TEXAS REGISTER

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William Riley
4th Grade

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

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*.

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Stephen F. Austin State University

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University of Houston System

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 December 5, 2003

Appointed to the Texas Commission on Private Security for a term to expire January 31, 2009, John E. Chism of Irving (replacing Ben Nix who resigned).

Designating George B. Craig of Corpus Christi as Presiding Officer of the Texas Commission on Private Security for a term at the pleasure of the Governor. Mr. Craig will be replacing Ben Nix as presiding officer.

Appointments for December 8, 2003

Appointed as Justice of the Third Appellate District, Place 6, for a term until the next General Election and until his successor shall be duly elected and qualified, Robert Harrison Pemberton of Austin. Mr. Pemberton is replacing Justice Lee Yeakel who received an appointment to a federal bench.

Appointed as Justice of the Tenth Appellate District, Place 3, Waco, for a term until the next General Election and until his successor shall be duly elected and qualified, Felipe Reyna of Lorena. Mr. Reyna is being appointed to replace Justice Thomas Gray who was appointed as Chief Justice.

Appointed as Chief Justice of the Tenth Appellate District, Waco, for a term until the next General Election and until his successor shall be duly elected and qualified, Thomas Wayne Gray of Waco. Justice Gray is being appointed as Chief Justice from his current position as Associate Justice of the court, to replace Chief Justice Rex Davis who resigned.

Appointed as Chief Justice of the Fourteenth Appellate District for a term until the next General Election and until her successor shall be duly elected and qualified, Adele Hedges of Houston. Justice Hedges is replacing Chief Justice Scott Brister who has been appointed to the Texas Supreme Court.

Appointed to the Polygraph Examiners Board for a term to expire June 18, 2009, Kelly B. Hendricks of Humble (replacing William Teigen of Dallas whose term expired).

Appointed to the Polygraph Examiners Board for a term to expire June 18, 2009, Lawrence D. Mann of Plano (pursuant to SB 287, 78th Legislature Regular Session).

Designating James R. Nichols of Fort Worth as Presiding Officer of the Texas Board of Professional Engineers for a term at the pleasure of the Governor. Mr. Nichols is being named presiding officer pursuant to SB 277, 78th Legislature, Regular Session.

Rick Perry, Governor

TRD-200308464

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THE ATTORNEY GENERAL

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

Opinions

Opinion No. GA-0126

The Honorable Ben W. "Bud" Childers

Fort Bend County Attorney

301 Jackson Street, Suite 728

Richmond, Texas 77469-3108

Re: Authority of a district court judge to appoint an associate judge (RQ-0063-GA)

S U M M A R Y

Chapter 201, subchapter A of the Family Code is the successor statute to former article 1918b of the Revised Civil Statutes, which authorized a district court with family law jurisdiction to appoint a family law master if the commissioners court authorized the employment of a master. The Fort Bend County Commissioners Court's 1984 authorization for the 328th District Court to employ a family law master pursuant to former article 1918b permits the judge of that district court to appoint an associate judge pursuant to chapter 201, subchapter A of the Family Code, provided that (i) the commissioners court has not rescinded the 1984 authorization, and (ii) the current county budget provides for the position. The 1984 authorization does not permit any other district court to appoint an associate judge.

The 1984 authorization's salary limitation does not prohibit the commissioners court from increasing the associate judge's salary in any subsequent county budget. The commissioners court's authority to pay the associate judge's salary in any given budget year is limited by the county budget.

A judge may appoint as an associate judge under Family Code, chapter 201, subchapter A a person who did not apply nor interview for the position and who did not meet posted qualifications, provided that the commissioners court has authorized the judge to employ an associate judge and the associate judge meets the statute's qualifications. *See* TEX. FAM. CODE ANN. §§201.001(a), 201.002 (Vernon 2002). A court is likely to conclude that an associate judge appointed under this provision is not an "employee" under Title VII of the Civil Rights Act of 1964.

Opinion No. GA-0127

The Honorable Michael J. Knight

Bee County Attorney

Bee County Courthouse, Room 204

105 West Corpus Christi Street

Beeville, Texas 78102

Re: Whether a school trustee may serve as an umpire at school district baseball games (RQ-0086-GA)

S U M M A R Y

A member of the board of trustees of the Beeville Independent School District is not prohibited by article XVI, section 40 of the Texas Constitution, or by the common-law doctrine of incompatibility from serving as an umpire at baseball games in which his school district is involved.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200308478
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: December 10, 2003

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Request for Opinions

RQ-0132-GA

Requestor:

Mr. Randall H. Riley

Executive Director

Texas Building and Procurement Commission

1711 San Jacinto Boulevard

Austin, Texas 78711

Re: Proper charges for furnishing copies of vessel and outboard motor ownership records maintained by the Texas Parks and Wildlife Department (Request No. 0132-GA)

Briefs requested by January 9, 2004

RQ-0133-GA

Requestor:

Mr. Geoffrey S. Connor

Texas Secretary of State

P.O. Box 12697

Austin, Texas 78711-2697

Re: Residency requirement for directors of The Texas Mexican Railway Company (Request No. 0133-GA)

Briefs requested by January 9, 2004

RQ-0134-GA

Requestor:

Mr. Terrell I. Murphy

Executive Director

Texas Commission for the Blind

P.O. Box 12866

Austin, Texas 78711

Re: Whether the Texas Commission for the Blind may recover certain costs in furnishing particular information to its licensees (Request No. 0134-GA)

Briefs requested by January 9, 2004

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200308475

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: December 10, 2003

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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 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER C. COST OF COPIES OF PUBLIC INFORMATION

1 TAC §§111.61 - 111.63, 111.65, 111.67 - 111.71

The Texas Building and Procurement Commission proposes amendments to Title 1, TAC, Chapter 111, Executive Administration Division; Subchapter C, §§111.61 - 111.63; 111.65, and 111.67 - 111.71, concerning the cost of copies of public information.

Amendments to §111.67 and §111.71 will implement amendments to Texas Government Code, Chapter 552, enacted by the passage of Senate Bill 653, 78th Legislature, Regular Session (2003).

The rest of the amendments, recommended by the Open Records Steering Committee (ORSC), update, restructure, revise language, and create more efficient processes throughout the rules.

Hadassah Schloss, Open Records Administrator, has determined for the first five year period that the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing these rules.

Ms. Schloss has further determined that for each year of the first five year period the rules are in effect, the public benefit anticipated as a result of enforcing these rules will be clarity and consistency. There will be no cost to small, large or micro businesses or persons and no impact on local employment as a result of enforcing these rules.

Comments on the proposed amendments may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78701-3047. Comments may also be sent via e-mail to travis.langdon@tbpc.state.tx.us. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

The proposed amendments are made under the authority of the Texas Government Code, Title 5, Chapter 552, §552.262 and §552.269.

The proposed amendments will affect the Texas Government Code, Title 5, Chapter 552 and §2308.253

§111.61. Purpose [~~General~~].

(a) The Texas Building and Procurement Commission ("he Commission") must:

(1) Adopt [~~adopt~~] rules for use by each governmental body in determining charges under Texas Government Code, Chapter 552 (Public Information), Subchapter F (Charges for Providing Public Information) [~~(the "Public Information Act")~~];

(2) Prescribe the methods for computing the charges for copies of public information in paper, electronic, and other kinds of media; and

(3) Establish costs for various components of charges for public information that shall be used by each governmental body in providing copies of public information.

(b) The cost of providing public information is not necessarily synonymous with the charges made for providing public information. Governmental bodies must use the charges established by these rules, unless:

(1) Other law provides for charges for specific kinds of public information;

(2) They are a governmental body other than a state agency, and their charges are within a 25 percent variance above the charges established by the Commission;

(3) They request and receive an exemption because their actual costs are higher; or

(4) In accordance with Chapter 552 of the Texas Government Code (also known as the Public Information Act), the governmental body may grant a waiver or reduction for charges for providing copies of public information pursuant to [~~They abide by~~] §552.267 of the Texas Government Code. [~~Public Information Act, which reads:~~]

(A) A governmental body shall furnish a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public; or

(B) If the cost to the governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

§111.62. Definitions.

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

(1) Actual cost--The sum of all direct costs plus a proportional share of overhead or indirect costs. Actual cost should be determined in accordance with generally accepted methodologies.

(2) Client/Server System--A combination of two or more computers that serve a particular application through sharing processing, data storage, and end-user interface presentation. PCs located in a LAN environment containing file servers fall into this category as do applications running in an X-window environment where the server is a UNIX based system.

(3) Commission--The Texas Building and Procurement Commission.

(4) Governmental Body--As defined by §552.003 of the Texas Government Code.[, ~~Public Information Act, means:~~]

(A) A [~~a~~] board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(B) A [~~a~~] county commissioners court in the state;

(C) A [~~a~~] municipal governing body in the state;

(D) A [~~a~~] deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) A [~~a~~] school district board of trustees;

(F) A [~~a~~] county board of school trustees;

(G) A [~~a~~] county board of education;

(H) The [~~the~~] governing board of a special district;

(I) The [~~the~~] governing body of a nonprofit corporation organized under, Chapter 67 [~~76, Acts of the 43rd Legislature, First Called Session, 1933 (Article 1434a, Texas Civil Statutes),~~] that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under the Texas Tax Code, Chapter 11, §11.30; and

(J) The [~~the~~] part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; [~~and~~]

(K) A local workforce development board created under §2308.253 of the Texas Government Code;

(L) A nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(M) [~~(K)~~] Does [~~does~~] not include the judiciary.

(5) Mainframe Computer--A computer located in a controlled environment and serving large applications and/or large numbers of users. These machines usually serve an entire organization or some group of organizations. These machines usually require an operating staff. IBM and UNISYS mainframes, and large Digital VAX 9000 and VAX Clusters fall into this category.

(6) Midsize Computer--A computer smaller than a Mainframe Computer that is not necessarily located in a controlled environment. It usually serves a smaller organization or a sub-unit of an organization. IBM AS/400 and Digital VAX/VMS multi-user single-processor systems fall into this category.

(7) Nonstandard copy--Under §§111.61 through 111.71 of this title, a copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM are examples of nonstandard copies. Paper copies larger than 8 1/2 by 14 inches (legal size) are also considered nonstandard copies.

(8) [~~Standalone~~] PC--An IBM compatible PC, Macintosh or Power PC based computer system operated without a connection to a network.

(9) Standard paper copy--Under §§111.61 through 111.71 of this title, a copy of public information that is a printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which information is recorded [~~an impression is made~~] is counted as a single copy. A piece of paper that has information recorded [~~is printed~~] on both sides is counted as two copies.

(10) Archival box--A carton box measuring approximately 12.5" width x 15.5" length x 10" height, or able to contain approximately 1.5 cubic feet in volume.

§111.63. Charges for Providing Copies of Public Information.

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §111.64 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is $.10 per page or part of a page. Each side that has recorded information [~~a printed image~~] is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

(A) Diskette [~~diskette~~]--$1.00;

(B) Magnetic [~~magnetic~~] tape--actual cost [~~$11.00-$13.50 (depending on width--see §111.70 of this title (relating to the Texas Building and Procurement Commission Charge Schedule))~~];

(C) Data [~~data~~] cartridge--actual cost [~~$17.50-$35 (depending on series--see §111.70)~~];

(D) Tape [~~tape~~] cartridge--actual cost [~~$38-$45 (depending on memory--see §111.70)~~];

(E) Rewritable CD (CD-RW)--$1.00;

(F) Non-rewritable CD (CD-R)--$1.00;

(G) Digital video disc (DVD)--$3.00;

(H) JAZ drive--actual cost;

(I) Other electronic media--actual cost;

(J) [~~(E)~~] VHS video cassette--$2.50;

(K) [~~(F)~~] Audio [~~audio~~] cassette--$1.00;

(L) [~~(G)~~] Oversize [~~oversize~~] paper copy (e.g. [~~i.e.~~]: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §111.69 of this title)--$.50;

(M) [~~(H)~~] Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic--actual cost. [~~$.85-$1.35/linear foot (depending on thickness--see §111.70);~~]

[~~(I) Blueprint/Blueline paper--$.20/linear foot (all widths).~~]

[(3) The charges in this subsection are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.]

(c) Labor charge for programming [Programming personnel]. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is $28.50 [$26] an hour, which includes [including] fringe benefits. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code [Public Information Act].

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code[, Chapter 552, §552.261(b)].

(d) Labor charge for locating, compiling, and reproducing public information [Other Personnel charge].

(1) The charge for labor [other personnel] costs[,] incurred in processing a request for public information is $15 an hour, which includes [including] fringe benefits. The labor [Where applicable, the other personnel] charge includes [may include] the actual time to locate, compile, and reproduce the requested information.

(2) A labor charge [An other personnel charge] shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) Two [two] or more separate buildings that are not physically connected with each other; or

(B) A [a] remote storage facility.

(3) A labor charge [Other personnel time] shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) To [to] determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552 [of the Public Information Act]; or

(B) To [to] research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code [Public Information Act].

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge [personnel time] may be recovered for time spent to redact [obliterate], blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).

(6) For purposes of subsection (d)(2)(A) of this section, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor [personnel] charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor [personnel] charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages [or fewer] of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor [personnel] costs associated with a particular request. Example: if one hour of labor [personnel (programming, other personnel or a combination of both)] is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing, $15.00 x .20 = $3.00; or Programming labor charge, $28.50 [$26.00] x .20 = $5.70 [$5.20;] If a request requires one hour of labor charge for locating, compiling, and reproducing information ($15.00 per hour); and one hour of programming labor charge ($28.50 per hour), the combined overhead would be: $15.00 + $28.50 = [or] $43.50 [$41.00] x .20 = $8.70 [$8.20].

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies [state agencies]. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before [may charge the actual costs of] having the reproduction made commercially.

(2) If only a master copy of information in microform is maintained, the charge is $.10 per page for standard size paper copies, plus any applicable labor [personnel] and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor [personnel] charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the

boxes must still be searched for records that are responsive to the request, a labor [~~personnel~~] charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System--Rate: Mainframe--$10 per CPU minute; Midsize--$1.50 per CPU minute; Client/Server--$2.20 per clock hour; PC or LAN--$1.00 per clock hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows: $10 / 3 = $3.33; or $10 / 60 x 20 = $3.33.

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the §552.231 of the Texas Government Code [~~Public Information Act, Government Code, Chapter 552, §552.231~~].

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales [~~Sales~~] tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, §3.341 and §3.342).

(l) The commission shall reevaluate and update these charges as necessary.

§111.65. Access to Information Where Copies Are Not Requested.

(a) Access to information in standard paper form. A governmental body shall not charge for making available for inspection information maintained in standard paper form. Charges are permitted only where the governmental body is asked to provide, for inspection, information that contains mandatory confidential information and public information. When such is the case, the governmental body may charge to make a copy of the page from which information must be edited. No other charges are allowed except as follows:

(1) The governmental body has 16 or more employees and the information requested takes more than five hours to prepare the public information for inspection; and[~~:~~]

(A) Is [~~is~~] older than five years; or

(B) Completely [~~completely~~] fills, or when assembled will completely fill, six or more archival boxes.[~~; and~~]

[~~(C) it is estimated that more than five hours will be required to make the public information available for inspection.~~]

(2) The governmental body has 15 or fewer full-time employees and the information requested takes more than two hours to prepare the public information for inspection; and[~~:~~]

(A) Is [~~is~~] older than three years; or

(B) Completely [~~completely~~] fills, or when assembled will completely fill, three or more archival boxes. [~~; and~~]

[~~(C) it is estimated that more than two hours will be required to make the public information available for inspection.~~]

(3) A governmental body may charge pursuant to paragraphs (1)(A) and (2)(A) of this subsection only for the production of those documents that qualify under those paragraphs.

(b) Access to information in other than standard form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard form, a governmental body may not charge the requesting party the cost of preparing and making available such information, unless complying with the request will require programming or manipulation of data.

§111.67. Estimates and Waivers of Public Information Charges.

(a) A governmental body is required to provide a requestor with an itemized statement of estimated charges if charges for copies of public information will exceed $40, or if a charge in accordance with §111.65 of this title (relating to Access to Information Where Copies Are Not Requested) will exceed $40 for making public information available for inspection. A governmental body that fails to provide the required statement may not collect more than $40. The itemized statement must be provided free of charge and must contain the following information:

(1) The [~~the~~] itemized estimated charges, including any allowable charges for labor [~~or personnel cost~~], overhead, copies, etc.;

(2) Whether [~~whether~~] a less costly or no-cost way of viewing the information is available;

(3) A [~~a~~] statement that the requestor must respond in writing by mail, in person, by facsimile if the governmental body is capable of receiving such transmissions, or by electronic mail, if the governmental body has an electronic mail address;

(4) A [~~a~~] statement that the request will be considered to have been automatically withdrawn by the requestor if a written response from the requestor is not received within ten business days after the date the statement was sent, in which the requestor states that the requestor:

(A) Will [~~will~~] accept the estimated charges; [~~or~~]

(B) Is [~~is~~] modifying the request in response to the itemized statement; or

(C) Has sent to the Texas Building and Procurement Commission a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

(b) If after starting the work, but before making the copies available, the governmental body determines that the initial estimated statement will be exceeded by 20% or more, an updated statement must be sent. If the requestor does not respond to the updated statement, the request is considered to have been withdrawn by the requestor.

(c) If the actual charges exceed $40, the charges may not exceed:

(1) The [~~the~~] amount estimated on the updated statement; or

(2) An [~~an~~] amount that exceeds by more than 20% [~~or more~~] the amount in the initial statement, if an updated statement was not sent.

(d) A governmental body that provides a requestor with the statement mentioned in subsection (a) of this section, may require a deposit or bond as follows:

(1) The [~~the~~] governmental body has 16 or more full-time employees and the estimated charges are $100 or more; or

(2) The [~~the~~] governmental body has 15 or fewer full-time employees and the estimated charges are $50 or more.

(e) If a request for the inspection of paper records will qualify for a deposit or a bond as detailed in subsection (d) of this section, a governmental body may request:

(1) A [~~a~~] bond for the entire estimated amount; or

(2) A [~~a~~] deposit not to exceed 50 percent of the entire estimated amount.

(f) A governmental body may require payment of overdue and unpaid balances before preparing a copy in response to a new request if:

(1) The [~~the~~] governmental body provided, and the requestor accepted, the required itemized statements for previous requests that remain unpaid if itemized statements were required by law; and

(2) The [~~the~~] aggregated unpaid amount exceed $100.

(g) A governmental body may not seek payment of said unpaid amounts through any other means.

(h) A governmental body that cannot produce the public information for inspection and/or duplication within 10 business days after the date the written response from the requestor has been received, shall certify to that fact in writing, and set a date and hour within a reasonable time when the information will be available.

§111.68. Processing Complaints of Overcharges.

(a) Pursuant to §552.269(a) of the Texas Government Code [~~Public Information Act~~], a requestor who believes he/she has been overcharged for a copy of public information may complain to the Commission.

(b) The complaint must be in writing, and must:

(1) Set [~~set~~] forth the reason(s) the person believes the charges are excessive;

(2) Provide a copy of the original request and a copy of any correspondence from the governmental body stating the proposed charges; and

(3) [~~(2)~~] Be [~~be~~] received by the Texas Building and Procurement Commission within 10 working days after the person knows of the occurrence of the alleged overcharge.

(c) The Texas Building and Procurement Commission shall address written questions to the governmental body, regarding the methodology and figures used in the calculation of the charges which are the subject of the complaint.

(d) The governmental body shall respond in writing to the questions within 10 business days from receipt of the questions.

(e) The Texas Building and Procurement Commission may use tests, consultations with records managers and technical personnel at TBPC and other agencies, and any other reasonable resources to determine appropriate charges.

(f) [~~(e)~~] If the Texas Building and Procurement Commission determines that the governmental body overcharged for requested public information, the governmental body shall adjust its charges in accordance with the determination, and shall refund the difference between what was charged and what was determined to be appropriate charges.

(g) [~~(f)~~] The Texas Building and Procurement Commission shall send a copy of the determination to the complainant and to the governmental body.

(h) [~~(g)~~] Pursuant to §552.269(b) of the Texas Government Code [~~Public Information Act~~], a requestor who overpays because a governmental body refuses or fails to follow the charges established by the Commission, is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the charges.

(i) [~~(h)~~] The Texas Building and Procurement Commission does not have the authority to determine whether or not a governmental body acted in good faith in computing charges.

§111.69. Examples of Charges for Copies of Public Information.

The following tables present a few examples of the calculations of charges for information:

(1) TABLE 1 (Fewer than 50 pages of paper records): $.10 per copy x number of copies (standard-size paper copies); + Labor [~~Personnel~~] charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(2) TABLE 2 (More than 50 pages of paper records or nonstandard copies): $.10 per copy x number of copies (standard-size paper copies), or cost of nonstandard copy (e.g., diskette, oversized paper, etc.); + Labor [~~Personnel~~] charge (if applicable); + Overhead charge (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(3) TABLE 3 (Information that Requires Programming or Manipulation of Data): Cost of copy (standard or nonstandard, whichever applies); + Labor [~~Personnel~~] charge; + Overhead charge; + Computer resource charge; + Programming time (if applicable); + Document retrieval charge (if applicable); + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(4) TABLE 4 (Maps): Cost of paper (Cost of Roll/Avg. # of Maps); + Cost of Toner (Black or Color, # of Maps per Toner Cartridge); + Labor charge (if applicable); + Overhead charge (if applicable) + Plotter/Computer resource Charge; + Actual cost of miscellaneous supplies (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

(5) TABLE 5 (Photographs): Cost of Paper (Cost of Sheet of Photographic Paper/Avg. # of Photographs per Sheet); + Developing/Fixing Chemicals (if applicable); + Labor charge (if applicable); + Overhead charge (if applicable); + Postage and shipping (if applicable) = $ TOTAL CHARGE.

§111.70. The Texas Building and Procurement Commission Charge Schedule.

The following is a summary of the charges for copies of public information that have been adopted by the Commission. [~~Service Rendered--Charge:~~]

(1) Standard paper copy--$.10 per page.

(2) Nonstandard-size copy:

(A) Diskette:[~~--~~]$1.00;

(B) Magnetic tape: actual cost;

~~*[(i)* 4 mm.--$13.50 each;]~~

~~*[(ii)* 8 mm.--$12 each;]~~

~~*[(iii)* 9-track--$11 each;]~~

(C) Data cartridge: actual cost;

~~*[(i)* 2000 Series--$17.50 each;]~~

~~*[(ii)* 3000 Series--$20 each;]~~

~~*[(iii)* 6000 Series--$25 each;]~~

~~*[(iv)* 9000 Series--$35 each;]~~

~~*[(v)* 600A--$20 each;]~~

(D) Tape cartridge: actual cost;

~~*[(i)* 250 MB--$38 each;]~~

~~*[(ii)* 525 MB--$45 each;]~~

(E) Rewritable CD (CD-RW)--$1.00;

(F) Non-rewritable CD (CD-R)--$1.00;

(G) Digital video disc (DVD)--$3.00;

(H) JAZ drive--actual cost;

(I) Other electronic media--actual cost;

(J) [~~(E)~~] VHS video cassette--$2.50;

(K) [~~(F)~~] Audio cassette--$1.00;

(L) [~~(G)~~] Oversize paper copy (e.g. : 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper)--$.50 [~~each~~];

(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic)--actual cost.

~~[(H) Mylar (36-inch, 42-inch, and 48-inch):]~~

~~*[(i)* 3 mil.--$.85/linear foot;]~~

~~*[(ii)* 4 mil.--$1.10/linear foot;]~~

~~*[(iii)* 5 mil.--$1.35/linear foot;]~~

~~[(I) Blueline/blueprint paper (all widths)--$.20/linear foot;]~~

~~[(J) Other--Actual cost.]~~

(3) Labor [~~Personnel~~] charge:

(A) For programming [~~Programming personnel~~]--$28.50 [~~$26~~] per hour;

(B) For locating , compiling, and reproducing [~~Other personnel~~]--$15 per hour.

(4) Overhead charge--20% of labor [~~personnel~~] charge.

(5) Microfiche or microfilm charge:

(A) Paper copy--$.10 per page;

(B) Fiche or film copy--Actual cost.

(6) Remote document retrieval charge--Actual cost.

(7) Computer resource charge:

(A) Mainframe--$10 per CPU minute;

(B) Midsize--$1.50 per CPU minute;

(C) Client/Serversystem--$2.20 per clock hour;

(D) PC or LAN--$1.00 per clock hour.

(8) Miscellaneous supplies--Actual cost.

(9) Postage and shipping charge--Actual cost.

(10) Photographs--Actual cost as calculated in accordance with §111.69(5) of this title.

(11) Maps--Actual cost as calculated in accordance with §111.69(4) of this title.

(12) [~~(11)~~] Other costs--Actual cost.

(13) [~~(12)~~] Outsourced/Contracted Services--Actual cost for the copy. May not include development costs.

(14) [~~(13)~~] No Sales Tax--No Sales Tax shall be applied to copies of public information.

§111.71. Informing the Public of Basic Rights and Responsibilities under the Public Information Act.

(a) Pursuant to Texas Government Code, Chapter 552, Subchapter D, §552.205, an officer for public information shall prominently display a sign in the form prescribed by the Texas Building and Procurement Commission.

(b) The sign shall contain basic information about the rights of requestors and responsibilities of governmental bodies that are subject to Chapter 552, as well as the procedures for inspecting or obtaining a copy of public information under said chapter.

(c) The sign shall have the minimum following characteristics:

(1) Be printed on plain paper.

(2) Be no less than 8 1/2 inches by 14 inches in total size, exclusive of framing.

(3) The sign may be laminated to prevent alterations.

(d) The sign will contain the following wording:

(1) The Public Information Act. Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought.

(2) Rights of Requestors. You have the right to:

(A) Prompt access to information that is not confidential or otherwise protected;

(B) Receive treatment equal to all other requestors, including accommodation in accordance with the Americans with Disabilities Act (ADA) requirements;

(C) Receive certain kinds of information without exceptions, like the voting record of public officials, and other information;

(D) Receive a written itemized statement of estimated charges, when charges will exceed $40, in advance of work being started and opportunity to modify the request in response to the itemized statement;

(E) Choose whether to inspect the requested information (most often at no charge), receive copies of the information, or both;

(F) A waiver or reduction of charges if the governmental body determines that access to the information primarily benefits the general public;

(G) Receive a copy of the communication from the governmental body asking the Office of the Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;

(H) Lodge a written complaint about overcharges for public information with the Texas Building and Procurement Commission. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the Office of the Attorney General.

(3) Responsibilities of Governmental Bodies. All governmental bodies responding to information requests have the responsibility to:

(A) Establish reasonable procedures for inspecting or copying public information and inform requestors of these procedures;

(B) Treat all requestors uniformly and shall give to the requestor all reasonable comfort and facility, including accommodation in accordance with ADA requirements;

(C) Be informed about open records laws and educate employees on the requirements of those laws;

(D) Inform requestors of estimated charges greater than $40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, [~~or~~] has amended the request, or has sent a complaint of overcharges to the Texas Building and Procurement Commission, in writing before finalizing the request;

(E) Inform requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;

(F) Request a ruling from the Office of the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;

(G) Segregate public information from information that may be withheld and provide that public information promptly;

(H) Make a good faith attempt to inform third parties when their proprietary information is being requested from the governmental body;

(I) Respond in writing to all written communications from the Texas Building and Procurement Commission regarding charges for the information. Respond to the Office of the Attorney General regarding complaints about violations of the Act.

(4) Procedures to Obtain Information.

(A) Submit a request by mail, fax, email or in person, according to a governmental body's reasonable procedures.

(B) Include enough description and detail about the information requested to enable the governmental body to accurately identify and locate the information requested.

(C) Cooperate with the governmental body's reasonable efforts to clarify the type or amount of information requested.

(5) Information to be released.

(A) You may review it promptly, and if it cannot be produced within 10 working days the public information office will notify you in writing of the reasonable date and time when it will be available;

(B) Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested;

(C) Cost of Records.

(i) You must respond to any written estimate of charges within 10 business days of the date the governmental body sent it or the request is considered to be automatically withdrawn;

(ii) If estimated costs exceed $100.00 (or $50.00 if a governmental body has fewer than 16 full time employees) the governmental body may require a bond, prepayment or deposit;

(iii) You may ask the governmental body to determine whether providing the information primarily benefits the general public, resulting in a waiver or reduction of charges;

(iv) Make timely payment for all mutually agreed charges. A governmental body can demand payment of overdue balances exceeding $100.00, or obtain a security deposit, before processing additional requests from you.

(6) Information that may be withheld due to an exception.

(A) By the 10th business day after a governmental body receives your written request, a governmental body must:

(i) Request an Attorney General Opinion and state which exceptions apply;

(ii) Notify the requestor of the referral to the Attorney General; and

(iii) Notify third parties if the request involves their proprietary information;

(B) Failure to request an Attorney General opinion and to notify the requestor within 10 business days will result in a presumption that the information is open unless there is a compelling reason to withhold it.

(C) Requestors may send a letter to the Attorney General arguing for release, and may review arguments made by the governmental body. If the arguments disclose the requested information, the requestor may obtain a redacted copy.

(D) The Attorney General must render a decision no later than the 45th working day after the attorney general received the request for a decision. The attorney general may request an additional 10 working days extension.

(E) Governmental bodies may not ask the Attorney General to "reconsider" an opinion.

(7) Additional Information on Sign.

(A) The sign must contain contact information of the governmental body's officer for public information, or the officer's agent, as well as the mailing address, phone and fax numbers, and email address, if any, where requestors may send a request for information to the officer or the officer's agent. The sign must also contain the physical address at which requestors may request information in person.

(B) The sign must contain [~~contact~~] information of the local county attorney or district attorney where requestors may submit a complaint of alleged violations of the Act, as well as the contact information for the Office of the Attorney General and the Texas Building and Procurement Commission.

(C) The sign must also contain contact information of the person or persons with whom a requestor may make special arrangements for accommodation pursuant to the American with Disabilities Act.

(e) A governmental body may comply with Texas Government Code, §552.205 and this rule by posting the sign provided by the Texas Building [~~building~~] and Procurement 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 December 4, 2003.

TRD-200308288
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 463-4257

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3, §51.15

The Texas Animal Health Commission (commission) proposes amendments to Chapter 51, entitled, "Entry Requirements." Specifically, the Texas Animal Health Commission proposes amendments to §51.3, concerning Exceptions and 51.15, concerning Poultry. The purpose of the amendments to Chapter 51 is to adjust some of the existing entry requirements in response to recent animal health related events. Also, the commission is proposing some amendments for the purpose of clarification.

The commission recently adjusted requirements for out-of-state poultry that enter Texas to participate in a show, fair or exhibition relative to low path Avian Influenza (AI). Low pathogenic AI is an infectious and contagious disease that has been detected in the last few years in several states. The purpose of the amendment was to substantially reduce the risk for introduction of this contagious and infectious disease to this State. The current requirement covered in Section 51.15 (b) (3) for all out-of-state poultry entering Texas, provides that the test must be administered within seventy two (72) hours of entry into the state. This timeframe is being adjusted in order to allow the test to be conducted within thirty days prior to entry. Also in 51.15 (b) (3) and (4) there is an option on which test, ELISA/AGID or Directigen (R) test, can be used for Avian Influenza. The rule is be modified to add an "or" to reflect that you have to do one or the other but do not have to do both.

Also, the Commission currently requires that all animals under its jurisdiction, which includes exotic fowl, shall enter the state with a health certificate and obtain an entry permit from the Commission unless exempted. However in reviewing the agency's permit protocol "pet birds" represent a reduced disease risk that currently does not warrant the need to obtain an entry permit. Therefore the commission is proposing to amend Section 51.3 to exempt exotic fowl other than ratites from obtaining a permit. Ratites currently must obtain a permit and they are not included in the exemption. All exotic fowl entering Texas must still have a health certificate prior to entry.

Mr. Bruce Hammond, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The commission currently administers the entry requirements and these amendments do not create any additional fiscal implications. There will be no effect to small or micro businesses.

Mr. Hammond also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations which can be found in one chapter. The commission has made adjustments in the rule to conform to our recently achieved swine health status and is including requirements for poultry which are intended to be protective of Texas poultry.

In accordance with Government Code, Section 2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC, Section 59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

Chapter 51 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent

of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases. Section 161.061 provides that the commission shall establish a quarantine on the affected animals or on the affected place.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

No other statutes, articles, or codes are affected by the amendments.

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter or a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(2) Cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, to a designated pen, or to a quarantined feedlot when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which includes the test date and results;

(3) Steers, spayed heifers, cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;

(4) steers, spayed heifers and cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;

(5) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(6) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission; and

(7) Steers, spayed heifers, and cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route.

(c) Exceptions for an entry permit.

(1) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Part 76;

(2) Swine that originate from an approved Swine Commuter Herd;

(3) Poultry that originate from an approved Poultry Commuter Flock;

(4) Cattle that originate from an approved Cattle Commuter Herd;

(5) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months.

(6) Sheep and goats consigned from out-of-state.

(7) Entry permits are not required for swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under Title 9 of the Code of Federal Regulations, Part 76.

(8) Entry permits are not required for swine that originate from an approved Swine Commuter Herd.

(9) Exotic fowl from out of state, except ratites.

§51.15. Poultry.

(a) All poultry must meet the requirements [~~the~~] contained in §57.11, of this title (relating to Entry Requirements).

(b) Live domestic poultry, except those entering for slaughter and processing at a slaughter facility owned or operated by the owner of the poultry entering, may enter Texas only under the following circumstances:

(1) The domestic poultry originate from a flock that is certified as Avian Influenza clean in accordance with the National Poultry Improvement Plan and the shipment is accompanied by a Certificate of Veterinary Inspection; or

(2) The domestic poultry is from an Avian Influenza negative flock that participates in an approved state-sponsored Avian Influenza monitoring program and the shipment is accompanied by a Certificate of Veterinary Inspection indicating participation and listing the general description of the birds, test date, test results, and name of testing laboratory; or

(3) The domestic poultry originate from a flock in which a minimum of 30 birds, 4 weeks of age or older, or the complete flock, if fewer than 30, are serologically negative to an Enzyme Linked Immunosorbent Assay (ELISA) or Agar Gel Immunodiffusion (AGID) test for Avian Influenza within 30 days [~~72 hours~~] of entry or [~~and~~] a minimum of 10 birds (e.g. two pools of 5 birds per house) are tested negative on trachea swabs to a Directigen (R) test within 30 days [~~72 hours~~] of entry or negative to other tests approved by the Commission; the shipment shall be accompanied by a Certificate of Veterinary Inspection listing the general description of the birds, test date, test results, and name of testing laboratory.

(4) Live domestic poultry from states affected with Avian Influenza may enter Texas for slaughter and processing only under the following circumstances: A minimum of 30 birds per flock are serologically negative to an ELISA or AGID test for Avian Influenza within 72 hours of entry, or [~~and~~] a minimum of 10 birds (e.g., two pools of 5 birds per house) are tested negative on tracheal swabs to a Directigen (R) test within 72 hours of entry or negative to other tests approved by the TAHC, and specific written permission has been granted.

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 December 8, 2003.

TRD-200308438
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 719-0714

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CHAPTER 54. DOMESTIC AND EXOTIC FOWL REGISTRATION

4 TAC §§54.1 - 54.8

The Texas Animal Health Commission (Commission) proposes a new Chapter 54, which is entitled "Domestic and Exotic Fowl Registration". Chapter 54 contains the following Sections: Section 54.1, "Definitions"; Section 54.2, "Registration Requirements"; Section 54.3, "Registration Exemption"; Section 54.4, "Registration Fee"; Section 54.5, "Program Requirements"; Section 54.6, "Recordkeeping"; Section 54.7, "Movement and Testing Restrictions"; and Section 54.8, "Enforcement".

During the last regular legislative session House Bill (H.B.) 2328 was passed and signed into law. It requires the Commission to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The primary purpose of the program is to ensure that the various type of fowl being sold or transported throughout this state do not pose a disease risk which could devastate the various Texas fowl industries. Texas has recently experienced problems with diseases in poultry.

In May, 2002, 300,000 Texas chickens were put to death because of an outbreak of low-pathogenic avian influenza (AI). On April 10, 2003 an outbreak of exotic Newcastle disease (END) was confirmed in a backyard flock near El Paso, resulting in the imposition of state and federal quarantines on five counties in Texas and New Mexico. Since October 2002, the state of California has had to destroy 3.5 million birds to stop an END outbreak there; the disease also has appeared in Nevada and Arizona.

Many factors can expose Texas livestock, poultry, or wildlife to the risk of infection by contagious diseases. With increasing consolidation in the farm and ranch industry, large numbers of animals are kept in close quarters, creating a situation in which animal diseases can spread more quickly. Besides jeopardizing the commercial poultry industry, contagious diseases also can pose a threat to the caged-bird industry and poultry hobbyists. Birds smuggled illegally into the United States bypass the quarantining and testing procedures of the U.S. Department of Agriculture (USDA). If a bird is carrying a foreign virus, owners and animal health officials may not discover the infection until an outbreak occurs. Because Texas has the longest contiguous state border with a foreign country, it is at increased risk for the introduction of a foreign animal disease.

Texas poultry are vulnerable to at least two fast-spreading diseases: END and highly pathogenic avian influenza (AI). Both diseases are considered "foreign animal diseases," which means they are not native to the United States. END is a high-pathogenic disease, meaning it is more likely to spread, while AI has both a low-pathogenic and a high-pathogenic strain. When an outbreak of a high-pathogenic disease occurs, international trade agreements ban the affected areas from international trade until they get a clean bill of health. These diseases can be carried by the various types of fowl, even if they are not susceptible.

The Commission is charged under current statutes with broad general responsibility and authority to eradicate or control diseases or agents of transmission of diseases affecting livestock, exotic livestock, domestic fowl or exotic fowl. The purpose of this chapter is to register a seller, distributor, or transporter of live domestic or exotic fowl where there is a risk for disease exposure or transmission. The registration will assist with surveillance necessary to protect Texas fowl from exposure to or infection with a highly contagious or infectious disease that could adversely affect domestic or exotic fowl in this state. The current registration requirements are focused on those areas or activities which create a higher risk for disease transmission.

This regulation will enhance poultry disease prevention, control and response by requiring that the identified sellers, transporters and distributors of fowl are either registered or participate in a disease surveillance program to minimize the impact of diseases.

A part of this program will be a requirement for dealers to make and maintain records regarding fowl bought and sold. This is one of the most valuable tools utilized by the Commission in all of their disease surveillance programs. It is an extremely valuable tool for being able to quickly respond to a significant avian disease exposure by tracing movement of fowl between buyers and sellers and thereby provide quick and effective response to control disease transmission which is essential to eradication efforts. The Commission currently has general record keeping requirements for fowl dealers which is applicable to most sellers. That provision is located in Volume 4, Texas Administrative Code Chapter 57, and Section 57.3. The basic requirement under that Section would be replicated for the Registration Program. That requirement currently provides would be to maintain records which show the buyer's and seller's name and address, county of origin, number of animals, and a description, including sex, age, color, breed, and any individual identification that is already on the fowl.

This proposed rule does not currently require individual identification of fowl because there is not a widely utilized industry standard and such a requirement would be unduly burdensome. Rather the Commission will utilize the dealer recordkeeping requirement for tracing the fowl that are bought and sold.

This chapter provides for sanitation standards to prevent spread of disease.

The Commission has not initiated any new testing requirements under this program but all registrants must comply with existing test requirements for change of ownership or for bringing fowl into Texas from other states.

The transporter portion of the registration program includes people who provide transportation of fowl as a business and not transportation which is incidental to someone moving fowl to other locations as part of their business practice.

The Commission may exempt from registration a person participating in a disease surveillance program recognized by the

commission. Currently the Commission has identified various disease programs that qualify for an exception. An example is USDA's "National Poultry Improvement Plan and Auxiliary Provisions" with a U.S. Avian Influenza Clean component. For persons who wish to qualify for an exemption through a disease surveillance program USDA is currently expanding the ability for various fowl species to participate in the National Poultry Improvement Plan and thereby allowing more fowl to participate in an acceptable disease monitoring program. The USDA, Animal and Plant Health Inspection Service (APHIS) have published proposed changes for their requirements regarding "National Poultry Improvement Plan and Auxiliary Provisions" as found in 9 CFR Parts 82, 145, and 147. The proposed changes were published in the Federal Register, May 23, 2003 (Volume 68, Number 100, Page 28169-28175, and [Docket No. 03-017-1]). They are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The Plan is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must first qualify as "U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs. USDA has proposed adding new U.S. Avian Influenza Clean programs to the regulations governing turkey breeding flocks and products and to the regulations governing waterfowl, exhibition poultry, and game breeding flocks and products. Both of these programs are modeled on the existing U.S. Avian Influenza Clean program for meat type chicken breeding flocks and products. Like the U.S. Avian Influenza Clean program for meat type chicken breeding flocks and products, the programs for turkey breeding flocks and products and waterfowl, exhibition poultry, and game breeding flocks and products would require that a sample of at least 30 birds must test negative for antibodies to avian influenza, as indicated by the agar gel immunodiffusion test. Both of these U.S. Avian Influenza Clean programs will provide flock-owners of fowl, other than poultry, with an optional way to be exempted from registration with the Commission by registering under this expanded USDA-APHIS Program.

This chapter also provides a mechanism through which a disease surveillance program could be recognized by the Commission.

H.B. 2328 authorizes the Commission to set fees under this section in amounts that do not exceed the amounts necessary to enable the commission to recover the costs of administering this section. The Commission proposes to utilize a graduated fee structure for registrants depending on flock size which takes into account the economic value of larger flocks as well as an increased disease risk. The Commission also recognizes that a person from out of state may want to bring fowl into Texas for the purpose of selling the fowl. These persons will be required to register and pay a fee. The fee is established at the top of the range because the commission can not inspect the premise to verify flock size. The proposed rule does however provide that an out of state registrant can submit an affidavit certifying a verified maximum flock size, in which case the registration fee will be the same as the fee for Texas registrants with a corresponding flock size.

H.B. 2328 provides that the registration program can be applied to all fowl being sold in Texas in order to ensure that the Commission can adequately address the various types of fowl industries and the risk posed by those industries. Texas is a very large state with a wide variety of activity associated with the various types of fowl. In order to assess the impact on the various fowl industries commission staff have developed several documents, which were posted on the agency's web site, to try and answer the questions posed by members of the fowl industries as well as to solicit input into the regulatory development process. Staff received a number of comments. Commission staff held a meeting for any interested parties on November 18, 2003. Staff presented a discussion draft of recommended regulations for consideration by the Commissioners at their December 3rd meeting. The meeting provided commission staff with some valuable feedback regarding that discussion draft as well as allowed staff to answer questions. A broad based point of discussion was the desire to have greater specificity regarding the applicability of the registration requirements to the various fowl groups. In particular a focus on fowl sales from a producer premise and classified as a "private treaty sale". Because of a lower disease risk, the difficulty in registering that type of activity, and the economic impact for small producers, Commission staff has consistently noted that the registration requirements would not include that limited and specific activity. There was also request made to be very specific on the types of birds included in the registration requirements. Because the Commission's authority over exotic and domestic fowl is broad based, coupled with the wide variety of fowl in this state and the difficulty in evaluating the risk associated with the various groups the task of specifically identifying the types of fowl is not appropriate. However in response to the meeting on the 18th Commission staff tried to develop a more specific description for those who need to register under Section 54.2.

In clarifying the registration requirements this proposal provides that the registration requirements apply to the identified groups. The registration requirements for a seller apply for those sales transactions where: (i) domestic fowl or domestic and exotic fowl are sold at a location, other than the premise of origin; or (ii) domestic fowl or domestic and exotic fowl are sold at a location where domestic fowl or domestic and exotic fowl from multiple sources are congregated; or (iii) any fowl where it has been epidemiologically determined by the commission to pose a high risk for disease transmission.

These provisions provide greater specificity but do not place registration requirements on "private treaty' sales" that take place on the premise of origin of the fowl. Also this proposal is more specific in that the registration requirements are focused on those situation where *"domestic fowl"* or *"domestic and exotic fowl"* from several sources are concentrated or congregated because those are activities where there is a high risk of disease transmission. As such the registration requirements do not include those congregation and sales of "only exotic fowl". In trying to develop this program Commission staff recognized that there may be situations where a disease risk develops among fowl being sold in situations not currently encompassed by the registration program. The discussion draft discussed at the meeting denoted that the registration program would also include high risk areas of activity and has been rewritten with greater specificity to state that the registration could be applied to any fowl being sold where it has been epidemiologically determined by the commission to be a high risk for disease transmission. The standard of being "epidemiologically determined by the commission to be a high risk" is more specific and allows the Commission to only address those situations on a case by case basis without trying to develop a wider registration program that captures activities that are not currently considered to be a high risk, such as private

treaty sales or exotic fowl only sales. The Commission will develop guidance documents to provide better direction on how the registration program will be applied.

In response to a comment from the meeting this proposal recognizes that sellers, distributors or transporters of only fowl classified as baby poultry, from an NPIP hatchery and accompanied by NPIP Form 9-3, or APHIS Form 17-6 do not pose a disease risk and therefore are not required to register.

Chapter 54 contains the following Sections: Section 54.1 is entitled "Definitions" and provides definitions for terms utilized in this chapter. Section 54.2 is entitled "Registration Requirements" and identifies those persons who are required to register and the registration process. Section 54.3 is entitled "Registration Exemption" and identifies those disease surveillance programs recognized by the commission as well as provides a mechanism for having a disease surveillance program recognized by the Commission through a submission process. Section 54.4 is entitled "Registration Fee" and provides the fees for registration utilizing a graduated fee structure for registrants depending on flock size. Section 54.5 is entitled "Program Requirements" and provides those requirements applicable to a registrant. Section 54.6 is entitled "Recordkeeping" and provides that a registrants shall keep records; identifies the information to be retained and the timeframe for retention. Section 54.7 is entitled "Movement and Testing Restrictions" provides the standards to be utilizing by the commission in restricting movement of fowl, any required testing as well as those standards for inspecting fowl being transported in this state. Section 54.8 is entitled "Enforcement" and provides the mechanisms the Commission may utilize to obtain compliance for violations of this chapter.

Mr. Bruce Hammond, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined the fiscal implications for state or local government. H.B. 2328 authorizes the Commission to set fees under this section in amounts that do not exceed the amounts necessary to enable the Commission to recover the costs of administering this section. The Commission proposes to institute a graduated fee structure for registrants depending on flock size, which also corresponds to disease risk. The annual registration fee for a seller shall be based on the maximum number of fowl at any one time, during the previous twelve (12) months, being owned or managed by the registrant. The annual certificate of registration fee for a distributor or transporter of fowl is set at $500.00 because a person performing this type of activity are handling a large number of fowl that will probably equal or exceed the corresponding fee for a seller with a flock of that size.

Anticipated revenues for first five year period are estimated to be $776,363. The first year's revenue is estimated to be $86,263 and each year thereafter, $172,525. Actual revenue will be dependent on the number of registrants within each graduated fee structure.

The use of a graduated fee also diminishes any type of adverse economic effect on small businesses or micro-businesses by relating the fee to the size of the flock. Also under this chapter the Commission recognizes there is a cost associated with the fee and there is also a cost for a similarly situated seller who is involved with a disease surveillance program recognized by the Commission. As such the requirements do create an adverse impact on a small businesses or micro-businesses for those who register and those under a disease surveillance program.

Mr. Hammond also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated is that the various types of fowl activities required to register provide the commission increased surveillance, reduced risk of disease spread and improved disease traceability to facilitate eradication of a disease all which is more protective for the various fowl industries and the general public.

In accordance with Government Code, Section 2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

Chapter 54 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. H.B. 2328 adds to Chapter 161, Section 161.0411 which authorizes the Commission to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. That authority is found in Section 161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under 161.002.

Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the

commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

Section 161.043, entitled, "Regulation of Exhibitions" provides that the Commission may regulate the entry of livestock, domestic animals, and domestic fowl into exhibitions, shows, and fairs and may require treatment or certification of those animals as reasonably necessary to protect against communicable diseases. Section 161.049, entitled "Dealer Records", provides the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. Section 161.056, entitled "Identification of Exotic Animals", provides the Commission may adopt rules to establish a standard method for identifying and tracking exotic livestock and exotic fowl. Section 161.081, entitled "Importation of Animals", provides the Commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country as well as the Commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The Commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits. Section 161.148, entitled "administrative penalty", provides that the commission may impose an administrative penalty against a person who violates a rule or order adopted under this chapter.

There are no other statutes affected by this chapter.

§54.1. Definitions.

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

(1) "Baby poultry"--Any newly hatched poultry that has not been fed or watered.

(2) "Caretaker"--A person who is the owner or lessee of a pen, or other place on which fowl are located and has control of that place, or who exercises care or control over fowl.

(3) "Distributor"--Any person engaged in sales and/or movement of live domestic or exotic fowl between a production system and a live bird market or fowl market or acquires domestic or exotic fowl from multiple flocks or geographic areas for resale to another person.

(4) "Domestic Fowl"--Any species of domestic fowl propagated and maintained by a person for food, eggs, exhibition or recreation.

(5) "Exotic fowl"--Any avian species that is not indigenous to the state. The term includes ratites.

(6) "Fowl Market"--A flea market, live bird market, sales pavilion, sales ring; roadside vendor or other location where domestic fowl or domestic and exotic fowl are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange.

(7) "Hold Order"--A commission document restricting movement of a flock, unit, or individual fowl pending the determination of disease status.

(8) "Live Bird Market" (LBM)--Any facility on which live domestic fowl or domestic and exotic fowl are congregated for sale or to be slaughtered and dressed for sale to the public or local restaurants or to be sold live for any purpose.

(9) "Person"--Any individual, firm, partnership, corporation, estate, trust, fiduciary, or other group or combination acting as a unit.

(10) "Seller"--Any person who sells, trades, exchanges or barters domestic or exotic fowl.

(11) "Transporter"--A person that transports, for hire, domestic or exotic fowl from a producer premises to another premises, a live bird market, a fowl market or to another person.

§54.2. Registration Requirements.

(a) A seller, distributor, or transporter of live domestic or exotic fowl in this state shall register with the commission. The registration requirements apply to the following groups:

(1) a seller who sells:

(A) domestic fowl or domestic and exotic fowl at a location, other than the premise of origin, or

(B) domestic fowl or domestic and exotic fowl at a location where domestic fowl or domestic and exotic fowl are congregated, or

(C) any fowl where it has been epidemiologically determined by the commission to be a high risk for disease.

(2) a distributor of domestic fowl or domestic and exotic fowl.

(3) a transporter of domestic fowl or domestic and exotic fowl.

(b) A person participating in a disease surveillance program recognized by the commission under §54.3 of this chapter is exempt from the registration requirements.

(c) Any person intending to operate as a seller, distributor, or transporter of live domestic or exotic fowl shall obtain a certificate of registration and pay an annual nonrefundable fee. To receive a certificate of registration a person shall complete an application that includes a list of each location at which the person conducts the sale, distribution, or transportation of domestic or exotic fowl. Application forms may be obtained from the Commission. An application for a certificate of registration or a renewal of a certificate of registration is made by submitting a completed application and an annual fee to the Commission. All certificates of registrations shall be issued for a period of one (1) year and shall expire twelve months from the date of issue. Renewal applications shall be completed and submitted 30 days prior to the expiration date.

(d) The certificate of registration shall be issued in the name used by the person or entity for transactions involving domestic and exotic fowl. Any change in the name of a registrant or additions or deletions of operation locations shall be promptly submitted to the Commission in writing. The registrant shall maintain proof of registration at each location where the activity takes place.

(e) All out of state sellers, distributors, or transporters of live domestic or exotic fowl that transact business in Texas shall register under this chapter.

§54.3. Registration Exemption.

(a) The commission may exempt from registration a person participating in a disease surveillance program recognized by the commission.

(b) The commission recognizes the following disease surveillance programs:

(1) National Poultry Improvement Plan ("NPIP") with the "U.S. Pullorum-Typhoid Clean'' ("PT") and "U.S. Avian Influenza Clean" ("LPAI") programs

(2) The Texas Poultry Federation Avian Influenza Monitoring Program

(3) sellers, distributor or transporter of only fowl classified as baby poultry, at the time of receipt, from NPIP hatchery and accompanied by NPIP Form 9-3, or APHIS Form 17-6.

(c) A disease surveillance program not identified in subsection (b) of this section may request approval for recognition provided it contains the following minimum elements:

(1) Verifiable disease testing protocol

(2) Includes PT and LPAI requirements

(3) Specified risk based sample size

(d) In order to recognize a disease surveillance program not identified in subsection (b) of this section, a person shall submit a detailed explanation of the surveillance program to the Executive Director for consideration. A decision to recognize a disease surveillance program will be provided to the requestor within 30 days of receipt by the Executive Director.

§54.4. Registration Fee.

(a) The annual registration fee for a seller shall be based on the maximum number of fowl, during the previous twelve (12) months, being owned or managed by the registrant at any one time:

(1) $25.00 for less than 100 fowl

(2) $100.00 for 100 to 499 fowl

(3) $200.00 for 500 through 999 fowl

(4) $350.00 for 1000 to 2,499 fowl

(5) $500.00 for 2,500 fowl or greater

(6) $500.00 for any registrant whose flock does not reside in the state of Texas, except in cases where the out of state registrant can provides to the Commission an affidavit certifying a verified maximum flock size, then the registration fee will be the same as the fee for Texas registrants with a corresponding flock size.

(b) The annual certificate of registration fee for a distributor or transporter of fowl shall be $500.00

§54.5. Program Requirements.

(a) Testing:

(1) Chickens, turkeys, game birds of all ages, and other domestic fowl offered for public sale shall meet the requirements as provided in §57.11(c) of this title.

(2) Chickens, turkeys, and game birds, and other domestic fowl entering Texas from other states shall be accompanied by a certificate of veterinary inspection from the state of origin, and meet the requirements for a pullorum-typhoid test as provided for in §57.11(e) of this title and Avian Influenza test as provided in §51.15(b) of this title.

(3) If the agency determines there is exposure to a disease or an agent of transmission of a disease the executive director may require testing under §54.7 of this chapter

(b) Inspection: The Commission may make inspections of any premises or vehicle and the domestic or exotic fowl therein and review records to ensure compliance with the requirements of the fowl registration program.

(c) Biosecurity:

(1) Sanitation - Registrants shall maintain facilities where fowl are kept in clean and sanitary conditions. If there is excessive die off fowl, the facility housing the fowl shall be thoroughly cleaned and disinfected. Cleaning and disinfection shall include removal of organic material, thoroughly washed with soap and water followed by disinfection with a disinfectant approved by the commission.

(2) Infection with or exposure to any disease, which is reportable to the Commission under provisions of §45.2 of this title, shall be reported immediately to the Commission.

(3) At sales locations fowl shall be kept confined until final disposition and removal from sales site.

§54.6. Recordkeeping.

(a) Registrants shall keep and maintain records of all domestic fowl, or exotic fowl bought, sold or exchanged.

(b) The records shall include the buyer's and seller's name and address, county of origin, date of transaction, number of fowl; and a description of the fowl, including sex, age, color, breed, and any individual identification.

(c) An agent of the commission may inspect and copy the registrant records of domestic fowl or exotic fowl transactions. A registrant shall maintain copies of all movement or health status documents which demonstrate compliance with any applicable commission requirements. All registrant records shall be maintained for a minimum of two years from the date of the transaction.

§54.7. Movement and Testing Restrictions.

(a) Movement and Testing Restrictions: If the agency determines there is exposure to or infection with a disease or an agent of transmission of a disease the movement of exposed or infected fowl shall be restricted, by a quarantine or hold order, to any specified location when an owner or caretaker for fowl has received written notice that movement restrictions are in place. Movement restrictions, by a hold order, may be issued to a person not in compliance with the registration requirements of this chapter. Movement restrictions shall remain in place until the commission determines that the risk of disease transmission no longer exists. The executive director may require testing, vaccination, or another epidemiologically sound procedure in order to control and eradicate the disease and/or require registration prior to authorizing movement from restricted locations.

(b) Inspection of Shipment of Fowl: Agent's of the commission are authorized to stop and inspect any shipment of fowl being transported in this state in order to determine if the shipment presents a danger to the public health or fowl industry of the state.

§54.8. Enforcement.

(a) An offense under Section 161.0411 of the Texas Agriculture Code is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section, in which event the offense is a Class B misdemeanor.

(b) The commission may impose an administrative penalty against a person who violates a rule or order adopted under this chapter. The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty shall not be based on a per head basis.

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

Filed with the Office of the Secretary of State on December 8, 2003.

TRD-200308439
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 719-0714

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 4. SCHOOL LIBRARY PROGRAMS SUBCHAPTER A. STANDARDS AND GUIDELINES

13 TAC §§4.1 - 4.7

(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 State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Library and Archives Commission proposes the repeal of 13 TAC §§4.1-4.7 concerning school library programs, standards and guidelines. These rules were adopted by the commission on May 19, 1997. The Education Code §33.021 directs the agency to adopt standards for school library services. The current standards are now six years old, and changes in library technology and services require that the standards be updated to reflect these changes.

Deborah Littrell, Director of the Library Development Division, has determined that for each year of the first five years the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Littrell has also determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the section will be that the commission can provide school districts with up-to-date standards with which to evaluate their libraries, with the goal to help improve student achievement. There is no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Written comments on the proposed repeal may be sent to Deborah Littrell, Library Development Division, Texas State Library, Box 12927, Austin, Texas 78711, or electronically to deborah.littrell@tsl.state.tx.us, or faxed to 512/463-8800, no later than 5:00 p.m. within 30 days after publication.

The repeal is proposed under the Education Code, §33.021, which permits the commission to adopt standards for school library services.

The proposed repeal affects the Education Code, §33.021.

§4.1. Definitions.

§4.2. Mission Statement.

§4.3. Models for School Library Programs.

§4.4. Exemplary School Library Program.

§4.5. Recognized School Library Program.

§4.6. Acceptable School Library Program.

§4.7. Below Standard School Library Program.

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 December 8, 2003.

TRD-200308432
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 463-5459

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13 TAC §4.1

The Texas State Library and Archives Commission proposes new rule, 13 TAC §4.1 relating to School Library Standards. Education Code §33.021 provides that the commission adopt standards for school library services. The standards are a professional tool for objective assessment based on recognized measures of performance, and are based on research that shows a correlation between school library resources and services and greater student achievement.

The Guidelines and Standards are available at http://www.tsl.state.tx.us/ld/schoollibs/standards2003.html. The Guidelines and Standards are also available for inspection in Room 405 of the Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin Texas.

The Guidelines and Standards for School Library Programs were developed by a committee appointed by the director and librarian of the Texas State Library and Archives Commission. The State Board of Education was consulted in the formation of the committee and members included representatives of school districts, as well as citizens, representatives from colleges and universities, and staff from Educational Service Centers, the Texas Education Agency, and the Texas State Library and Archives Commission.

Deborah Littrell, Director, Library Development Division, has determined that for each year of the first five years after the adoption of the proposed rules, there will be no fiscal implications for local governments as a result of adoption of the rules, because the commission's proposed rules are voluntary for local school districts.

Ms. Littrell has also determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission can provide school districts with up-to-date standards with which to evaluate their libraries, with the goal to help improve student achievement. There is no effect on small or micro

businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Written comments on the proposed new §4.1 may be sent to Deborah Littrell, Library Development Division, Texas State Library, Box 12927, Austin, Texas 78711, or electronically to deborah.littrell@tsl.state.tx.us, or faxed to 512/463- 8800, no later than 5:00 p.m. within 30 days after publication.

The new rule is proposed pursuant to Education Code §33.021 which provides that the commission, in consultation with the State Board of Education, shall adopt standards for school library services.

Education Code §33.021 is affected by the proposed rule.

§4.1. School Library Programs, Guidelines and Standards.

(a) The School Library Programs, Guidelines and Standards, which are available at http://www.tsl.state.tx.us/ld/schoollibs/standards2003.html, are adopted by the Texas State Library and Archives Commission. The Guidelines and Standards are available in Room 405 of the Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin Texas. The Guidelines and Standards are based on the work and recommendations of an advisory committee formed to review and update the current Guidelines and Standards.

(b) The School Library Programs, Guidelines and Standards are applicable to local Texas school districts (Independent, consolidated, common, or municipal districts and charter schools accredited by the Texas Education Agency as provided by TEC Chapter 11 Subchapter D, Chapter 39).

(c) The School Library Programs, Guidelines and Standards, describe six components for school library programs: Learner-Centered Teaching and Learning, Learner-Centered Program Leadership and Management, Learner-Centered Technology and Information Access, Learner-Centered Library Environment, Learner-Centered Connections to Community, and Learner-Centered Information Science and Librarianship. The Guidelines and Standards describe four levels of achievement, below standard, acceptable, recognized, and exemplary, for the goals within each component. The Guidelines and Standards also include output measures to use to quantify the level of use of the school library program and services, as well as outcome-based evaluation measures to demonstrate the impact of school library programs. The vision, mission, and core values of school library programs are discussed. The Guidelines and Standards include appendices that provide a glossary of terms, a bibliography, a list of committee members, and an example of an annual report for a library program that includes a profile and assessment in accordance with these Guidelines and Standards.

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

Filed with the Office of the Secretary of State on December 8, 2003.

TRD-200308433
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 463-5459

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.85

The Texas Higher Education Coordinating Board proposes amendments to §4.85 concerning dual credit classes, adding an exception allowing dual credit students to mix with high school-only students in dual credit classes. Under previous rules, an exception was allowed for mixed classes of dual credit and honors students. The exception was removed because it was too broad and was not conducive to preserving college-level rigor. However, removing that exception had the unintended consequence of prohibiting dual credit students to mix with students who are working for articulated credit in workforce education courses. The exception should be made because, as in the case of Advanced Placement students, both types of students are attempting to earn college credit but through different pathways.

Dr. Glenda O. Barron, Assistant Commissioner for Community and Technical Colleges has determined that for each year of the first five years the section is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to provide additional options for high school students interested in enrolling in dual credit courses. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Dr. Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thecb.state.tx.us.

The amendments are proposed under the Texas Education Code, Sections 29.182, 29.184, 54,216, 61.027, 61.076(j), 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d), which provide the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree granting institutions and public universities with secondary schools.

The amendments affect Texas Education Code §§29.182, 29.184, 54.216, 61.027, 61.076(j), 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d).

§4.85. Dual Credit Requirements.

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

(d) Composition of Class. Dual credit courses may be composed of dual credit students only or of dual and college credit students. Exceptions for a mixed class, which would also include high

school credit-only students, may be allowed only under one of the following conditions:

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

(3) If the course is a career and technology/college workforce education course and the high school credit-only students are earning articulated college credit.

(e) - (i) (No change.)

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

Filed with the Office of the Secretary of State on December 3, 2003.

TRD-200308228
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.12

The Texas Board of Architectural Examiners proposes new §1.12 for Title 22, Chapter 1, Subchapter A, pertaining to a statutory joint advisory committee to advise the Board and the Texas Board of Professional Engineers on issues related to the practice of engineering, the practice of architecture, and the practice of landscape architecture.

The proposed new rule will govern issues related to the appointment, tenure, and functions of the statutory joint advisory committee as follows: the Board's chairman will appoint three members of the Board and one architect who is not a member of the Board to serve on the joint advisory committee. The three members of the Board will include two architects and one landscape architect. Members will serve staggered six-year terms. The terms of one or two of the members must expire each odd numbered year. The joint advisory committee will meet at least twice each year to address issues resulting from the overlap between activities that constitute the practices of engineering and architecture and the practices of engineering and landscape architecture. The joint advisory committee will issue advisory opinions to the Board and the Texas Board of Professional Engineers (TBPE) on subjects including whether certain activities constitute the practice of engineering, the practice of architecture, and/or the practice of landscape architecture; specific disciplinary proceedings initiated by the Board or by TBPE; and the need for persons working on particular projects to be registered by the Board or licensed by TBPE. The Board will notify the joint advisory committee of the final action taken by the Board with regard to a matter addressed in an advisory opinion issued to the Board. The Board will enter into a memorandum of understanding with TBPE regarding the joint advisory committee. The mission of the joint advisory committee will be to assist the Board and TBPE in protecting the public rather than advancing the interests of either agency or the profession(s) it regulates.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed new rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed new rule. Although there are significant costs associated with the functioning of the joint committee, the costs will not be funded by the State or by any unit of local government because the agency is participating in a self-directed, semi-independent agency pilot project (SDSI Project). As a result, the agency's functions are not funded by the State. The costs of the joint committee will be funded by the agency and the Texas Board of Professional Engineers, which also is participating in the SDSI Project. In addition, any costs associated with the functioning of the joint committee are the result of the statutory provisions that created the joint committee. No additional cost will result from the adoption of the proposed rule.

The public benefits expected as a result of the proposed new rule will be that problematic issues resulting from the overlap of the three professions will be addressed by a group of people who are qualified to handle complex issues related to the three professions. In addition, the two agencies will be provided with reliable guidance regarding enforcement issues related to the overlap of the three professions.

There is expected to be no significant impact on small business as a result of the proposed new rule.

There is expected to be no economic cost to persons required to comply with the proposed new rule.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new section is proposed pursuant to Sections 1051.202 and 1051.212 of Tex. Occupations Code Annotated ch. 1051, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the statutory joint advisory committee.

The proposed new section will not affect any other statutes.

§1.12. Joint Advisory Committee of the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers.

(a) The Chairman shall appoint three members of the Board and one Architect who is not a member of the Board to serve on a joint advisory committee on the practices of engineering, architecture, and landscape architecture. The three members of the Board to be appointed by the Chairman shall include one Architect, one landscape architect, and one other member of the Board.

(b) Members of the joint advisory committee shall serve staggered six-year terms. The terms of one or two of the members appointed by the Chairman must expire each odd-numbered year.

(c) The joint advisory committee shall meet at least twice each year to address issues resulting from the overlap between activities that constitute the practices of engineering and architecture and the practices of engineering and landscape architecture.

(d) The joint advisory committee shall issue advisory opinions to the Board and the Texas Board of Professional Engineers (TBPE) on subjects including:

(1) whether certain activities constitute the practice of engineering, the practice of architecture, and/or the practice of landscape architecture;

(2) specific disciplinary proceedings initiated by the Board or by TBPE; and

(3) the need for persons working on particular projects to be registered by the Board or licensed by TBPE.

(e) The Board shall notify the joint advisory committee of the final action taken by the Board with regard to a matter addressed in an advisory opinion issued to the Board.

(f) The Board shall enter into a memorandum of understanding with TBPE regarding the joint advisory committee.

(g) The mission of the joint advisory committee shall be to assist the Board and TBPE in protecting the public rather than advancing the interests of either agency or the profession(s) it regulates.

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 December 8, 2003.

TRD-200308404
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.21, §1.22

The Texas Board of Architectural Examiners proposes amendments to §1.21 and §1.22 for Title 22, Chapter 1, Subchapter B, pertaining to registration. The existing sections describe the general requirements for obtaining architectural registration by examination and by reciprocal transfer.

The proposed amendment to §1.21 adds a requirement that an applicant for registration by examination must provide verification that the applicant is legally in the United States pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The proposed amendment to §1.22 modifies the requirements related to obtaining reciprocal registration by adding language that requires a reciprocal applicant to hold a registration that is active and in good standing in another jurisdiction that has registration requirements substantially equivalent to Texas registration requirements or that has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas. The proposed amendment reflects a recently enacted legislative change.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there are costs associated with the review of documentation submitted to prove legal status in the United States, the costs will not be funded by the State or by any unit of local government because the agency is participating in a self-directed, semi-independent agency pilot project (SDSI Project). As a result, the agency's functions are not funded by the State. The costs related to the review of documentation to prove legal status will be funded by the agency. In addition, any costs associated with the review are the result of the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. No additional cost will result from the adoption of the proposed rule. There is not expected to be a significant increase in costs as a result of enforcing the proposed amendment to the reciprocal registration rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect the public benefits expected as a result of the amendments to the sections will be that the agency will be upholding its statutory responsibility to assist with enforcement of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and, with regard to the proposed amendment to the reciprocal registration rule, that the opportunities for obtaining reciprocal registration will be clearly described in the rules.

The agency anticipates no significant impact on small business.

The agency anticipates that there will be a small cost to persons required to comply with the amended sections because those persons will have to bear the expense of providing the required documentation to prove legal status in the United States. There is expected to be no additional cost associated with the proposed amendment to the reciprocal registration rule.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.202 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to adopt rules necessary to the administration of its statutory duties. The proposed amendment to the reciprocal registration rule is further authorized by Section 1051.305 of the Tex. Occupations Code, which allows the Board to grant reciprocal registration privileges under certain circumstances.

The proposed amendments will not affect any other statutes.

§1.21. Registration by Examination.

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

(e) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other certified documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

§1.22. Registration by Reciprocal Transfer.

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction: [~~offers similar reciprocal registration privileges to Texas architects.~~]

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b)-(c) (No change.)

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

Filed with the Office of the Secretary of State on December 8, 2003.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 305-8535

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SUBCHAPTER C. EXAMINATION

22 TAC §1.41

The Texas Board of Architectural Examiners proposes an amendment to §1.41 for Title 22, Chapter 1, Subchapter C, pertaining to the refund of examination fees. The existing section describes requirements related to the general procedures for examination for architectural registration in Texas. The proposed amendment to §1.41 adds a new subsection regarding refunds of examination fees. It states that the application fee is not refundable but that a portion of the examination fee paid to the national examination provider may be refunded if a candidate is precluded from taking or scheduling the examination because of extreme hardship. The new subsection requires the submission of a written request for refund within thirty days of the examination date. The new subsection states that an examination fee may not be transferred to a subsequent examination.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there are expected to be no significant implications for state or local government as a result of enforcing or administering the amended section. The policy reflected in the rule is currently in place.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect the public benefits expected as a result of the amended section are that the policy regarding refunds of examination fees will be readily available to persons who might be affected by the policy.

The agency anticipates there will be no significant impact on small business.

The agency anticipates there will be no significant change in the cost to persons required to comply with the amended section because the policy reflected in the rule reflects the agency's current practice.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this section is proposed pursuant to Section 1051.303 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt a comprehensive refund policy for examination fees.

The proposed amendment to this section will not affect any other statutes.

§1.41. Requirements.

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

(e) An examination fee may be refunded as follows:

(1) The application fee paid to the Board is not refundable or transferable.

(2) The Board, on behalf of a Candidate, may request a refund of a portion of the examination fee paid to the national examination provider for scheduling all or a portion of the registration examination. A charge for refund processing may be withheld by the national examination provider. Refunds of examination fees are subject to the following conditions:

(A) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(B) A written request for a refund based on extreme hardship must be submitted not later than thirty (30) days after the date of the scheduled examination or portion of the examination. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(i) Illness: verification from a physician who treated the illness.

(ii) Accident: a copy of an official accident report.

(iii) Death: a copy of a death certificate or newspaper obituary.

(3) An examination fee may not be transferred to a subsequent examination.

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 December 8, 2003.

TRD-200308406
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 305-8535

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22 TAC §1.45

The Texas Board of Architectural Examiners proposes new §1.45 for Title 22, Chapter 1, Subchapter C, pertaining to special accommodations for taking the Architect Registration Examination.

New §1.45 describes the Board's policy for ensuring that the examination process complies with the requirements of the Americans with Disabilities Act. It states that every registration examination must be conducted in an accessible place and manner or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability; that special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities; that available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability; that the Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested; that the Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden; that the procedure for requesting accommodation will be (1) for an applicant requesting an accommodation to submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination, (2) for an applicant requesting an accommodation to have a licensed health care professional or other qualified evaluator provide certification regarding the disability, and (3) for an applicant seeking an accommodation to make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date; that to support a request for an accommodation or an auxiliary aid, the following information is required: (1) identification of the type of disability (physical, mental, learning), (2) information to substantiate the credentials of the evaluator, and (3) professional verification of the disability and the required accommodation; that documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future; that the Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations; that the Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability; and that information related to a request for accommodation shall be kept confidential to the extent provided by law.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the new section is in effect, there are expected to be no significant implications for state or local government as a result of enforcing or administering the new section. The policy reflected in the rule is currently in place.

The public benefits expected as a result of the proposed new section are that the policy regarding special accommodations for registration examinations will be readily available to persons who might be affected by the policy.

The agency anticipates there will be no significant impact on small business.

The agency anticipates there will be no significant change in the cost to persons required to comply with the new section because the policy reflected in the rule reflects the agency's current practice.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new section is proposed pursuant to Section 1051.301 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act of 1990.

The proposed new section will not affect any other statutes.

§1.45. Special Accommodations.

(a) In accordance with the Americans with Disabilities Act (ADA), every registration examination must be conducted in an accessible place and manner, or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability.

(b) Special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities. Available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability.

(c) The Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested. The Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden.

(d) Procedure for requesting accommodation:

(1) To protect the integrity of the testing process, an Applicant requesting an accommodation must submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the Applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination. The Board shall evaluate each request on a case-by-case basis.

(2) An Applicant requesting an accommodation must have a licensed health care professional or other qualified evaluator provide certification regarding the disability as described in subsection (e) of this section.

(3) An Applicant seeking an accommodation must make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date. If the form is submitted less than sixty (60) days prior to the examination date, the Board will attempt to process the request but might not be able to provide the necessary accommodation for the next examination.

(e) The following information is required to support a request for an accommodation or an auxiliary aid:

(1) Identification of the type of disability (physical, mental, learning);

(2) Credential requirements of the evaluator:

(A) For physical or mental disabilities (not including learning), the evaluator shall be a licensed health care professional qualified to assess the type of disability claimed. If a person who does

not fit these criteria completes the evaluation, the Board may reject the evaluation and require another evaluation, and the request for accommodation may be delayed.

(B) In the case of learning disabilities, a qualified evaluator shall have sufficient experience to be considered qualified to evaluate the existence of learning disabilities and proposed accommodations needed for specific learning disabilities. The evaluator shall be one of the following:

(i) a licensed physician or psychologist with a minimum of three years' experience working with adults with learning disabilities; or

(ii) another professional who possesses a master's or doctorate degree in special education or educational psychology and who has at least three years of equivalent training and experience in all of the areas described below:

(I) assessing intellectual ability and interpreting tests of such ability;

(II) screening for cultural, emotional, and motivational factors;

(III) assessing achievement level; and

(IV) administering tests to measure attention and concentration, memory, language reception and expression, cognition, reading, spelling, writing, and mathematics.

(3) Professional verification of the disability, which shall include a description of:

(A) the nature and extent of the disability, including a description of its effect on major life activities and the anticipated duration of the impairment;

(B) the effect of the disability on the applicant's ability to:

(i) evaluate written material;

(ii) complete graphic sections of the examination by drawing, drafting, and lettering; and

(iii) complete computerized sections of the examination that require data entry via keyboard and the manipulation of a mouse.

(C) whether the disability limits the amount of time the Applicant can spend on specific examination tasks;

(D) the recommended accommodation and how it relates to the applicant's disability;

(E) the professional's name, title, telephone number, and his/her original signature;

(F) any other information necessary, in the professional's opinion, to enable the exam provider to understand the examinee's disability and the accommodation necessary to enable the examinee to demonstrate his/her knowledge, skills, and ability.

(f) Documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future.

(g) The Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations. The Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability.

(h) Information related to a request for accommodation shall be kept confidential to the extent provided by 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 December 8, 2003.

TRD-200308407
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 305-8535

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SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §1.65, §1.66

The Texas Board of Architectural Examiners proposes amendments to §1.65 and §1.66 for Title 22, Chapter 1, Subchapter D, pertaining to renewal and reinstatement. The existing sections describe the annual registration renewal procedure and the procedure for reinstating a registration that has been revoked, surrendered, or cancelled.

The proposed amendment to §1.65 will implement recently enacted statutory language regarding the automatic cancellation of any registration that is delinquent for one year. It states that a registration shall be cancelled by operation of law on the one-year anniversary of its expiration unless it is renewed before that time and that after such automatic cancellation, a registration may not be reinstated. If a registration is automatically cancelled pursuant to the section, the registrant will have to (1) submit an application for registration by examination and satisfy all requirements for registration by examination, including the successful completion of the current registration examination; (2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer, including the successful completion of the current registration examination; or (3) submit an application for registration without reexamination and demonstrate that he or she moved to another state and is currently registered and has been in practice in the other state for at least the two years immediately preceding the date of the application.

The proposed amendment to §1.66 will implement recently enacted statutory language regarding the reinstatement of a registration that has been revoked as a result of disciplinary action, surrendered in lieu of disciplinary action, or cancelled due to the registrant's failure to renew the registration. It requires that a revoked or surrendered registration may not be reinstated unless the applicant demonstrates that he or she has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender, demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender. It also

states that a registration cancelled due to the registrant's failure to renew it may not be reinstated.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there are likely to be significant costs to the State associated with the proposed amendments, most of which are expected to result from a loss of revenue associated with the new automatic cancellation provisions found in the statutory language underlying the proposed amendments. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, the public benefits expected as a result of the amendments to the sections are that new statutory provisions related to the automatic cancellation of delinquent registrations and new statutory provisions related to reinstatement will be clearly described in the rules.

The agency anticipates that there could be an impact on small business related to the proposed amendments because an architect who is a sole proprietor could face a substantial hardship if his or her registration is cancelled pursuant to the new automatic cancellation provision. However, the expected impact will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

The agency anticipates that there are likely to be significant costs associated with the proposed amendments because the cost of reinstating a registration that has been revoked or cancelled will increase in order to cover the costs associated with the cancellation or surrender and because persons whose registrations are automatically cancelled will have to either bear the costs related to obtaining new registrations or give up the privilege of working as registered design professionals. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.353 of the Tex. Occupations Code, which directs the Texas Board of Architectural Examiners to cancel a registration that has been delinquent for one year and prohibits the reinstatement of a registration that was cancelled due to delinquency, and pursuant to Section 1051.403 of the Tex. Occupations Code, which allows the Board to reinstate a revoked registration only after the reinstatement applicant pays all fees and costs associated with the revocation and also presents evidence to support the reinstatement.

The proposed amendments to these sections do not affect any other statutes.

§1.65. Annual Renewal Procedure.

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

(g) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must: [~~Board may take formal action to revoke the registration. Formal action to revoke a registration for failure to renew shall not be subject to the requirements of the Administrative Procedure Act, Chapter 2001, Government Code.~~]

(1) submit an application for registration by examination and satisfy all requirements for registration by examination pursuant to Section 1.21, including the successful completion of the current registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 1.22, including the successful completion of the current registration examination; or

(3) submit an application for registration without reexamination and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

§1.66. Reinstatement.

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

(e) If a registration was revoked as a result of disciplinary action or surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender.

(f) If a registration is cancelled due to the Registrant's failure to renew the registration within one (1) year after its designated expiration date, the registration may not be reinstated.

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

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Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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SUBCHAPTER E. FEES

22 TAC §1.81, §1.82

The Texas Board of Architectural Examiners proposes amendments to §1.81 and §1.82 for Title 22, Chapter 1, Subchapter E, pertaining to fees. The existing sections describe the method of establishing fees, the requirements related to paying fees, and the consequences of failing to pay the annual registration renewal fee.

The proposed amendment to §1.81 adds the agency's fee schedule to the section, adds a reference to a processing fee

to be charged if a check is returned unpaid by the bank upon which the check is drawn, and describes a fee exemption for members of the U.S. military who are on active duty status.

The proposed amendment to §1.82 describes the automatic cancellation provision enacted by the Legislature that will result in the automatic cancellation of any registration that remains delinquent for one year after its designated expiration date.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there are likely to be significant costs associated with the proposed amendments, most of which are expected to result from a loss of revenue associated with the new automatic cancellation provisions found in the statutory language underlying the proposed amendments. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, the public benefits expected as a result of the amendments to §1.81 and §1.82 are that the fees charged by the agency will be clearly described in the rules, as will the new statutory provisions related to fee exemptions for members of the U.S. military and related to the automatic cancellation of registrations that remain delinquent for one year.

The agency anticipates that there could be an impact on small business related to the proposed amendments because an architect who is a sole proprietor could face a substantial hardship if his registration is cancelled pursuant to the new automatic cancellation provision. However, the expected impact will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

With regard to persons required to comply with the amended sections, there are significant costs associated with the proposed amendments because persons whose registrations are automatically cancelled will have to either bear the costs related to obtaining new registrations or give up the privilege of working as registered design professionals. These costs will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.651 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with authority to establish fees as reasonable and necessary to cover the costs of administering its statutory duties, and pursuant to Sections 1051.353 and 1051.354 of the Tex. Occupations Code, which provide authority for the subsections regarding the automatic cancellation of registrations and the fee exemptions for members of the U.S. military.

The proposed amendments to these sections will not affect any other statutes.

§1.81. General.

(a) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board: [~~by the Legislature, fees shall be established by the Board at a public meeting and shall be published in the *Texas Register*.~~]
Figure: 22 TAC §1.81(a)

(b) The Board cannot accept cash as payment for any fee. [~~Payment of any fee established by the Board may be made only by check or money order made payable to the Texas Board of Architectural Examiners.~~]

(c) An official postmark from the U.S. Postal Service may be presented to the Board to demonstrate the timely payment of any fee.

(d) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check, the fee shall be considered unpaid and any applicable late fees shall accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(e) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U. S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

§1.82. Annual Fees.

(a) The Board shall send an annual notice to each person who must pay a fee that is due annually. Each annual notice shall be sent to the intended recipient's current address of record. Every annual fee must be paid regardless of whether an annual notice is received.

(b) Every Registrant [~~registrant~~] must pay his/her annual renewal fee on or before the designated expiration date of the Registrant's [~~registrant's~~] certificate of registration. If a Registrant [~~registrant~~] fails to pay his/her annual renewal fee on or before the designated expiration date of the Registrant's [~~registrant's~~] certificate of registration, the Board shall require that the Registrant [~~registrant~~] pay a penalty fee in addition to the registration renewal fee before the registration may be renewed. A registration certificate shall become invalid on its designated expiration date unless it is renewed.

(c) If a Registrant [~~registrant~~] fails to renew his/her certificate of registration within one year after its designated expiration date, the certificate of registration shall be cancelled by operation of law [~~may be revoked by the Board~~] without the opportunity for [~~scheduling~~] a formal hearing [~~before the State Office of Administrative Hearings pursuant to the Administrative Procedure Act~~]. The Board shall send a notice of pending cancellation [~~revocation~~] to a Registrant [~~registrant~~] who fails to renew his/her certificate of registration within one year after its designated expiration date. The notice shall be sent to the Registrant's [~~registrant's~~] current address of record.

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

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Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.12

The Texas Board of Architectural Examiners proposes new §3.12 for Title 22, Chapter 3, Subchapter A, pertaining to a statutory joint advisory committee to advise the Board and the Texas Board of Professional Engineers on issues related to the practice of engineering, the practice of architecture, and the practice of landscape architecture.

The proposed new rule will govern issues related to the appointment, tenure, and functions of the statutory joint advisory committee as follows: the Board's chairman will appoint three members of the Board and one architect who is not a member of the Board to serve on the joint advisory committee. The three members of the Board will include two architects and one landscape architect. Members will serve staggered six-year terms. The terms of one or two of the members must expire each odd numbered year. The joint advisory committee will meet at least twice each year to address issues resulting from the overlap between activities that constitute the practices of engineering and architecture and the practices of engineering and landscape architecture. The joint advisory committee will issue advisory opinions to the Board and the Texas Board of Professional Engineers (TBPE) on subjects including whether certain activities constitute the practice of engineering, the practice of architecture, and/or the practice of landscape architecture; specific disciplinary proceedings initiated by the Board or by TBPE; and the need for persons working on particular projects to be registered by the Board or licensed by TBPE. The Board will notify the joint advisory committee of the final action taken by the Board with regard to a matter addressed in an advisory opinion issued to the Board. The Board will enter into a memorandum of understanding with TBPE regarding the joint advisory committee. The mission of the joint advisory committee will be to assist the Board and TBPE in protecting the public rather than advancing the interests of either agency or the profession(s) it regulates.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed new rule is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed new rule. Although there are significant costs associated with the functioning of the joint committee, the costs will not be funded by the State or by any unit of local government because the agency is participating in a self-directed, semi-independent agency pilot project (SDSI Project). As a result, the agency's functions are not funded by the State. The costs of the joint committee will be funded by the agency and the Texas Board of Professional Engineers, which also is participating in the SDSI Project. In addition, any costs associated with the functioning of the joint committee are the result of the statutory provisions that created the joint committee. No additional cost will result from the adoption of the proposed rule.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed new rule is in effect, the public benefits expected as a result of the proposed new rule will be that problematic issues resulting from the overlap of the three professions will be addressed by a group of people who are qualified to handle complex issues related to the three professions. In addition, the two agencies will be provided with reliable guidance regarding enforcement issues related to the overlap of the three professions.

There is expected to be no significant impact on small business as a result of the proposed new rule.

There is expected to be no economic cost to persons required to comply with the proposed new rule.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new section is proposed pursuant to Sections 1051.202 and 1051.212 of Tex. Occupations Code Annotated ch. 1051, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the statutory joint advisory committee.

The proposed new section will not affect any other statutes.

§3.12. Joint Advisory Committee of the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers.

(a) The Chairman shall appoint three members of the Board and one architect who is not a member of the Board to serve on a joint advisory committee on the practices of engineering, architecture, and landscape architecture. The three members of the Board to be appointed by the Chairman shall include one architect, one Landscape Architect, and one other member of the Board.

(b) Members of the joint advisory committee shall serve staggered six-year terms. The terms of one or two of the members appointed by the Chairman must expire each odd-numbered year.

(c) The joint advisory committee shall meet at least twice each year to address issues resulting from the overlap between activities that constitute the practices of engineering and architecture and the practices of engineering and landscape architecture.

(d) The joint advisory committee shall issue advisory opinions to the Board and the Texas Board of Professional Engineers (TBPE) on subjects including:

(1) whether certain activities constitute the practice of engineering, the practice of architecture, and/or the practice of landscape architecture;

(2) specific disciplinary proceedings initiated by the Board or by TBPE; and

(3) the need for persons working on particular projects to be registered by the Board or licensed by TBPE.

(e) The Board shall notify the joint advisory committee of the final action taken by the Board with regard to a matter addressed in an advisory opinion issued to the Board.

(f) The Board shall enter into a memorandum of understanding with TBPE regarding the joint advisory committee.

(g) The mission of the joint advisory committee shall be to assist the Board and TBPE in protecting the public rather than advancing the interests of either agency or the profession(s) it regulates.

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

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.21, §3.22

The Texas Board of Architectural Examiners proposes amendments to §3.21 and §3.22 for Title 22, Chapter 3, Subchapter B, pertaining to registration. The existing sections describe the general requirements for obtaining landscape architectural registration by examination and by reciprocal transfer.

The proposed amendment to §3.21 adds a requirement that an applicant for registration by examination must provide verification that the applicant is legally in the United States pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The proposed amendment to §3.22 modifies the requirements related to obtaining reciprocal registration by adding language that requires a reciprocal applicant to hold a registration that is active and in good standing in another jurisdiction that has registration requirements substantially equivalent to Texas registration requirements or that has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas. The proposed amendment reflects a recently enacted legislative change.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there are costs associated with the review of documentation submitted to prove legal status in the United States, the costs will not be funded by the State or by any unit of local government because the agency is participating in a self-directed, semi-independent agency pilot project (SDSI Project). As a result, the agency's functions are not funded by the State. The costs related to the review of documentation to prove legal status will be funded by the agency. In addition, any costs associated with the review are the result of the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. No additional cost will result from the adoption of the proposed rule. There is not expected to be a significant increase in costs as a result of enforcing the proposed amendment to the reciprocal registration rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect the public benefits expected as a result of the amendments to the sections will be that the agency will be upholding its statutory responsibility to assist with enforcement of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and, with regard to the proposed amendment to the reciprocal registration rule, that the opportunities for obtaining reciprocal registration will be clearly described in the rules.

The agency anticipates no significant impact on small business.

The agency anticipates that there will be a small cost to persons required to comply with the amended sections because those persons will have to bear the expense of providing the required documentation to prove legal status in the United States. There is expected to be no additional cost associated with the proposed amendment to the reciprocal registration rule.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.202 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to adopt rules necessary to the administration of its statutory duties. The proposed amendment to the reciprocal registration rule is further authorized by Section 1051.305 of the Tex. Occupations Code, which allows the Board to grant reciprocal registration privileges under certain circumstances.

The proposed amendments will not affect any other statutes.

§3.21. Registration by Examination.

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

(d) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other certified documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

§3.22. Registration by Reciprocal Transfer.

(a) A person may apply for landscape architectural registration [~~in Texas~~] by reciprocal transfer if the person holds a [~~valid certificate of~~] landscape architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction: [.]

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b)-(c) (No change.)

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

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SUBCHAPTER C. EXAMINATION

22 TAC §3.41

The Texas Board of Architectural Examiners proposes an amendment to §3.41 for Title 22, Chapter 3, Subchapter C, pertaining to the refund of examination fees. The existing section describes requirements related to the general procedures for examination for landscape architectural registration in Texas.

The proposed amendment to §3.41 adds a new subsection regarding refunds of examination fees. It states that the application fee is not refundable but that a portion of the examination fee paid to the national examination provider may be refunded if

a candidate is precluded from taking or scheduling the examination because of extreme hardship. The new subsection requires the submission of a written request for refund within thirty days of the examination date. The new subsection states that an examination fee may not be transferred to a subsequent examination.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there are expected to be no significant implications for state or local government as a result of enforcing or administering the amended section. The policy reflected in the rule is currently in place.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect the public benefits expected as a result of the amended section are that the policy regarding refunds of examination fees will be readily available to persons who might be affected by the policy.

The agency anticipates there will be no significant impact on small business.

The agency anticipates there will be no significant change in the cost to persons required to comply with the amended section because the policy reflected in the rule reflects the agency's current practice.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this section is proposed pursuant to Section 1051.303 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt a comprehensive refund policy for examination fees.

The proposed amendment to this section will not affect any other statutes.

§3.41. Requirements.

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

(e) An examination fee may be refunded as follows:

(1) The application fee paid to the Board is not refundable or transferable.

(2) The Board, on behalf of a Candidate, may request a refund of a portion of the examination fee paid to the national examination provider for scheduling all or a portion of the registration examination. A charge for refund processing may be withheld by the national examination provider. Refunds of examination fees are subject to the following conditions:

(A) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(B) A written request for a refund based on extreme hardship must be submitted not later than thirty (30) days after the date of the scheduled examination or portion of the examination. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(i) Illness: verification from a physician who treated the illness.

(ii) Accident: a copy of an official accident report.

(iii) Death: a copy of a death certificate or newspaper obituary.

(3) An examination fee may not be transferred to a subsequent examination.

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

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Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §3.45

The Texas Board of Architectural Examiners proposes new §3.45 for Title 22, Chapter 3, Subchapter C pertaining to special accommodations for taking the registration examination for landscape architectural registration in Texas.

New §3.45 describes the Board's policy for ensuring that the examination process complies with the requirements of the Americans with Disabilities Act. It states that every registration examination must be conducted in an accessible place and manner or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability; that special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities; that available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability; that the Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested; that the Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden; that the procedure for requesting accommodation will be (1) for an applicant requesting an accommodation to submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination, (2) for an applicant requesting an accommodation to have a licensed health care professional or other qualified evaluator provide certification regarding the disability, and (3) for an applicant seeking an accommodation to make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date; that to support a request for an accommodation or an auxiliary aid, the following information is required: (1) identification of the type of disability (physical,

mental, learning), (2) information to substantiate the credentials of the evaluator, and (3) professional verification of the disability and the required accommodation; that documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future; that the Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations; that the Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability; and that information related to a request for accommodation shall be kept confidential to the extent provided by law.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the new section is in effect, there are expected to be no significant implications for state or local government as a result of enforcing or administering the new section. The policy reflected in the rule is currently in place.

The public benefits expected as a result of the proposed new section are that the policy regarding special accommodations for registration examinations will be readily available to persons who might be affected by the policy.

The agency anticipates there will be no significant impact on small business.

The agency anticipates there will be no significant change in the cost to persons required to comply with the new section because the policy reflected in the rule reflects the agency's current practice.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new section is proposed pursuant to Section 1051.301 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act of 1990.

The proposed new section will not affect any other statutes.

§3.45. Special Accommodations.

(a) In accordance with the Americans with Disabilities Act (ADA), every registration examination must be conducted in an accessible place and manner, or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability.

(b) Special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities. Available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability.

(c) The Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested. The Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden.

(d) Procedure for requesting accommodation:

(1) To protect the integrity of the testing process, an Applicant requesting an accommodation must submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the Applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination. The Board shall evaluate each request on a case-by-case basis.

(2) An Applicant requesting an accommodation must have a licensed health care professional or other qualified evaluator provide certification regarding the disability as described in subsection (e) of this section.

(3) An Applicant seeking an accommodation must make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date. If the form is submitted less than sixty (60) days prior to the examination date, the Board will attempt to process the request but might not be able to provide the necessary accommodation for the next examination.

(e) The following information is required to support a request for an accommodation or an auxiliary aid:

(1) Identification of the type of disability (physical, mental, learning);

(2) Credential requirements of the evaluator:

(A) For physical or mental disabilities (not including learning), the evaluator shall be a licensed health care professional qualified to assess the type of disability claimed. If a person who does not fit these criteria completes the evaluation, the Board may reject the evaluation and require another evaluation, and the request for accommodation may be delayed.

(B) In the case of learning disabilities, a qualified evaluator shall have sufficient experience to be considered qualified to evaluate the existence of learning disabilities and proposed accommodations needed for specific learning disabilities. The evaluator shall be one of the following:

(i) a licensed physician or psychologist with a minimum of three years' experience working with adults with learning disabilities; or

(ii) another professional who possesses a master's or doctorate degree in special education or educational psychology and who has at least three years of equivalent training and experience in all of the areas described below:

(I) assessing intellectual ability and interpreting tests of such ability;

(II) screening for cultural, emotional, and motivational factors;

(III) assessing achievement level; and

(IV) administering tests to measure attention and concentration, memory, language reception and expression, cognition, reading, spelling, writing, and mathematics.

(3) Professional verification of the disability, which shall include a description of:

(A) the nature and extent of the disability, including a description of its effect on major life activities and the anticipated duration of the impairment;

(B) the effect of the disability on the applicant's ability to:

(i) evaluate written material;

(ii) complete graphic sections of the examination by drawing, drafting, and lettering; and

(iii) complete computerized sections of the examination that require data entry via keyboard and the manipulation of a mouse.

(C) whether the disability limits the amount of time the Applicant can spend on specific examination tasks;

(D) the recommended accommodation and how it relates to the applicant's disability;

(E) the professional's name, title, telephone number, and his/her original signature;

(F) any other information necessary, in the professional's opinion, to enable the exam provider to understand the examinee's disability and the accommodation necessary to enable the examinee to demonstrate his/her knowledge, skills, and ability.

(f) Documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future.

(g) The Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations. The Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability.

(h) Information related to a request for accommodation shall be kept confidential to the extent provided by 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.

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SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §3.65, §3.66

The Texas Board of Architectural Examiners proposes amendments to §3.65 and §3.66 for Title 22, Chapter 3, Subchapter D, pertaining to renewal and reinstatement. The existing sections describe the annual registration renewal procedure and the procedure for reinstating a registration that has been revoked, surrendered, or cancelled.

The proposed amendments to §3.65 will implement recently enacted statutory language regarding the automatic cancellation of any registration that is delinquent for one year. It states that a registration shall be cancelled by operation of law on the one-year anniversary of its expiration unless it is renewed before that time and that after such automatic cancellation, a registration may not be reinstated. If a registration is automatically cancelled pursuant to the section, the registrant will have to (1) submit an application for registration by examination and satisfy all requirements for registration by examination, including the successful completion of the current registration examination; (2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer, including the successful completion of the current registration examination; or (3) submit an application for registration without reexamination and demonstrate that he or she moved to another state and is currently registered and has been in practice in the other state for at least the two years immediately preceding the date of the application. The proposed amendments also will implement recently enacted statutory language requiring landscape architects to pay a $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

The proposed amendment to §3.66 will implement recently enacted statutory language regarding the reinstatement of a registration that has been revoked as a result of disciplinary action, surrendered in lieu of disciplinary action, or cancelled due to the registrant's failure to renew the registration. It requires that a revoked or surrendered registration may not be reinstated unless the applicant demonstrates that he or she has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender, demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender. It also states that a registration cancelled due to the registrant's failure to renew it may not be reinstated.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there are likely to be significant costs to the State associated with the proposed amendment related to automatic cancellation because a loss of revenue is expected as a result of the new statutory language underlying this segment of the proposed amendments. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs. There also is expected to be a significant increase in revenue to the State as a result of the proposed amendment related to the new $200 professional fee. The increased revenue will result from the underlying legislation, not from the proposed amendments. The increased revenue to the State is expected to total approximately $200,000.00.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, the public benefits expected as a result of the amendments to the sections are that new statutory provisions related to the automatic cancellation of delinquent registrations, new statutory provisions related to reinstatement, and new statutory provisions related to a mandatory $200 professional fee will be clearly described in the rules.

The agency anticipates that there could be an impact on small business related to the proposed amendments because a landscape architect who is a sole proprietor could face a substantial hardship if his or her registration is cancelled pursuant to the new automatic cancellation provision. However, the expected impact will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves. Similarly, the new $200 professional fee could have an impact on small business. That impact also will result from the

statutory provision underlying the proposed amendments rather than from the amendments themselves.

The agency anticipates that there are likely to be significant costs associated with the proposed amendments because the cost of reinstating a registration that has been revoked or cancelled will increase in order to cover the costs associated with the cancellation or surrender, because persons whose registrations are automatically cancelled will have to either bear the costs related to obtaining new registrations or give up the privilege of working as registered design professionals, and because registrants will have to pay the mandatory $200 professional fee. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.353 of the Tex. Occupations Code, which directs the Texas Board of Architectural Examiners to cancel a registration that has been delinquent for one year and prohibits the reinstatement of a registration that was cancelled due to delinquency, pursuant to Section 1051.403 of the Tex. Occupations Code, which allows the Board to reinstate a revoked registration only after the reinstatement applicant pays all fees and costs associated with the revocation and also presents evidence to support the reinstatement, and pursuant to Section 1052.0541 of the Tex. Occupations Code, which prescribes the mandatory $200 professional fee.

The proposed amendments to these sections do not affect any other statutes.

§3.65. Annual Renewal Procedure.

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

(f) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must: [~~Board may take formal action to revoke the registration. Formal action to revoke a registration for failure to renew shall not be subject to the requirements of the Administrative Procedure Act, Chapter 2001, Government Code.~~]

(1) submit an application for registration by examination and satisfy all requirements for registration by examination pursuant to Section 3.21, including the successful completion of the current registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 3.22, including the successful completion of the current registration examination; or

(3) submit an application for registration without reexamination and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

(g) Each Landscape Architect must pay a mandatory $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

§3.66. Reinstatement.

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

(e) If a registration was revoked as a result of disciplinary action or surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender.

(f) If a registration is cancelled due to the Registrant's failure to renew the registration within one (1) year after its designated expiration date, the registration may not be reinstated.

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

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Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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SUBCHAPTER E. FEES

22 TAC §3.81, §3.82

The Texas Board of Architectural Examiners proposes amendments to §3.81 and §3.82 for Title 22, Chapter 3, Subchapter E, pertaining to fees. The existing sections describe the method of establishing fees, the requirements related to paying fees, and the consequences of failing to pay the annual registration renewal fee.

The proposed amendment to §3.81 adds the agency's fee schedule to the section, adds a reference to a processing fee to be charged if a check is returned unpaid by the bank upon which the check is drawn, and describes a fee exemption for members of the U.S. military who are on active duty status. The proposed amendment to §3.82 describes the automatic cancellation provision enacted by the Legislature that will result in the automatic cancellation of any registration that remains delinquent for one year after its designated expiration date.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there are likely to be significant costs associated with the proposed amendments, most of which are expected to result from a loss of revenue associated with the new automatic cancellation provisions found in the statutory language underlying the proposed amendments. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, the public benefits expected as a result of the amendments to §3.81 and §3.82 are that the fees charged by the agency will be clearly described in the rules, as will the new statutory provisions related to fee exemptions for members of the U.S. military and related to the automatic cancellation of registrations that remain delinquent for one year.

The agency anticipates that there could be an impact on small business related to the proposed amendments because a landscape architect who is a sole proprietor could face a substantial hardship if his registration is cancelled pursuant to the new automatic cancellation provision. However, the expected impact will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

With regard to persons required to comply with the amended sections, there are significant costs associated with the proposed amendments because persons whose registrations are automatically cancelled will have to either bear the costs related to obtaining new registrations or give up the privilege of working as registered design professionals. These costs will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1052.054 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with authority to establish fees as reasonable and necessary to cover the costs of administering its statutory duties, and pursuant to Sections 1051.353 and 1051.354 of the Tex. Occupations Code, which provide authority for the subsections regarding the automatic cancellation of registrations and the fee exemptions for members of the U.S. military.

The proposed amendments to these sections will not affect any other statutes.

§3.81. General.

(a) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board: [~~by the Legislature, fees shall be established by the Board at a public meeting and shall be published in the *Texas Register*.~~]
Figure: 22 TAC §3.81(a)

(b) The Board cannot accept cash as payment for any fee. [~~Payment of any fee established by the Board may be made only by check or money order made payable to the Texas Board of Architectural Examiners.~~]

(c) An official postmark from the U.S. Postal Service may be presented to the Board to demonstrate the timely payment of any fee.

(d) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check, the fee shall be considered unpaid and any applicable late fees shall accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(e) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U. S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

§3.82. Annual Fees.

(a) The Board shall send an annual notice to each person who must pay a fee that is due annually. Each annual notice shall be sent to the intended recipient's current address of record. Every annual fee must be paid regardless of whether an annual notice is received.

(b) Every Registrant [~~registrant~~] must pay his/her annual renewal fee on or before the designated expiration date of the Registrant's [~~registrant's~~] certificate of registration. If a Registrant [~~registrant~~] fails to pay his/her annual renewal fee on or before the designated expiration date of the Registrant's [~~registrant's~~] certificate of registration, the Board shall require that the Registrant [~~registrant~~] pay a penalty fee in addition to the registration renewal fee before the registration may be renewed. A registration certificate shall become invalid on its designated expiration date unless it is renewed.

(c) If a Registrant [~~registrant~~] fails to renew his/her certificate of registration within one year after its designated expiration date, the certificate of registration shall be cancelled by operation of law [~~may be revoked by the Board~~] without the opportunity for [~~scheduling~~] a formal hearing [~~before the State Office of Administrative Hearings pursuant to the Administrative Procedure Act~~]. The Board shall send a notice of pending cancellation [~~revocation~~] to a Registrant [~~registrant~~] who fails to renew his/her certificate of registration within one year after its designated expiration date. The notice shall be sent to the Registrant's [~~registrant's~~] current address of record.

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

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Cathy L. Hendricks, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31, §5.32

The Texas Board of Architectural Examiners proposes amendments to §5.31 and §5.32 for Title 22, Chapter 5, Subchapter B, pertaining to registration. The existing sections describe the general requirements for obtaining interior design registration by examination and by reciprocal transfer.

The proposed amendment to §5.31 adds a requirement that an applicant for registration by examination must provide verification that the applicant is legally in the United States pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The proposed amendment to §5.32 modifies the requirements related to obtaining reciprocal registration by adding language that requires a reciprocal applicant to hold a registration that is

active and in good standing in another jurisdiction that has registration requirements substantially equivalent to Texas registration requirements or that has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas. The proposed amendment reflects a recently enacted legislative change.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there are costs associated with the review of documentation submitted to prove legal status in the United States, the costs will not be funded by the State or by any unit of local government because the agency is participating in a self-directed, semi-independent agency pilot project (SDSI Project). As a result, the agency's functions are not funded by the State. The costs related to the review of documentation to prove legal status will be funded by the agency. In addition, any costs associated with the review are the result of the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. No additional cost will result from the adoption of the proposed rule. There is not expected to be a significant increase in costs as a result of enforcing the proposed amendment to the reciprocal registration rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect the public benefits expected as a result of the amendments to the sections will be that the agency will be upholding its statutory responsibility to assist with enforcement of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and, with regard to the proposed amendment to the reciprocal registration rule, that the opportunities for obtaining reciprocal registration will be clearly described in the rules.

The agency anticipates no significant impact on small business.

The agency anticipates that there will be a small cost to persons required to comply with the amended sections because those persons will have to bear the expense of providing the required documentation to prove legal status in the United States. There is expected to be no additional cost associated with the proposed amendment to the reciprocal registration rule.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.202 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to adopt rules necessary to the administration of its statutory duties. The proposed amendment to the reciprocal registration rule is further authorized by Section 1051.305 of the Tex. Occupations Code, which allows the Board to grant reciprocal registration privileges under certain circumstances.

The proposed amendments will not affect any other statutes.

§5.31. Registration by Examination.

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

(h) In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide evidence of legal status by submitting a certified copy of a United States birth certificate or other certified documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

§5.32. Registration by Reciprocal Transfer.

(a) A person may apply for interior design registration by reciprocal transfer if the person holds an [~~a certificate of~~] interior design registration that is active and in good standing in another jurisdiction and the other jurisdiction: [.]

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b)-(c) (No change.)

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

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Texas Board of Architectural Examiners
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SUBCHAPTER C. EXAMINATION

22 TAC §5.51

The Texas Board of Architectural Examiners proposes an amendment to §5.51 for Title 22, Chapter 5, Subchapter C, pertaining to the refund of examination fees. The existing section describes requirements related to the general procedures for examination for interior design registration in Texas. The proposed amendment to §5.51 adds a new section regarding refunds of examination fees. It states that the application fee is not refundable but that a portion of the examination fee paid to the national examination provider may be refunded if a candidate is precluded from taking or scheduling the examination because of extreme hardship. The new section requires the submission of a written request for refund within thirty days of the examination date. The new section states that an examination fee may not be transferred to a subsequent examination.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect, there are expected to be no significant implications for state or local government as a result of enforcing or administering the amended section. The policy reflected in the rule is currently in place.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended section is in effect the public benefits expected as a result of the amended section are that the policy regarding refunds of examination fees will be readily available to persons who might be affected by the policy.

The agency anticipates there will be no significant impact on small business.

The agency anticipates there will be no significant change in the cost to persons required to comply with the amended section because the policy reflected in the rule reflects the agency's current practice.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment to this section is proposed pursuant to Section 1051.303 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt a comprehensive refund policy for examination fees.

The proposed amendment to this section will not affect any other statutes.

§5.51. Requirements.

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

(e) An examination fee may be refunded as follows:

(1) The application fee paid to the Board is not refundable or transferable.

(2) The Board, on behalf of a Candidate, may request a refund of a portion of the examination fee paid to the national examination provider for scheduling all or a portion of the registration examination. A charge for refund processing may be withheld by the national examination provider. Refunds of examination fees are subject to the following conditions:

(A) A Candidate, because of extreme hardship, must have been precluded from scheduling or taking the examination or a portion of the examination. For purposes of this subsection, extreme hardship is defined as a serious illness or accident of the Candidate or a member of the Candidate's immediate family or the death of an immediate family member. Immediate family members include the spouse, child(ren), parent(s), and sibling(s) of the Candidate. Any other extreme hardship may be considered on a case-by-case basis.

(B) A written request for a refund based on extreme hardship must be submitted not later than thirty (30) days after the date of the scheduled examination or portion of the examination. Documentation of the extreme hardship that precluded the applicant from scheduling or taking the examination must be submitted by the Candidate as follows:

(i) Illness: verification from a physician who treated the illness.

(ii) Accident: a copy of an official accident report.

(iii) Death: a copy of a death certificate or newspaper obituary.

(3) An examination fee may not be transferred to a subsequent examination.

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

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §5.55

The Texas Board of Architectural Examiners proposes new §5.55 for Title 22, Chapter 5, Subchapter C pertaining to special accommodations for taking the registration examination for interior design registration in Texas.

New §5.55 describes the Board's policy for ensuring that the examination process complies with the requirements of the Americans with Disabilities Act. It states that every registration examination must be conducted in an accessible place and manner or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability; that special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities; that available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability; that the Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested; that the Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden; that the procedure for requesting accommodation will be (1) for an applicant requesting an accommodation to submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination, (2) for an applicant requesting an accommodation to have a licensed health care professional or other qualified evaluator provide certification regarding the disability, and (3) for an applicant seeking an accommodation to make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date; that to support a request for an accommodation or an auxiliary aid, the following information is required: (1) identification of the type of disability (physical, mental, learning), (2) information to substantiate the credentials of the evaluator, and (3) professional verification of the disability and the required accommodation; that documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future; that the Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations; that the Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability; and that information related to a request for accommodation shall be kept confidential to the extent provided by law.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the amended section is in effect,

there are expected to be no significant implications for state or local government as a result of enforcing or administering the amended section. The policy reflected in the rule is currently in place.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the amended section is in effect, the public benefits expected as a result of the proposed new section are that the policy regarding special accommodations for registration examinations will be readily available to persons who might be affected by the policy.

The agency anticipates there will be no significant impact on small business.

The agency anticipates there will be no significant change in the cost to persons required to comply with the amended section because the policy reflected in the rule reflects the agency's current practice.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new section is proposed pursuant to Section 1051.301 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act of 1990.

The proposed new section will not affect any other statutes.

§5.55. Special Accommodations.

(a) In accordance with the Americans with Disabilities Act (ADA), every registration examination must be conducted in an accessible place and manner, or alternative accessible arrangements must be afforded so that no qualified individual with a disability is unreasonably denied the opportunity to complete the licensure process because of his/her disability.

(b) Special accommodations can be provided for examinees with physical or mental impairments that substantially limit major life activities. Available accommodations include the modification of examination procedures and the provision of auxiliary aids and services designed to furnish an individual with a disability an equal opportunity to demonstrate his/her knowledge, skills, and ability.

(c) The Board is not required to approve every request for accommodation or auxiliary aid or provide every accommodation or service as requested. The Board is not required to grant a request for accommodation if doing so would fundamentally alter the measurement of knowledge or the measurement of a skill intended to be tested by the examination or would create an undue financial or administrative burden.

(d) Procedure for requesting accommodation:

(1) To protect the integrity of the testing process, an Applicant requesting an accommodation must submit documentation regarding the existence of a disability and the reason the requested accommodation is necessary to provide the Applicant with an equal opportunity to exhibit his/her knowledge, skills, and ability through the examination. The Board shall evaluate each request on a case-by-case basis.

(2) An Applicant requesting an accommodation must have a licensed health care professional or other qualified evaluator provide certification regarding the disability as described in Subsection (e) of this section.

(3) An Applicant seeking an accommodation must make a request for accommodation on the prescribed form and provide documentation of the need for accommodation well in advance of the examination date. If the form is submitted less than sixty (60) days prior to the examination date, the Board will attempt to process the request but might not be able to provide the necessary accommodation for the next examination.

(e) The following information is required to support a request for an accommodation or an auxiliary aid:

(1) Identification of the type of disability (physical, mental, learning);

(2) Credential requirements of the evaluator:

(A) For physical or mental disabilities (not including learning), the evaluator shall be a licensed health care professional qualified to assess the type of disability claimed. If a person who does not fit these criteria completes the evaluation, the Board may reject the evaluation and require another evaluation, and the request for accommodation may be delayed.

(B) In the case of learning disabilities, a qualified evaluator shall have sufficient experience to be considered qualified to evaluate the existence of learning disabilities and proposed accommodations needed for specific learning disabilities. The evaluator shall be one of the following:

(i) a licensed physician or psychologist with a minimum of three years' experience working with adults with learning disabilities; or

(ii) another professional who possesses a master's or doctorate degree in special education or educational psychology and who has at least three years of equivalent training and experience in all of the areas described below:

(I) assessing intellectual ability and interpreting tests of such ability;

(II) screening for cultural, emotional, and motivational factors;

(III) assessing achievement level; and

(IV) administering tests to measure attention and concentration, memory, language reception and expression, cognition, reading, spelling, writing, and mathematics.

(3) Professional verification of the disability, which shall include a description of:

(A) the nature and extent of the disability, including a description of its effect on major life activities and the anticipated duration of the impairment;

(B) the effect of the disability on the applicant's ability to:

(i) evaluate written material;

(ii) complete graphic sections of the examination by drawing, drafting, and lettering; and

(iii) complete computerized sections of the examination that require data entry via keyboard and the manipulation of a mouse.

(C) whether the disability limits the amount of time the Applicant can spend on specific examination tasks;

(D) the recommended accommodation and how it relates to the applicant's disability;

(E) the professional's name, title, telephone number, and his/her original signature;

(F) any other information necessary, in the professional's opinion, to enable the exam provider to understand the examinee's disability and the accommodation necessary to enable the examinee to demonstrate his/her knowledge, skills, and ability.

(f) Documentation supporting an accommodation shall be valid for five (5) years from the date submitted to the Board except that no further documentation shall be required where the original documentation clearly states that the disability will not change in the future.

(g) The Board has the responsibility to evaluate each request for accommodation and to approve, deny, or suggest alternative reasonable accommodations. The Board may consider an Applicant's history of accommodation in determining its reasonableness in relation to the currently identified impact of the disability.

(h) Information related to a request for accommodation shall be kept confidential to the extent provided by 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.

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Cathy L. Hendricks, ASID/IIDA
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SUBCHAPTER D. CERTIFICATION AND ANNUAL RENEWAL

22 TAC §5.75, §5.76

The Texas Board of Architectural Examiners proposes amendments to §5.75 and §5.76 for Title 22, Chapter 5, Subchapter D, pertaining to renewal and reinstatement. The existing sections describe the annual registration renewal procedure and the procedure for reinstating a registration that has been revoked, surrendered, or cancelled.

The proposed amendments to §5.75 will implement recently enacted statutory language regarding the automatic cancellation of any registration that is delinquent for one year. It states that a registration shall be cancelled by operation of law on the one-year anniversary of its expiration unless it is renewed before that time and that after such automatic cancellation, a registration may not be reinstated. If a registration is automatically cancelled pursuant to the section, the registrant will have to (1) submit an application for registration by examination and satisfy all requirements for registration by examination, including the successful completion of the current registration examination; (2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer, including the successful completion of the current registration examination; or (3) submit an application for registration without reexamination and demonstrate that he or she moved to another state and is currently registered and has been in practice in the other state for at least the two years immediately preceding the date of the application. The proposed amendments also will implement recently enacted statutory language requiring interior designers to pay a $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

The proposed amendment to § 5.76 will implement recently enacted statutory language regarding the reinstatement of a registration that has been revoked as a result of disciplinary action, surrendered in lieu of disciplinary action, or cancelled due to the registrant's failure to renew the registration. It requires that a revoked or surrendered registration may not be reinstated unless the applicant demonstrates that he or she has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender, demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender. It also states that a registration cancelled due to the registrant's failure to renew it may not be reinstated.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there are likely to be significant costs to the State associated with the proposed amendment related to automatic cancellation because a loss of revenue is expected as a result of the new statutory language underlying this segment of the proposed amendments. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs. There also is expected to be a significant increase in revenue to the State as a result of the proposed amendment related to the new $200 professional fee. The increased revenue will result from the underlying legislation, not from the proposed amendments. The increased revenue to the State is expected to total approximately $855,000.00.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, the public benefits expected as a result of the amendments to the sections are that new statutory provisions related to the automatic cancellation of delinquent registrations, new statutory provisions related to reinstatement, and new statutory provisions related to a mandatory $200 professional fee will be clearly described in the rules.

The agency anticipates that there could be an impact on small business related to the proposed amendments because an interior designer who is a sole proprietor could face a substantial hardship if his or her registration is cancelled pursuant to the new automatic cancellation provision. However, the expected impact will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves. Similarly, the new $200 professional fee could have an impact on small business. That impact also will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

The agency anticipates that there are likely to be significant costs associated with the proposed amendments because the cost of reinstating a registration that has been revoked or cancelled will increase in order to cover the costs associated with the cancellation or surrender, because persons whose registrations are automatically cancelled will have to either bear the costs related to obtaining new registrations or give up the privilege of working as registered design professionals, and because registrants will have to pay the mandatory $200 professional fee. The expected costs will result from the underlying legislation, not from

the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1051.353 of the Tex. Occupations Code, which directs the Texas Board of Architectural Examiners to cancel a registration that has been delinquent for one year and prohibits the reinstatement of a registration that was cancelled due to delinquency, pursuant to Section 1051.403 of the Tex. Occupations Code, which allows the Board to reinstate a revoked registration only after the reinstatement applicant pays all fees and costs associated with the revocation and also presents evidence to support the reinstatement, and pursuant to Section 1053.0521 of the Tex. Occupations Code, which prescribes the mandatory $200 professional fee.

The proposed amendments to these sections do not affect any other statutes.

§5.75. Annual Renewal Procedures.

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

(f) If a registration is not renewed within one (1) year after the specified registration expiration date, the registration shall be cancelled by operation of law on the one-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must: [~~Board may take formal action to revoke the registration. Formal action to revoke a registration for failure to renew shall not be subject to the requirements of the Administrative Procedure Act, Chapter 2001, Government Code.~~]

(1) submit an application for registration by examination and satisfy all requirements for registration by examination pursuant to Section 5.31, including the successful completion of the current registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to Section 5.32, including the successful completion of the current registration examination; or

(3) submit an application for registration without reexamination and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the two (2) years immediately preceding the date of the application.

(g) Each Interior Designer must pay a mandatory $200 professional fee in addition to the annual registration renewal fee prescribed by the Board.

§5.76. Reinstatement.

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

(e) If a registration was revoked as a result of disciplinary action or surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the revocation or surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the revocation or surrender.

(f) If a registration is cancelled due to the Registrant's failure to renew the registration within one (1) year after its designated expiration date, the registration may not be reinstated.

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 December 8, 2003.

TRD-200308418
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 305-8535

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SUBCHAPTER E. FEES

22 TAC §5.91, §5.92

The Texas Board of Architectural Examiners proposes amendments to §5.91 and §5.92 for Title 22, Chapter 5, Subchapter E, pertaining to fees. The existing sections describe the method of establishing fees, the requirements related to paying fees, and the consequences of failing to pay the annual registration renewal fee.

The proposed amendment to §5.91 adds the agency's fee schedule to the section, adds a reference to a processing fee to be charged if a check is returned unpaid by the bank upon which the check is drawn, and describes a fee exemption for members of the U.S. military who are on active duty status. The proposed amendment to §5.92 describes an automatic cancellation provision enacted by the Legislature that will result in the automatic cancellation of any registration that remains delinquent for one year after its designated expiration date.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there are likely to be significant costs associated with the proposed amendments, most of which are expected to result from a loss of revenue associated with the new automatic cancellation provisions found in the statutory language underlying the proposed amendments. The expected costs will result from the underlying legislation, not from the proposed amendments. The amendments themselves are not expected to result in any additional costs.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended sections are in effect, the public benefits expected as a result of the amendments to §5.91 and §5.92 are that the fees charged by the agency will be clearly described in the rules, as will the new statutory provisions related to fee exemptions for members of the U.S. military and related to the automatic cancellation of registrations that remain delinquent for one year.

The agency anticipates that there could be an impact on small business related to the proposed amendments because an interior designer who is a sole proprietor could face a substantial hardship if his registration is cancelled pursuant to the new automatic cancellation provision. However, the expected impact

will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

With regard to persons required to comply with the amended sections, there are significant costs associated with the proposed amendments because persons whose registrations are automatically cancelled will have to either bear the costs related to obtaining new registrations or give up the privilege of working as registered design professionals. These costs will result from the statutory provision underlying the proposed amendments rather than from the amendments themselves.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to Section 1053.052 of the Tex. Occupations Code, which provides the Texas Board of Architectural Examiners with authority to establish fees as reasonable and necessary to cover the costs of administering its statutory duties, and pursuant to Sections 1051.353 and 1051.354 of the Tex. Occupations Code, which provide authority for the subsections regarding the automatic cancellation of registrations and the fee exemptions for members of the U.S. military.

The proposed amendments to these sections will not affect any other statutes.

§5.91. General.

(a) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board:[~~In addition to any fees established by the Legislature, fees shall be established by the Board at a public meeting and shall be published in the *Texas Register*.~~]
Figure: 22 TAC §5.91(a)

(b) The Board cannot accept cash as payment for any fee.[~~Payment of any fee established by the Board may be made only by check or money order made payable to the Texas Board of Architectural Examiners.~~]

(c) An official postmark from the U.S. Postal Service may be presented to the Board to demonstrate the timely payment of any fee.

(d) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check, the fee shall be considered unpaid and any applicable late fees shall accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(e) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U. S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

§5.92. Annual Fees.

(a) The Board shall send an annual notice to each person who must pay a fee that is due annually. Each annual notice shall be sent to the intended recipient's current address of record. Every annual fee must be paid regardless of whether an annual notice is received.

(b) Every Registrant [~~registrant~~] must pay his/her annual renewal fee on or before the designated expiration date of the Registrant's [~~registrant's~~] certificate of registration. If a Registrant [~~registrant~~] fails to pay his/her annual renewal fee on or before the designated expiration date of the Registrant's [~~registrant's~~] certificate of registration, the Board shall require that the Registrant [~~registrant~~] pay a penalty fee in addition to the registration renewal fee before the registration may be renewed. A registration certificate shall become invalid on its designated expiration date unless it is renewed.

(c) If a Registrant [~~registrant~~] fails to renew his/her certificate of registration within one year after its designated expiration date, the certificate of registration shall be cancelled by operation of law [~~may be revoked by the Board~~] without the opportunity for [~~scheduling~~] a formal hearing [~~before the State Office of Administrative Hearings pursuant to the Administrative Procedure Act~~]. The Board shall send a notice of pending cancellation [~~revocation~~] to a Registrant [~~registrant~~] who fails to renew his/her certificate of registration within one year after its designated expiration date. The notice shall be sent to the Registrant's [~~registrant's~~] current address of record.

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

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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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, §73.7

The Texas Board of Chiropractic Examiners proposes to amend the following sections in Title 22, Chapter 73 relating to licenses and renewals: 22 TAC §73.3, relating to continuing education and 22 TAC §73.7, relating to approved continuing education courses. The Proposed amendments to §73.3 and §73.7 will also require continuing education sponsors to submit attendance rosters and to monitor a licensee's actual attendance at a course and will allow the Board to perform a post-audit of licensee's compliance with continuing education requirements.

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 government as a result of enforcing or administering the proposed amendments. 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 easier reporting requirements for licensees relating to continuing education, 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. There is no anticipated economic cost to persons required to comply with the rules as proposed.

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, 201.311, 201.351, 201.354, 201.355, 201.356

§73.3. Continuing Education.

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Requirements.

(1) Every licensee shall attend and complete 16 hours of continuing education each year unless a licensee is exempted under subsection (d) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §73.7 of this title (relating to Approved Continuing Education Courses). However, a licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. A licensee who serves as an examiner for the National Boards Part IV Examination may receive credit for this activity, not to exceed two hours each year. No more than four hours of credit may be obtained through online courses.

(3) A list of approved courses, including TBCE Required Courses, is available on the board's website, www.tbce.state.tx.us, [~~or may be obtained from the board office upon request,~~] as provided in §73.7(f). The board will also provide notice of a TBCE Required Course in its newsletter.

(4) The two hours of continuing education to be presented by the board will be given at the following seminars:

(A) Texas Chiropractic Association - Midwinter;

(B) Texas Chiropractic Association Convention;

(C) Chiropractic Society of Texas Annual Convention;

(D) Parker College of Chiropractic Homecoming;

(E) Texas Chiropractic College Homecoming;

(F) Online at www.tbce.state.tx.us;

(G) TBCE Headquarters in Austin, TX (check website for details)

(5) A licensee who is unable to travel for the purpose of attending a continuing education course or seminar due to a mental or physical illness or disability may satisfy the board's continuing education requirements by listening to audio or viewing video taped courses approved by the Board [~~from the Foundation for Chiropractic Education and Research~~], or taking approved online courses. In order for an audio or video tape or an online course to be accepted by the board, a licensee must submit a letter from a licensed chiropractor or physician, [~~M.D., D.O., D.P.M., D.D.S. or O.D.,~~] who is not associated with the licensee in any manner. In the letter, the chiropractor or other doctor must state the nature of the illness or disability and certify that the licensee was ill or disabled, and unable to travel for the purpose of obtaining continuing education hours due to the illness or disability. A licensee is required to submit a new certificate for each year an exemption is sought. An untrue certification submitted to the board shall subject the licensee to disciplinary action as authorized by the Chiropractic Act, Occupations Code §§201.501 and .502. The four hour limit provided in subsection (b)(2) of this section for online courses does not apply to a licensee who submits a certification under this subsection.

(c) Verification.

(1) At the request of the Board [~~time of license renewal each year~~], a licensee shall submit, to the board, written verification from each sponsor, of the licensee's attendance at and completion of each continuing education course which is used in the fulfillment of the required [~~16~~] hours for all years requested [~~the reporting year just ending~~].

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

[~~(3) Upon request by the board, a licensee shall provide verification of his or her continuing education for all years requested.~~]

(3) [~~(4)~~] Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (b) of this section.

(d) Qualifying exemption. The following persons are exempt from the requirements of subsection (b) of this section:

(1) a licensee who holds an inactive Texas license. However, if at any time during the reporting year for which such exemption applies such person desires to practice chiropractic, such person shall not be entitled to practice chiropractic in Texas until all required [~~16~~] hours of continuing education credits are obtained and the executive director has been notified of completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is first licensed within the 12 months immediately preceding the annual renewal date.

§73.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course and must include the course title, subject and description, the number of credit hours, the date, time and location of the course, and the names and backgrounds of speakers or instructors, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the

sponsor. Each continuing education course shall be approved for one calendar year only. The number of hours of credit to be earned at a course may not be changed after an application has been submitted to the board.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee of $25 for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all course offered by the sponsor for which board approval is requested will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (i) of this section.

(e) Rejection. The board will notify, in writing, a sponsor of any rejection.

(f) Approved list of courses. The board will maintain a list of approved courses on their website at www.tbce.state.tx.us for compliance with §73.3 of this title (relating to Continuing Education) [~~by licensees. One copy of the list will be provided to a licensee, without charge, upon request~~].

(g) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency;

(3) be on a topic from one or more of the following categories:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) boundary (sexual) issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) HIV prevention and education;

(V) acupuncture;

(W) Ethics.

(h) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(i) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide [~~prepare~~] a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request; and

(6) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(j) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

(k) The board, at its discretion, may authorize the presentation of a board required course at the annual seminars listed in §73.3[~~(1)(D)~~] of this title (relating to Continuing Education). The board will approve the subject, content and presenter of the course. Such course generally will cover topics of timely and educational interest to the chiropractic profession. The sponsor of a seminar shall designate the course as board required on its seminar agenda and other materials as follows: "TBCE Required Course." This designation may only be used for a course for which the sponsor has received written notice from the executive director that the board has approved the course for such designation.

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

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Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.7, §75.13

The Texas Board of Chiropractic Examiners proposes to amend the following sections in Title 22, Chapter 75 relating to rules of practice: 22 TAC §75.7, relating to required fees and charges and 22 TAC §75.13, relating to disciplinary records and reportable actions. The proposed amendments to 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 section to be amended includes §75.7, relating to required fees and charges. 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. 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 §75.7. 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 section as amended is 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

§75.7. Required Fees and Charges [~~for Public Information~~].

(a) Current fees required by the board are as follows:
Figure: 22 TAC §75.7(a)

(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

§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)-(6) [~~(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 sexual misconduct, 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.

(4) Disciplinary action in which an administrative penalty was imposed against a licensee for practicing with an expired license:

(A) the effective date of the board order is at least three years past;

(B) the licensee has had no subsequent disciplinary action for the same violation;

(C) the licensee has no disciplinary proceeding pending; and

(D) the licensee currently is not under investigation by the board.

(5) Disciplinary action in which a suspension order (partially or not probated) was issued:

(A) the effective date of the board order is at least ten years past;

(B) the suspension order did not involve action based upon either sexual misconduct, 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.

(6) Disciplinary action in which an administrative penalty and a written reprimand were imposed against a licensee:

(A) the effective date of the board order is at least five 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.

(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6709

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.5

The Texas Optometry Board proposes amendments to §277.5, to more explicitly define, as required by Chapter 53 of the Occupations Code, those types of criminal convictions that are directly related to the practice of optometry and therapeutic optometry.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is that licensees and the public will have a more detailed description of the type of criminal conviction that may result in disciplinary action against the licensee. Since the current rule language and statute now authorize disciplinary action for directly related criminal convictions, the amendments are not creating any additional duties that might impose additional costs to the persons affected by the rule. No additional costs are foreseen for small or micro business.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.501, and Chapter 53 of the Texas Occupations Code. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.501 and Chapter 53 of the Occupations Code to authorize disciplinary action against a license who has received a criminal conviction.

§277.5. Felony Convictions.

(a) The [~~Both the~~] Act, Section 351.501(a)(3), [~~§4.04(a)(3),~~] and Texas Occupations Code Chapter 53, [~~Civil Statutes, Article 6252-13(c),~~] provide that the board may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor [~~involving moral turpitude,~~] if the crime directly relates to duties and responsibilities of a [~~the~~] licensed optometrist or therapeutic optometrist. [~~In actual practice and by way of guidelines, any proceeding instituted by the board or otherwise, with respect to the statutes mentioned in this section, shall be considered a contested case and all procedural safeguards afforded to a respondent under the APA, the Texas Optometry Act, and these disciplinary rules shall be available. The board shall institute no proceeding with respect to a particular felony or misdemeanor conviction until a jury verdict or a plea of guilty is entered. In making any determination, the board shall consider all factors and evidence with respect to the elements enumerated in Texas Civil Statutes, Article 6252-13(c), if, and to the extent evidence with respect to such matters is presented to the board.~~]

(b) A person currently incarcerated because of a felony conviction may not sit for examination, obtain a license under this act, or renew a previously issued license to practice optometry or therapeutic optometry.

(c) In considering whether a criminal conviction directly relates to the occupation of an optometrist or therapeutic optometrist, the Board shall consider the factors listed in Texas Occupations Code §53.022.

(d) The practice of optometry and therapeutic optometry places the optometrist or therapeutic optometrist in a position of public trust. A licensee practices in an autonomous role in treating patients young and old; in prescribing, administering and safely storing dangerous drugs including controlled substances; in preparing and safeguarding confidential records and information; and in accepting client funds. Therefore the crimes considered by the Board to relate to the practice of optometry and therapeutic optometry include, but are not limited to:

(1) any felony or misdemeanor of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Optometry Act, or other statutes regulating or pertaining to the practice or profession of optometry and therapeutic optometry;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) any crime involving moral turpitude;

(5) murder;

(6) burglary;

(7) robbery;

(8) theft;

(9) sex offense;

(10) perjury;

(11) child molesting; and

(12) substance abuse or substance diversion.

(e) In determining the present fitness of a person who has been convicted of a crime, the Board shall consider the factors listed in Texas Occupations Code §53.023.

(f) It shall be the responsibility of the applicant for license to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities regarding all offenses.

(g) The applicant for license shall also furnish proof in such form as may be required by the Board, that the licensee maintained a record of steady employment and has supported licensee dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which the licensee has been convicted.

(h) Upon suspension or revocation of a license, or denial of an application for license or examination because of the person's prior conviction of a crime and the relationship of the crime to the license, the Board shall notify the person in writing:

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

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

(3) of the earliest date that the person may appeal.

(i) The board, however, shall be under no duty to generate evidence with respect to the matters listed in Texas Occupations Code Chapter 53. [~~Civil Statutes, Article 6252-13(c), §4. As in all other contested cases, all relevant evidence will be considered and an opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.~~]

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 December 8, 2003.

TRD-200308402
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 305-8502

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

SUBCHAPTER D. LIMITED LIABILITY CERTIFICATION

25 TAC §§13.41 - 13.48

The Texas Department of Health (department) proposes new §§13.41-13.48, concerning the criteria and procedures to determine a non-profit hospital's or hospital system's eligibility for limited liability certification. These new sections implement the provisions of Health and Safety Code, §311.0456, which was added by House Bill 4, 78th Regular Legislative Session, 2003. The new sections include purpose and authority, definitions, eligible entities, certification criteria, submission deadlines, duties of the department, effective date of certification, and the effect of certification.

These sections establish the reporting criteria and guidelines and the submission deadlines for non-profit hospitals and hospital systems seeking certification for limited liability protection under Civil Practices and Remedies Code, §101.023(b). The sections will apply to and affect the limited liability status of approximately 80 non-profit hospitals and hospital systems statewide who are or may be eligible for these benefits by virtue of providing 8% or more of their net revenue as charity care to county residents and 40% of the total charity care provided in the county in which the hospital or hospital system is located.

Bruce A. Gunn, Ph.D., Manager, Health Provider Resources Division, Center for Health Statistics, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Gunn also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to encourage non-profit hospitals and hospital systems to deliver more charity care to indigent individuals in their service areas. Public and for-profit hospitals will not benefit from or be affected by these sections.

There will be no additional cost to hospitals or hospital systems that currently report charity care information to the department under Health and Safety Code, Chapter 311 (Chapter 311). Hospitals and hospital systems who do not currently report charity care information, but who wish to benefit from the limited liability certification will incur the cost of compiling and filing charity care information under Chapter 311, necessary to evaluate their eligibility. There are no anticipated economic costs to small or micro-businesses because they are not required to comply with the rules. There is no anticipated impact on local employment.

Comments may be submitted to Dr. Bruce A. Gunn, Manager, Health Provider Resources Division, Center for Health Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0243, or bruce.gunn@tdh.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, Chapters 104 and 311, which provide the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 311; and §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 the commissioner of health.

The new sections affect the Health and Safety Code, Chapters 104 and 311.

§13.41. Purpose and Authority.

(a) Purpose. These sections provide the criteria and procedures the department uses to determine a non-profit hospital's or hospital system's eligibility for limited liability certification by the department.

(b) Authority. These sections are authorized by Health and Safety Code, §311.0456, which requires the department to receive, verify and certify limited liability status for non-profit hospitals or hospital systems that meet the requirements of these sections.

§13.42. Definitions.

Terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise. Terms not defined have their common meanings.

(1) Department--The Texas Department of Health.

(2) Charity care--Is defined in Health and Safety Code, §311.031(2).

(3) Net patient revenue--Is defined in Health and Safety Code, §311.042(8).

(4) Non-profit hospital--Is defined in Health and Safety Code, §311.042(9).

(5) Non-economic damages--Is defined in Civil Practices and Remedies Code, §41.001(12).

§13.43. Eligible Entities.

These sections apply to non-profit hospitals and non-profit hospital systems that:

(1) meet the community benefits and charity care requirements of Health and Safety Code, §311.045; or

(2) are corporations certified by the Texas State Board of Medical Examiners as non-profit organizations under Occupations Code, §162.001, whose sole member is a qualifying hospital or hospital system.

§13.44. Certification Criteria.

A non-profit hospital or hospital system that satisfies the eligibility criteria under §13.43 of this title (relating to Eligible Entities) must additionally meet the following certification criteria:

(1) provide charity care in an amount not less than 8% of net patient revenues for the preceding fiscal year; and

(2) provide not less than 40% of the total charity care provided in the county in which the hospital is located. Total charity care for the county for purposes of this section is determined by the department based on completed reports submitted not later April 30 for each reporting year under Health and Safety Code, §311.045. Charity care reports submitted after April 30 for each reporting year, but before the submission deadline under Health and Safety Code, §311.045, will be excluded from the total charity care denominator for purposes of this section.

§13.45. Mandatory Submission Deadline.

Not later than April 30 of each year, an eligible entity must submit a report, based on its most recent completed and audited fiscal year, stating that the hospital or system is eligible for certification. Reports submitted after April 30 of each reporting year will not be considered for certification, and exceptions to the deadline will not be granted.

§13.46. Duties of the Department.

(a) The department will verify that all hospitals or systems that have submitted reports within the submission deadline meet the certification criteria not later than May 31 of the year in which the department receives the report.

(b) The department will compare the report under these sections against the reporting requirements under Health and Safety Code, §311.046, for accuracy and completeness.

(c) The department will certify those hospitals or systems that meet all requirements of these sections.

§13.47. Effective Date of Certification.

A certification under these sections takes effect on May 31 of the year for which certification is issued, regardless of the date the department issues the certification. The certification expires on May 31 of the following year, regardless of the date the department issues the certification.

§13.48. Effect of Certification.

(a) The total combined limit of liability of a hospital or system certified under these sections for non-economic damages for a cause of action that accrues during the period that the hospital or system is certified is subject to the limitations specified by Civil Practices and Remedies Code, §101.023(b).

(b) Civil Practices and Remedies Code, §101.023(c), does not apply to a hospital or system certified by the department under these sections.

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 December 5, 2003.

TRD-200308381
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 458-7236

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER D. STANDARDS FOR ALLOWABLE METHODS OF EUTHANASIA FOR ANIMALS IN THE CUSTODY OF AN ANIMAL SHELTER

25 TAC §§169.81 - 169.83

The Texas Department of Health (department) proposes new §§169.81 - 169.83, concerning standards for allowable methods of euthanasia for animals in the custody of an animal shelter. The new sections set standards for animal shelter personnel euthanizing a dog or cat in the custody of an animal shelter by administration of sodium pentobarbital or commercially compressed carbon monoxide. The proposed new rules are required by Chapter 821, Subchapter C, Euthanasia of Animals, enacted by the 78th Texas Legislature (2003).

Jane C. Mahlow, DVM, MS, Director of the Zoonosis Control Division, has determined that for each year of the first five years that the sections are in effect, there may be additional costs to state and local governments that operate animal shelters. The exact cost will vary depending on the degree to which their existing euthanasia techniques are compliant with the new rules. Dr. Mahlow estimates these increased costs will range from zero

for a shelter already in compliance, to $250 during the first six months for a shelter that will require investment in equipment and supplies. Following this initial period, the cost for all shelters should be zero. The same range of costs will fall on other persons that operate animal shelters but, because they are operated by non-profit organizations, there will be no impact on small businesses or micro-businesses. There is no anticipated effect on local employment.

Dr. Mahlow has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the new rules will be that animal shelter personnel would receive guidance in the proper methods and techniques of animal euthanasia; and therefore, animals would be euthanized by humane methods. Specifically, the rules instruct animal shelter personnel in the use of carbon monoxide, a hazardous poison, and sodium pentobarbital, a controlled substance with the potential for abuse.

Comments may be submitted to Jane C. Mahlow, DVM, MS, Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7255, jane.mahlow@tdh.state.tx.us. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Health and Safety Code, Chapter 821, "Euthanasia of Animals," §821.053, which requires the Texas Board of Health (board) to establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter; §821.054, which requires the board to establish standards for a carbon monoxide chamber used to euthanize an animal in the custody of an animal shelter and the requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal in the custody of an animal shelter; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect Texas Health and Safety Code, Chapter 821.

§169.81. Purpose.

The purpose of these sections is to set standards for allowable methods of euthanasia for animals in the custody of an animal shelter, in accordance with the Texas Health and Safety Code, Chapter 821.

§169.82. Definition.

The following term, when used in these rules, shall have the following meaning, unless the context clearly indicates otherwise: Animal shelter--A facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.

§169.83. Allowable Methods of Euthanasia.

(a) Only sodium pentobarbital or commercially compressed carbon monoxide gas may be used to euthanize a dog or cat in the custody of an animal shelter.

(b) When sodium pentobarbital is used to euthanize an animal, the following requirements shall be met.

(1) Persons administering sodium pentobarbital must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.

(2) The routes of injections of sodium pentobarbital, listed in the order of preference, shall be:

(A) intravenous injection by hypodermic needle;

(B) intraperitoneal injection by hypodermic needle; or

(C) intracardiac injection by hypodermic needle.

(3) All injections must be administered using an undamaged sterilized hypodermic needle of a size suitable for the size and species of the animal.

(4) Injection shall be conducted in a room out of public view.

(5) The room used for injection shall have sufficient lighting to allow for visual accuracy during the injection process.

(6) Each animal shall be weighed to determine the correct dose of sodium pentobarbital.

(7) Animals given sodium pentobarbital by intraperitoneal injection need to be given 3 to 4 times the intravenous dose.

(8) Animals given sodium pentobarbital by intraperitoneal injection shall be placed in a quiet, dark room, separated from other animals during the dying process.

(9) Intracardiac injection may not be used unless the animal is heavily sedated, unconscious, or anesthetized.

(10) Carcasses of animals euthanized by sodium pentobarbital must be stored and disposed of in a manner that minimizes the potential for scavenging by animals or humans.

(c) When commercially compressed carbon monoxide gas is used to euthanize an animal, the following requirements shall be met.

(1) It must be performed in a commercially manufactured carbon monoxide chamber or one designed and constructed, at a minimum, to equal the specifications and standards of a commercially manufactured chamber.

(2) The chamber must be located outdoors or in a well ventilated room.

(3) The chamber must be airtight and equipped with the following:

(A) an exhaust fan which is capable of evacuating all gas from the chamber in one minute and is connected by a gas-type duct to the outdoors;

(B) a gas flow regulator and flow meter;

(C) a gas concentration gauge;

(D) an accurate temperature gauge for monitoring the interior of the chamber;

(E) if located indoors, a carbon monoxide monitor on the exterior of the chamber that is connected to an audible alarm system, which will sound in the room containing the chamber and in a separate location in the facility, and to an automated gas flow shut-off valve;

(F) a view-port with either internal lighting or external lighting sufficient to allow direct visual surveillance of all animals within the chamber; and

(G) if designed to euthanize more than one animal at a time, independent sections or cages to separate individual animals.

(4) The gas concentration process must achieve at least a 6.0% carbon monoxide gas concentration throughout the chamber within 5 minutes after the introduction of carbon monoxide into the chamber is initiated.

(5) The ambient temperature inside the chamber must not exceed 85 degrees Fahrenheit (29.4 degrees Celsius) when it contains live animals.

(6) All equipment, as specified in paragraph (3)(A)-(G) of this subsection, must be in proper working order and used at all times during the operation of the chamber in accordance with the manufacturer's instructions and specifications.

(7) Animals must be left in the chamber for a minimum of 20 minutes after the carbon monoxide level reaches a minimum of 6.0% and may not be removed from the chamber until at least 5 minutes after cessation of respiratory movement.

(8) The chamber must be thoroughly vented prior to removing any carcasses.

(9) The chamber must be thoroughly cleaned after the completion of each cycle.

(10) Persons operating the chamber must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.

(11) Operation, maintenance, and safety instructions and guidelines must be displayed prominently in the room containing the chamber.

(12) Carbon monoxide should not be used to euthanize an animal less than 4 months of age or an animal that is known to be old, injured, pregnant, or sick.

(13) Only compatible animals of the same species may be placed in the chamber simultaneously.

(14) No live animal may be placed in the chamber with a dead animal.

(d) All animals other than cats and dogs, including birds and reptiles, in the custody of an animal shelter shall be humanely euthanized only in accordance with the methods, recommendations and procedures set forth in the 2000 Report of the American Veterinary Medical Association Panel on Euthanasia applicable to each species of animal.

(e) When using any of the allowable methods of euthanasia, the animal must be monitored at all times between the time euthanasia procedures have commenced and the time death occurs, and the animal's body may not be disposed of until death is confirmed by examination of the animal for cessation of vital signs.

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 December 5, 2003.

TRD-200308379
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 458-7236

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CHAPTER 217. MILK AND DAIRY

SUBCHAPTER E. PERMITS, FEES AND ENFORCEMENT

The Texas Department of Health (department) proposes the repeal of §§217.91 - 217.93 and new §§217.91 - 217.92, concerning permits, fees, and enforcement relating to the Milk and Dairy Program and the Frozen Dessert Manufacturer Program. The proposed rules clarify the permit/license fee procedures. In addition, §217.92 adds a delinquency late fee, provides an election of penalties for firms regulated under the Pasteurized Milk Ordinance, provides for the assessment of administrative penalties, and expands enforcement authority and implements the language from House Bill (HB) 3542 and Senate Bill (SB) 1454, 78th Legislature, Regular Session, 2003, making Health and Safety Code, Chapter 431, applicable to products and firms regulated under Health and Safety Code, Chapters 435 and 440. In addition, these changes bring the rules into compliance with Health and Safety Code, §§12.0111 and 12.0112, which require programs to charge fees to recover all costs associated with operating the program effective January 1, 2004, and to change the term of the permit/license from a one-year to a two-year period, effective January 1, 2005.

Gene P. Wright, Assistant Division Director, Milk and Dairy Products Division, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated increase in revenue of milk and dairy permit and inspection fees to the state of approximately $1.3 million each year, which will cover the costs of the program. There will be no effect on local government.

Mr. Wright 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 and administering the sections will be the ability to ensure that milk and milk products offered to the public are fully inspected and regulated, and that those products not meeting federal standards can be removed from the market, so that the public is safe from milk borne diseases. The anticipated economic cost to micro-businesses, small businesses, and persons required to maintain a Grade "A" permit, and/or a frozen dessert manufacturer permit, is an increased permit fee ranging from $50 to $400 per year, depending upon the type of permit, and an increased inspection fee from $.02 to $0.045 per hundredweight of milk or milk products, and an increased inspection fee from $.01 to $0.015 per hundredweight for frozen desserts. There will be no anticipated impact on local employment.

Comments may be submitted to Gene P. Wright, Assistant Division Director, Milk and Dairy Products Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0260. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

25 TAC §§217.91 - 217.93

(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 the Health and Safety Code §§431.241, 435.009(c), and 440.006, which provide the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapters 431, 435, and 440; and §12.001, which provides the administration and 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 the commissioner of health.

The repeals affect the Health and Safety Code, Chapters 431, 435, and 440.

§217.91. Permits.

§217.92. Fees.

§217.93. Enforcement.

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 December 5, 2003.

TRD-200308376
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 458-7236

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25 TAC §217.91, §217.92

The new rules are proposed under the Health and Safety Code §§431.241, 435.009(c), and 440.006, which provide the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapters 431, 435, and 440; and §12.001, which provides the administration and 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 the commissioner of health.

The new rules affect the Health and Safety Code, Chapters 431, 435 and 440.

§217.91. Milk Facilities and Operations Permit and Frozen Dessert License Procedures.

(a) Permit/license required. A current permit/license is required for every dairy farm, milk plant, receiving station, transfer station, raw for retail milk dairy farm, milk tank truck, and frozen dessert manufacturer located and operating in the state of Texas. Every milk plant and frozen dessert manufacturer that imports milk, milk products or frozen desserts into the State of Texas is required to obtain a current permit/license.

(1) All milk facilities, frozen dessert manufacturers and operations shall be approved by the department prior to the issuance of a permit.

(2) Permit or license fees are non-refundable.

(3) A current permit or license shall only be issued when all past due fees and late fees have been paid for all years of operation in Texas.

(b) Application. Applications may be obtained by contacting the Milk and Dairy Division, Texas Department of Health (department), 1100 West 49th Street, Austin, Texas 78756, 512-719-0260. Applications are also available on-line at www.tdh.state.tx.us/bfds. The applicant must submit an accurate, complete application and pass an inspection in order to receive a permit/license to operate.

(c) Permit/license fees.

(1) Permitted or licensed facilities and operations in Texas shall pay the following fees. If applications are made after March 1 of any year, the fee will be prorated.

(2) This paragraph applies to all new and renewal applications received by the department prior to January 1, 2005. Permits issued under this subsection are valid up to one year and expire on August 31 (expiration date).

(A) Milk plant - $400 per year. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(B) Producer dairy farm - $100 per year. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(C) Receiving and transfer station - $400 per year. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(D) Milk transport tanker - $100 per year. Each tanker is required to submit payment with the application and a copy of the inspection, which shall not be over 90 days from the date of inspection. Permit fees will be determined by the date of inspection.

(E) Grade A raw for retail - $400 per year. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(F) Frozen desserts manufacturers - $400 per year. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(3) This paragraph applies to all new and renewal applications received on or after January 1, 2005. Permits issued under this subsection are valid for up to two years and expire on August 31 (expiration date).

(A) Milk plant - $800 every two years. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(B) Producer dairy farm - $200 every two years. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(C) Receiving and transfer station - $800 every two years. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(D) Milk transport tanker - $200 every two years. Each tanker is required to submit payment with the application and a copy of inspection, which shall not be over 90 days from the date of inspection. Permit fees will be determined by the date of inspection.

(E) Grade A raw for retail - $800 every two years. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved by the department to begin production.

(F) Frozen desserts manufacturers - $800 every two years. An invoice for the permit fee will be sent to the permitted entity when the entity has been approved to begin production.

(d) Renewal of a permit/license.

(1) Milk plants, producer dairy farms, receiving and transfer stations, grade "A" raw for retail, and frozen desserts manufacturers

must submit a renewal application and the required fee prior to September 1 of the permitting year. A person who submits a renewal application and required fee after the expiration date shall pay an additional $100 as a delinquency fee.

(2) Milk transport tankers must submit a renewal application and required fee prior to September 1 of the permitting year. All tankers shall have an inspection no more than one year old on file prior to issuance of the renewal permit sticker.

(e) Amendment of permit/license.

(1) Fee. A permit/license that is amended, including a change of name, ownership, or a change in location of a permitted place of business will require submission of a new permit, application, and the required fee pursuant to subsection (a) of this section.

(2) Change of ownership. A permit is not transferable.

(3) The department must be notified in writing at least 30 days prior to the effective date of the name, ownership, or location change.

(f) All applicants shall comply with §1.301 of this title (relating to Suspension of License for Failure to Pay Child Support).

(g) Applicability of other law.

(1) Health and Safety Code (HSC), Chapter 431, applies to the conduct of a person licensed under HSC, Chapter 440, and to a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products subject to HSC, Chapter 440. A frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products is a food for purposes of HSC, Chapter 431.

(2) A person who holds a license under HSC, Chapter 440, related to the manufacturing of a product regulated under that Chapter and is engaging in conduct within the scope of that license, is not required to hold a license as a food manufacturer, food wholesaler, or warehouse operator under HSC, Chapter 431, Subchapter J.

(3) Health and Safety Code, Chapter 431, applies to the conduct of a person licensed under HSC, Chapter 435, and to milk or a milk product subject to HSC, Chapter 435. Milk, or a milk product, is a food for purposes of HSC, Chapter 431.

(4) A person who holds a license under HSC, Chapter 435, related to the processing, producing, bottling, receiving, transferring, or transporting of Grade "A" milk or milk products, and who is engaging in conduct within the scope of that permit, is not required to hold a license as a food manufacturer, food wholesaler, or warehouse operator under HSC, Chapter 431, Subchapter J.

(h) Inspection fees.

(1) All milk or milk products processed, manufactured, or bottled by milk plants, and offered for sale within the State of Texas shall be assessed a $0.045 per hundredweight inspection fee or shall pay a minimum fee of $5.00 each month, whichever is greater. This fee shall be assessed on a monthly basis. The inspection fee includes the cost of analyzing samples for milk or milk products. Milk plants shall submit monthly production data to the department no later than 15 days after the end of each reporting month as designated by the department, accompanied by the fee required by this section. Each milk plant is required to furnish, upon request from the department, production records for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the department within 30 days after the end of the reporting period.

(2) All frozen desserts manufactured by frozen dessert manufacturing plants and intended for sale within the State of Texas shall be assessed a $0.015 per hundredweight inspection fee or shall pay a minimum fee of $5.00 each month, whichever is greater. This fee shall be assessed on a monthly basis. The inspection fee includes the cost for analyzing frozen dessert samples. Manufacturers shall submit monthly production data to the department no later than 15 days after the end of each monthly reporting period designated by the department, accompanied by the required fee. Also, each plant will be required to furnish, upon request, production records for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the department within 30 days after the end of the reporting period.

§217.92. Enforcement.

(a) Tagging insanitary equipment, utensils, and rooms. The department representative may attach a tag or other appropriate marking device to any equipment, utensil, or room in a dairy farm, milk plant, receiving station, transfer station, raw for retail dairy farm, milk tank truck, or frozen dessert manufacturer that a department representative determines is insanitary or is a health hazard. No equipment, utensil, or room so tagged shall be used until a department representative removes the tag following adequate cleaning and sanitization. Such tag shall not be removed by anyone other than a department representative.

(b) Detained products. A department representative shall attach a tag or other appropriate marking device to any milk, milk product, dairy product, frozen dessert, Grade A retail raw milk, or Grade A retail raw milk product that is or is suspected of being adulterated or misbranded. The tag indicates notice that the product is detained. No person shall remove the tagged products from the premises or dispose of the product by sale or otherwise without prior written approval from the department or a court order.

(c) Suspension of Health and Safety Code (HSC), Chapter 435, permit. The department shall suspend a permit issued under HSC, Chapter 435, whenever there is reason to believe that a public health hazard exists, or whenever a permit holder has violated any of the sections of this chapter, or whenever the permit holder has interfered with the department or its agents in the performance of its duties. A written notice of the violation will be provided to the permit holder, and the permit holder shall have 72 hours to correct the violation(s). The written notice may be a copy of the inspection report handed to the permit holder or operator or may be the posting of the inspection report at the place of business. After receipt of the notice, but prior to the expiration of the 72 hours, the permit holder may request for an extension of the time allowed to correct the violation. The permit holder who has been served with a written notice of violation and suspension may request an informal regulatory conference on the facts of the violation. The informal regulatory conference shall be held within 72 hours of the request, notwithstanding any time allotted for correction. A permit holder who disagrees with the outcome of an informal regulatory conference may make a written request for a hearing. The hearing will be conducted pursuant to §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) and the Administrative Procedure Act, Government Code, Chapter 2001.

(d) Immediate suspension of HSC, Chapter 435, permit. Immediate suspension of a permit under this subsection shall occur when the milk or milk product involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit an inspection; or when the bacteria counts, coliform counts, somatic cell counts or cooling temperatures are in violation of the requirements of §217.27(e) of this title (relating to Examination of Milk and Milk Products), §217.28 of this title (relating to Standards for Grade A Raw for Retail Milk and Milk Products), or §217.65 of this title (relating to

Examination and Standards for Frozen Desserts); or when adulteration by inhibitors or water is identified; or if any pathogenic bacteria is isolated, the department will immediately suspend the permit issued under HSC, Chapter 435. A permit that is immediately suspended shall remain suspended until the department determines that the violation has been corrected. The permit holder may make a written request for a hearing to contest the suspension. The hearing will be conducted pursuant to §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) and the Administrative Procedure Act, Government Code, Chapter 2001.

(e) Revocation of HSC, Chapter 435, permits. The department may revoke a permit issued under HSC, Chapter 435, if the permit holder is delinquent in the remittance of the permit fee, or the inspection fee. The department may revoke a permit for noncompliance with the requirements of this chapter. The department will provide written notice of the reasons for the proposal to revoke, and the opportunity to request a hearing. The permit holder may make a written request for a hearing within 20 days of receipt of the written notice proposing revocation. The permit holder may also request a settlement conference without waiving the right to a hearing. The hearing will be conducted pursuant to §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) and the Administrative Procedure Act, Government Code, Chapter 2001.

(f) Refusal, suspension, and revocation of license issued under frozen desserts, HSC, Chapter 440. The commissioner may refuse an application for a license, may suspend a license, or may revoke a license issued under HSC, Chapter 440, for violations of HSC, Chapter 440, or these sections. The license holder may request a hearing in writing to contest the refusal, suspension, or revocation. The license holder may also request a settlement conference without waving the right to a hearing. The hearing will be conducted pursuant to §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) and the Administrative Procedure Act, Government Code, Chapter 2001.

(g) Election of penalties. The penalty authorized by HSC, Chapter 435, is subject to either the sanctions prescribed in the Grade "A" Pasteurized Milk Ordinance (PMO) for products covered by the PMO or any civil or administrative penalty sanction otherwise imposed by HSC, Chapter 431, or other law for products not covered by the PMO.

(h) Administrative penalties. For products not covered by the PMO, administrative penalties, as provided in the Health and Safety Code, §§431.054 - 431.058, and in §229.261 of this title (relating to Assessment of Administrative Penalties), may be assessed against a person who violates HSC, Chapter 435 or 440, this chapter or a rule or order adopted under this chapter, who holds a permit or license under HSC, Chapter 435 or 440, or who is regulated under this chapter.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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CHAPTER 221. MEAT SAFETY ASSURANCE
SUBCHAPTER B. MEAT AND POULTRY INSPECTION

25 TAC §221.11

The Texas Department of Health (department) proposes an amendment to §221.11, concerning meat and poultry inspection. The proposed amendment adds new United States Department of Agriculture (USDA) regulations, Title 9, Code of Federal Regulations, Part 430, requiring all official establishments producing certain ready-to-eat (RTE) meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant *Listeria monocytogenes* (*L. monocytogenes*).

In particular, under these regulations, establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of *L. monocytogenes* will be required to have, in their hazard analysis and critical control point (HACCP) plans, or in their sanitation standard operating procedures or other prerequisite programs, controls that prevent product adulteration by *L. monocytogenes*. The establishments must share data and information relevant to their controls for *L. monocytogenes* with the department. The establishments must furnish the department with information on the production volume of products affected by the regulations. The establishments may make claims on the labels of their RTE products regarding the processes they use to eliminate or reduce *L. monocytogenes* or which suppress or limit its growth in the products.

Establishments must choose one of three alternatives to control *L. monocytogenes* and the department will conduct the greatest number of verification activities in those establishments that rely solely on sanitation practices. The three alternatives are as follows:

Alternative 1 - Employ both a post-lethality treatment and a growth inhibitor for *L. monocytogenes*.

Alternative 2 - Employ either a post-lethality treatment or growth inhibitor for *L. monocytogenes*. Establishments opting for using a growth inhibitor only must also include testing of food contact surfaces in the post-lethality environment to ensure the surfaces are sanitary and free of *L. monocytogenes* or its indicator organisms (*Listeria* spp. or *Listeria*-like organisms). Establishments opting for this alternative will be subject to more frequent department verification activity than those using alternative 1.

Alternative 3 - Employ sanitation measures only. Establishments using this alternative will be required to test food contact surfaces in the post-lethality environment to ensure the surfaces are sanitary and free of *L. monocytogenes* or its indicator organisms. Establishments opting for this alternative will be subject to the most frequent department verification activity.

Establishments that produce RTE meat and poultry products and choose to implement post lethality treatments to eliminate and/or limit growth of the organism would incur an additional cost of implementing those processes or procedures. Additionally, establishments producing RTE products and not implementing processes to eliminate the organism, will incur the cost of product and environmental testing for listerial organisms of about $90.

The department used the USDA Food Safety and Inspection Service (FSIS) estimates to determine the cost associated with implementing this rule on very small establishments in Texas affected by this rule. The FSIS estimated the cost impacts of their

interim final rule on all affected establishments. The FSIS final regulatory impact analysis adds several cost impacts in addition to those considered in their preliminary regulatory impact analysis. The preliminary analysis identified major cost impacts from mandatory food contact surface testing, HACCP plan modification, and production adjustments. In addition to these and in response to comments to FSIS, the final analysis considers the costs, both fixed and recurring, associated with the installation by establishments of post-lethality treatments; the costs, both fixed and recurring, associated with product formulation or process changes to include antimicrobial agents or processes that limit the growth of *L. monocytogenes*; and the costs to establishments required to hold and test products pending confirmation of positive food contact-surface tests for Listeria species.

The FSIS estimates that the interim final rule will have combined one-time and recurring costs to very small establishments totaling approximately $1.7 million. The FSIS assumes a 10-year useful life for the changes (e.g., post-lethality treatment validation, installation, antimicrobial agent or process alteration, and production adjustments) for which establishments incur one-time costs and, using a 7% discount rate, the department annualizes these one-time costs over the useful life of the changes. Adding these to the annual recurring costs, the FSIS obtains annualized industry-wide costs of the interim final rule to very small establishments of about $613,000. The department estimates that not more than 5% of the very small plants are located in Texas and operate under department jurisdiction; therefore the annualized industry-wide cost in Texas is estimated to be about $31,000.

Lee C. Jan, D.V.M., Director, Meat Safety Assurance Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications to state government as a result of enforcing or administering the rule as proposed. There will be no fiscal implication to local government.

Dr. Jan has also determined that for each year of the first five years the section is in effect, the public benefit anticipated is a reduced risk of death and illness from ingesting *L. monocytogenes* contaminated ready-to-eat meat or poultry products. There are about 40 cases of *L. monocytogenes* illnesses reported each year in Texas. It is not known how many, if any, are caused by eating *L. monocytogenes* contaminated meat or poultry; however, the USDA's Economic Research Service estimates the value of statistical life at $4.8 million as a proxy for the cost of one fatality. There will be an estimated annualized industry wide cost of $31,000 to micro-businesses, small businesses, or individuals who are required to comply with the proposed amendments to §221.11. There will be no impact to local employment.

Comments may be submitted to Lee C. Jan, D.V.M., Director, Meat Safety Assurance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0205. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 433, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 433; and §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 the commissioner of health.

The amendment affects the Health and Safety Code, Chapters 433 and 12.

§221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The Texas Department of Health (TDH) adopts by reference the following federal requirements in the Code of Federal Regulations (CFR), as amended:

(1) - (33) (No change.)

(34) 9 CFR, Part 424, "Preparation and Processing Operations"; [~~and~~]

(35) 9 CFR, Part 441, "Consumer Protection Standards: Raw Products[~~.~~]"; and

(36) 9 CFR, Part 430, "Control of *Listeria monocytogenes* in ready-to-eat meat and poultry products."

(b) (No change.)

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

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CHAPTER 229. FOOD AND DRUG
SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

25 TAC §229.172, §229.176

The Texas Department of Health (department) proposes amendments to §229.172, concerning the accreditation and certified food management programs, and §229.176, concerning the certification of food managers. The amendments change the amount of fees charged, and permits and licenses issued in conjunction with the administering and enforcing of the certified food manager program. Specifically, the amendments bring the rules into compliance with Health and Safety Code, §§12.0111 and 12.0112, which change the term of the permit/license to a two-year period, effective January 1, 2005.

Steven C. McAndrew, Director of the Retail Foods Division, has determined that for each of the five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated increase in revenue of food manager certificate fees to the state of approximately $39,624 each year, which will cover the costs of the program. There will be no effect on local government.

Mr. McAndrew has also determined that for each of the first five years the revisions are in effect, the public benefit will be an increase in food safety knowledge of food managers in food establishments throughout the state. The application of this knowledge should decrease the number of foodborne disease outbreaks in the state. There will be an anticipated increase of $1.60 per certificate per year, for a cost of $39,624, to micro-businesses and/or small businesses and persons required to comply

with the sections as proposed. There will be no impact to local employment.

Comments may be submitted to Ruth N. Hendy, Chief, Accreditation and Training Branch, Retail Foods Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 719-0232. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §438.042, which requires the department to adopt necessary regulations pursuant to the enforcement of Chapter 438; and §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 the commissioner of health.

The amendments affect the Health and Safety Code, Chapters 438 and 12.

§229.172. Accreditation of Certified Food Management Programs.

(a) (No change.)

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

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

[~~(7) Certified food management program instructor--An individual whose educational background and work experience meet the requirements for approval as a certified food management instructor as described in this section.~~]

(7) [~~(8)~~] Certified food management program licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.

(8) [~~(9)~~] Certified food management program sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.

(9) [~~(10)~~] Conference for Food Protection--An independent national voluntary nonprofit organization to promote food safety and consumer protection.

(10) [~~(11)~~] Continuing education--Documented professional education or activities that provide for the continued proficiency of a certified food management program instructor.

(11) [~~(12)~~] Department--The Texas Department of Health.

(12) [~~(13)~~] Examination administrator--An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(13) [~~(14)~~] Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(14) [~~(15)~~] Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; retail food store; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer or to a conveyance used to transport people; market; remote catered operations; conveyance used to transport people; institution or food bank that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(A) The term includes: an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; a restaurant; a grocery store; an operation that is conducted in a mobile, roadside, stationary, temporary, or permanent facility or location; group residence; outfitter operations; bed and breakfast extended and bed and breakfast food establishments where consumption is on or of the premises; and regardless of whether there is a charge for the food.

(B) The term does not include: an establishment that offers only prepackaged foods that are not potentially hazardous; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant; a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; a bed and breakfast limited facility as defined in §229.162(4)(A) of this title (relating to Definitions); or a private home.

(15) [~~(16)~~] Law--Applicable local, state and federal statutes, regulations and ordinances.

(16) [~~(17)~~] Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(17) [~~(18)~~] Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(18) [~~(19)~~] Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(19) Qualified food management program instructor--An individual whose educational background and work experience meet the requirements for approval as a qualified food management instructor as described in this section.

(20) Renewal certificate--The certificate issued by the department verifying that a certified food manager has completed the application and submission of fees for renewal of a department issued certificate.

(21) [~~(20)~~] Reciprocity--Acceptance by state and local regulatory authorities of a department [~~Department~~] approved food manager certificate.

(22) [~~(21)~~] Regulatory authority--The state or local enforcement body or authorized representative having jurisdiction over the food establishment.

(23) [~~(22)~~] Secure--Access limited to the certified food manager licensee or examination administrator.

(24) [~~(23)~~] Single entity--A corporation that educates only its own employees.

(25) [~~(24)~~] Traceable means--A method of mailing documents, which can be tracked in the event of loss or delay.

(c) (No change.)

(d) Licensing of certified food management program licensee. The department shall issue a license of accreditation to each certified food management program licensee who has demonstrated compliance with this section. A license issued under these rules will expire two years [~~one year~~] from the date of issuance. This license is not transferable on change of ownership, name, or site location.

(1) - (7) (No change.)

(e) (No change.)

(f) Responsibilities of a certified food management program licensee.

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

(7) Change of qualified [certified] food management instructor. The licensee shall ensure that only a department qualified [certified] food management instructor serves as the instructor for the food management program. All new instructors must complete the application for new instructors that must be submitted by the licensee to the department with the applicable documentation. All new instructors must receive instruction on the applicable law and rules and administrative responsibilities.

(8) (No change.)

(g) Requirements for qualification [certification] of certified food management program instructors. The instructors for all food management programs shall be department qualified [certified] prior to teaching a class. The instructors for all certified food management programs shall meet the qualifications in these rules. Instructors meeting these qualifications shall be approved for the two year permit term of the certified food management program licensee. [Instructors meeting the qualifications will be approved for a five-year period.] The application form shall be submitted to the department through the accredited certified food management program licensee.

(1) New food management instructors. A completed application for new instructors must be submitted by the program licensee to the department with the following documentation:

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

(2) (No change.)

(h) Responsibilities of certified food management program instructors.

(1) Compliance with certified food management program law and rules. All qualified [certified] instructors are responsible for compliance with applicable certified food management program law and rules.

(2) Training requirements. All qualified [certified] instructors are responsible for instructing the course content as specified in subsection (f)(4) of this section, and meeting the training time requirements as specified in subsection (d)(6) of this section.

(3) (No change.)

(i) Requirements for the renewal of qualified [certified] food management program instructors [instructor certification]. In order to renew an instructor's qualification the program licensee must comply with the requirements of this subsection. [for an instructor to renew their instructor certification, they must comply with the requirements of this subsection.]

(1) Contact hours for continuing education. Certified food management programs shall submit a renewal application and documentation of five contact hours of continuing education for each instructor during the two-year program license period to maintain qualification as a certified food manager program instructor. [Instructor certification renewal. At least 60 days prior to the certificate expiration date, the department will mail instructors a renewal notice. In order for certification to be renewed, the instructor must return the completed renewal notice to the department prior to the expiration date along with required documentation.]

[(2) Continuing education requirements. An instructor must earn a minimum of 12 contact hours of continuing education credits before expiration of their certification.]

(2) [(3)] Accepted continuing education topics. Continuing education topics may include areas in food safety or instruction enhancement.

(3) [(4)] Verification of continuing education. The following may be used for continuing education:

(A) a certificate of completion for a course or seminar with the participant's name, course name, date and number of contact hours earned;

(B) a college transcript with course description; or

[(C) a copy of a published professional research paper authored by the instructor that indicates the journal name and publication date;]

[(D) a signed and dated letter on official letterhead from an employer detailing the instructor's participation in company workshops or programs; or]

(C) [(E)] other documentation of attendance as approved by the department.

[(5) Expiration of instructor certificate. Instructor certification expires upon the expiration date on the certificate. In order to be recertified, the instructor must submit a new food management instructor application.]

(j) (No change.)

(k) Certified food manager certificates.

(1) (No change.)

(2) Certificate period. A certified food manager certificate issued by the department shall be valid for two [five] years [from the date of examination]. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(3) Certificate renewal. Food manager certificates issued by the Department must be renewed every two years and may be renewed two times without retaking the examination prior to recertification. [Renewal shall be achieved by completing a recertification program and passing a department approved examination. A renewal certificate shall be valid for five years from date of issuance.]

(4) Recertification. Candidates may become recertified by taking a recertification class and passing a department approved examination.

(5) [(4)] Certificate replacement. An individual requesting a certified food manager certificate replacement must submit a written request to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(6) [(5)] Expired certificates. Certified food managers whose certification has expired shall complete an accredited certification course and pass the final examination.

(7) [(6)] Certification through single entity corporations. Candidates from accredited single entity corporations will receive food management certificates as described in this section, except that the food management certificate shall:

(A) clearly indicate that the certificate is for the single entity only;

(B) be recognized by regulatory authorities for only that single entity; and

(C) not receive reciprocity or recertification.

(l) - (o) (No change.)

(p) Required fees. All fees are payable to the Texas Department of Health and are non- refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas.

(1) Certified food manager program license fee. A program fee shall be $600 for a two [~~$300 per~~] year license for each certification or recertification program.

(2) Examination packet fee. The fee for the department examination shall be $10 and shall include a manager's certificate valid for two years if the candidate passes the examination. [~~Candidate fee. A candidate fee for those taking a department approved examination shall be $17.~~] If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(3) Renewal certificate fee. The fee for a renewal certificate shall be $10.

(4) [~~(3)~~] Replacement certificate. A replacement certificate fee for the department examination shall be $10.

(5) [~~(4)~~] Late fee. Certified food manager licensees submitting a renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

(q) - (u) (No change.)

§229.176. Certification of Food Managers.

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

(d) Licensing of certified food manager licensee. The department shall issue a license to certified food manager licensees meeting the requirements of this subsection. A license issued under these rules shall expire two years [~~one year~~] from the date of issuance. A license is not transferable on change of ownership, name, or change of site location.

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

(e) - (g) (No change.)

(h) Certified food manager certificates.

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

(3) Certificate period. A certified food manager certificate issued by the department shall be valid for two [~~five~~] years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(4) Certificate renewal. Food manager certificates issued by the department must be renewed every two years and may be renewed two times without retaking the examination prior to recertification. [~~Renewal shall be achieved by passing an examination approved by the department. A renewal certificate shall be valid for five years from the date of issuance.~~]

(5) Recertification. Candidates may become recertified by passing a department approved examination.

(6) [~~(5)~~] Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a written request to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(i) - (n) (No change.)

(o) Required fees. All fees are payable to the Texas Department of Health and are non- refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:

(1) Certified food manager licensee fee. Certified food manager licensee fees shall be valid for a two-year period and shall be based on the number of sites at which the certified food manager licensee administers the examinations based on the following scale:

(A) one site--$400 [~~$200~~];

(B) two to ten sites--$1,000 [~~$500~~]; or

(C) over ten sites--$2,000 [~~$1,000~~].

(2) Examination packet fee. The fee for a department examination packet shall be $10 and shall include a manager's certification valid for two years if the candidate passes the examination. [~~Candidate fee. A candidate fee for those taking the department examination shall be $17.~~] If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(3) Renewal certificate fee. The fee for a renewal certificate shall be $10.

(4) [~~(3)~~] Replacement certificate fee. A replacement certificate fee for the department examination shall be $10.

(5) [~~(4)~~] Late fee. A certified food manager licensee submitting a renewal application to the department after the expiration date shall pay an additional $100 as a late fee.

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

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

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PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.2

The Texas Medical Disclosure Panel (panel) proposes an amendment to §601.2, concerning informed consent of the treatments and procedures requiring full disclosure by a physician or health care provider to a patient or person authorized to consent for the patient. The section covers procedures requiring full disclosure--list A.

The Texas Civil Practice and Remedies Code, §74.102, requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health

care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

The amendment is proposed based upon the panel's review of House Bill (HB) 15, 78th Legislature, 2003, concerning the regulation of abortion, specifically, informed consent and the particular medical risks associated with the particular abortion procedure to be employed. The proposed amendment to §601.2 includes the addition of clarifying and new language to the subsection concerning female genital system treatments and procedures. Risks are identified for dilation and curettage of uterus (diagnostic/therapeutic); surgical abortion/dilation and curettage/dilation and evacuation; and medical abortion/non-surgical procedures.

Lisa Subia, Associateship for Consumer Health Protection, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of administering the section as proposed.

Lisa Subia has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be to provide the public with the risks associated with female genital system treatments and procedures. There will be no cost to micro-businesses, small businesses, or to persons who are required to comply with the section as proposed, because regulated facilities already have an obligation to disclose risks and hazards related to the medical care and surgical procedures listed in §601.2. The amendment and new language will not add additional costs. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Cindy Bednar, Director of Licensing 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 the proposal in the *Texas Register*.

The amendment is proposed under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendment affects Texas Civil Practice and Remedies Code, Chapter 74.

§601.2. Procedures Requiring Full Disclosure--List A.

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

(g) Female genital system treatments and procedures.

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

(12) Dilation and curettage of uterus (diagnostic/therapeutic).

(A) - (E) (No change.)

(13) Surgical abortion/dilation [~~Dilation~~] and curettage/dilation and evacuation [~~of uterus (obstetrical)~~].

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

(14) Medical abortion/non-surgical.

(A) Hemorrhage with possible need for surgical intervention.

(B) Failure to remove all products of conception.

(C) Sterility.

(h) - (s) (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 December 5, 2003.

TRD-200308382
Melba W. G. Swafford, M.D.
Chairperson
Texas Medical Disclosure Panel
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 458-7236

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.415

The Comptroller of Public Accounts proposes an amendment to §9.415, concerning applications for property tax exemptions. To implement the requirements of House Bill 500, 78th Legislature, Regular Session, effective September 1, 2003, the comptroller is amending all the model forms for property tax exemptions subsections (c)(1) - (24) of this section, to add a statement which requires the chief appraiser to keep confidential the driver's license number, personal identification number, or social security number provided on the exemption application except for disclosure to appraisal office employees who appraise property and as authorized by Tax Code §11.48(b).

The residential homestead exemption application form, subsection (c)(2) of this section, is being amended, in response to House Bill 136, 78th Legislature, effective January 1, 2004, which provides a tax limitation for homeowners disabled or 65 or older at the option of the county, city, or special district; in response to House Bill 217, 78th Legislature, effective January 1, 2004, which provides a school tax limitation for disabled homeowners; House Bill 2147, 78th Legislature, effective June 20, 2003, which provides a different filing deadline; and in response to Senate Bill 521, 78th Legislature, effective January 1, 2004, which provides for a statement of ownership and location to accompany a homestead application for manufactured housing.

The miscellaneous property tax exemptions application form subsection (c)(10) is being amended, in response to House Bill 179, 78th Legislature, effective January 1, 2004, to change the application for nonprofit county fair association to specify that an exemption, once allowed, does not need to be claimed annually.

House Bill 1278, 78th Legislature, Regular Session, effective January 1, 2004, is the basis for amending the application for religious organizations, subsection (c)(7) of this section, which provides exemption for property owned by religious organization and leased for use as a school and for land owned with the intent of expanding or constructing a religious facility. This bill is also the basis for amending the application for privately owned schools, subsection (c)(8) of this section, which provides exemption for property owned by religious organization and leased for use as a school.

The application for religious organizations, subsection (c)(7) of this section, is amended to implement House Bill 2383, 78th Legislature, Regular Session, effective January 1, 2004, which provides exemption for property owned by the state or political subdivision and leased as an actual place of religious worship.

House Bill 2416, 78th Legislature, Regular Session, effective September 1, 2003, is the basis for amending subsection (c)(4), (6) - (8), (10) and (18) of this section, which provides exemption for an incomplete improvement for five years.

The applications for community housing development organizations improving property for low-income and moderate-income housing subsection (c)(21) of this section, is amended in response to House Bill 3546, 78th Legislature, effective January 1, 2004, to change the application's title to specify that this form may only be used by community housing development organizations to apply for an exemption for property previously qualified for exempt status as low-income moderate-income housing.

The exemption application for certain travel trailers, subsection (c)(25) of this section will be repealed. Pursuant to Senate Bill 510, 78th Legislature, effective January 1, 2004, and Senate Joint Resolution 25, approved by Texas voters September 13, 2003, is no longer necessary.

A new application form for use by organizations constructing or rehabilitating low-income housing new subsection (c)(25) of this section is proposed in response to House Bill 3546, 78th Legislature, effective January 1, 2004. This new form will be used by these organizations to apply an exemption for property previously not qualified for exempt status.

The Comptroller is correcting the application for charitable organizations, subsection (c)(4) of this section, on Step 3 from "and" to "or" in the provision that relates to providing housing and services to persons 62 years of age or older in a retirement community.

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

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be in providing additional information to taxpayers regarding state and local tax laws. The proposed amendment would have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.

The amendment implements Tax Code, §§11.111, 11.13, 11.14, 11.17, 11.18, 11.181, 11.19, 11.20, 11.21, 11.22, 11.23(a) - (k), 11.24, 11.251, 11.27, 11.271, 11.28, 11.29, 11.30, 11.31, 11.32, 11.33, 11.437, 11.182, 11.1825 and 11.1826. It repeals Tax Code §11.142.

§9.415. Applications for Property Tax Exemptions.

(a) With the application for exemption for residence homesteads (Form 50-114), the appraisal office shall:

(1) provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers; or

(2) provide the appraisal district's name and appraisal district's phone number on the form, with an instruction that the property owner may call the appraisal district to determine what homestead exemptions are offered by the property owner's taxing units.

(b) If the chief appraiser learns of the death of a person qualified for over-65 or disabled homestead exemptions (Tax Code, §11.13) and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 or disabled exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(c) The model forms in paragraphs (1) - (24) [~~(23)~~] of this subsection and the new model forms in paragraph [~~paragraphs (24) and~~] (25) of this subsection are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621:

(1) Application for Transitional Housing Property Tax Exemption (Form 50-140);

(2) Application for Residence Homesteads (Form 50-114);

(3) Application for Cemetery Exemption (Form 50-120);

(4) Application for Charitable Organizations (Form 50-115);

(5) Application(s) for Charitable Organization Providing Low-Income Housing (Form 50-242 and Form 50-243);

(6) Application for Youth Spiritual, Mental, and Physical Development Organizations (Form 50-118);

(7) Application for Religious Organizations (Form 50-117);

(8) Application for Privately Owned Schools (Form 50-119);

(9) Application for Disabled Veteran's or Survivor's Exemption (Form 50-135);

(10) Application for Miscellaneous Property Tax Exemptions (Form 50-128);

(11) Application for Theater School Property Tax Exemption (Form 50-125);

(12) Application for Historic Sites Property Tax Exemption (Form 50-122);

(13) Application for Goods Exported from Texas (freeport exemption) (Form 50-113);

(14) Application for Solar and Wind-Powered Energy Device Exemption (Form 50-123);

(15) Application for Property Tax Abatement Exemption (Form 50-116);

(16) Application for Stored Offshore Drilling Rig Exemption (Form 50-124);

(17) Application for Dredge Disposal Site Exemption (Form 50-121);

(18) Application for Nonprofit Water Supply or Wastewater Services Corporation (Form 50-214);

(19) Application for Pollution Control Property (Form 50-248);

(20) Application for Cotton Stored in a Warehouse (Form 50-245);

(21) Application(s) for Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing Tax Exemption Previously Exempt in 2003 (Form 50-263 and Form 50-264);

(22) Application for Water Conservation Initiatives Property Tax Exemption (Form 50-270);

(23) Application for Ambulatory Health Care Center Assistance Exemption (Form 50-282);

(24) Application for Raw Cocoa and Green Coffee Held in Harris County (Form 50-297); and

(25) Application for Organizations Constructing or Rehabilitating Low-Income Housing for Property Tax Exemption (Form 50-310) [~~Travel Trailer Exemption Application (Form 50-298)~~].

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 December 4, 2003.

TRD-200308290
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 475-0387

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SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4033

The Comptroller of Public Accounts proposes an amendment to §9.4033, concerning the allocation of value of certain personal property. This rule is being amended to provide for changes to the model forms for allocation of value resulting from several items of legislation. Senate Bill 340, 78th Legislature, Regular Session, is amending this section to implement several language changes to the model forms for allocation of value. Effective January 1, 2004, forms adopted or approved by the Comptroller of Public Accounts must contain a statement that a person could be found guilty of a misdemeanor or state jail felony under Penal Code, §37.10, if a person makes a false statement on a form as required by Tax Code, §22.24(c). This section also authorizes the comptroller to require that the person rendering property shall use the model form adopted by the Comptroller of Public Accounts or a form containing information which is in substantial compliance with the model form if approved by the comptroller. The comptroller added language to the forms explaining the change in Tax Code, §22.23(b), that on written request the chief appraiser must extend the filing deadline to May 15 of the tax year and may extend the deadline for an additional 15 days upon written request and a showing of good cause.

House Bill 2574, 76th Legislature, is the basis for amending this section to revise the allocation for ad valorem tax form to add the allocation of value of certain business aircraft used outside this state, and Senate Bill 1359, 76th Legislature, which requires the comptroller to add sworn statement language to the forms.

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

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information to taxpayers regarding state and local tax laws. The proposed amendment would have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §5.03, which requires the comptroller to adopt rules establishing minimum standards for the administration and operation of an appraisal district, Tax Code, §5.07, which requires the comptroller to prescribe the contents of forms for the administration of the property tax system, and Tax Code, §22.24, which requires the comptroller to prescribe and approve appropriate forms for filing a rendition or report.

The amendment implements Tax Code, §§21.02, 21.021, 21.03, 21.031, 21.05, 21.055, 22.23, and 22.24.

§9.4033. Allocation of Value.

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

(1) Commercial instrument or commercial equipment--Tangible personal property used for a business purpose, which includes, but is not limited to, commercial and business aircraft, rolling stock not owned or leased by a railroad, motor vehicle, shipping containers, vessels and watercraft (except for special purpose vessels and watercraft used as an instrumentality of commerce as defined in the Tax Code, §21.031), mobile construction or drilling equipment, and mobile equipment of any other sort. The term does not include goods, wares, ores, or merchandise held for sale or resale, stored, warehoused, or in the process of assembly, manufacture, or refinement on January 1.

(2) Jurisdiction to tax--The legal power to levy a property tax on a property, regardless of whether the power to tax is exercised.

(3) Situs jurisdiction--A taxing unit, state, or nation that has jurisdiction to tax a property because of the property's location or use, or because of the owner's domicile or principal place of business.

(4) Used continually--Used several times on regular routes or for several tasks in close succession throughout the year.

(b) A property owner may apply for the allocation of total market value of a vessel, special- purpose vessel, or other watercraft.

(1) The allocation of taxable value of vessels and other watercraft used outside this state shall be determined according to the provisions of the Tax Code, §21.021 and §21.031.

(2) To receive an allocation of value for vessels and other watercraft, a property owner must apply for the allocation on the model form adopted by the Comptroller of Public Accounts or a form containing information which is in substantial compliance with the model form if approved by the comptroller [~~a form that substantially complies with the appropriate form prescribed or approved by the Comptroller of Public Accounts~~]. A person filing an allocation application form must [~~shall~~] include all information required by the form. The application must be filed with the chief appraiser for the district in which the property is taxable and must be filed prior to the approval of appraisal records by the appraisal board. Model Application for Interstate Allocation of Vessels or Other Watercraft (Form 50-146), as amended, is adopted by reference.

(3) If the chief appraiser determines that he needs information in addition to that furnished on the application, he may request additional information by written notice delivered to the property owner. A taxpayer shall furnish any additional information required within 15 days after the date the notice is mailed.

(c) The guidelines for determination of jurisdiction to tax are as follows.

(1) The chief appraiser shall determine whether property is within the taxing jurisdiction of another state or nation from the evidence supplied by the property owner. The burden of proof in establishing such jurisdiction is upon the property owner.

(2) The State of Texas has jurisdiction to tax property if:

(A) it is physically present within the State of Texas on January 1 for more than a temporary period;

(B) it has been used continually in Texas during the 12 months preceding January 1, regardless of its location on January 1; or

(C) its owner resides or does business in Texas and the property is outside Texas for a temporary period on January 1.

(3) Property is within the jurisdiction to tax of another state or nation if:

(A) it is physically present within that state or nation's boundaries on the state or nation's property tax lien date for more than a temporary period;

(B) it has been used continually in the state or nation during the 12 months preceding January 1, regardless of its location on January 1;

(C) its owner resides or does business in that state or nation and the property is outside that state or nation for temporary period on January 1; or

(D) the state or nation has in fact assessed a property tax against the property.

(4) Property is neither physically present nor used in a jurisdiction when it flies over the jurisdiction without landing.

(5) Property that leaves the boundaries of this state, and returns without being exposed to the taxing jurisdiction of another state or nation, remains within this state's taxing jurisdiction for the duration of the trip.

(6) Property is not within the jurisdiction to tax of this state or any other state of the United States if:

(A) it is an instrumentality of commerce;

(B) it is owned by a foreign domiciliary;

(C) it is taxed in the nation where its owner is domiciled;

(D) it is used exclusively in foreign commerce; and

(E) it is not present in this state for more than a temporary period on January 1.

(7) The chief appraiser may consider the following evidence in determining where a property has taxable situs:

(A) published schedules, if the property carries passengers and/or cargo on regular routes at regular times;

(B) records kept in the normal course of business, such as mileage, flight, or vessel logs, that indicate where the property has traveled, how long it was located at each destination, and the purpose of its location at each destination;

(C) reports filed with state or national agencies that indicate where the property has traveled, how long it was located at destination, and the purpose of its location at each destination; and

(D) actual tax bills or notices of appraisal or assessment from other jurisdictions.

(d) The chief appraiser shall allocate the market value of that property used in interstate or foreign commerce that qualifies for allocation under this subsection.

(1) Property qualifies for allocation if it:

(A) constitutes a commercial instrument or commercial equipment;

(B) is used for a business purpose;

(C) has taxable situs in a taxing unit within the appraisal district as provided by the Tax Code, §21.02 or §21.021; and

(D) is used continually outside Texas in interstate or foreign commerce, whether regularly or irregularly.

(2) A commercial instrument or item of business equipment is present in the state for more than a temporary period if:

(A) its owner maintains one or more places of business in this state and the property is present in this state on January 1 or at any time during the 12 months preceding January 1; and

(B) the property has contact with this state of a character that would permit this state to tax it under applicable federal law.

(e) A property owner who is entitled to an allocation of property must file a rendition form that provides enough information necessary to prove the entitlement to allocation and permit the chief appraiser to apply an allocation formula appropriate to the subject property. An appraisal district shall use the model form adopted by the Comptroller of Public Accounts or a form containing information which is in substantial compliance with the model form if approved by the comptroller [~~may use a rendition form that substantially complies with the appropriate Comptroller of Public Accounts allocation-rendition form~~]. Each form shall require the property owner to identify the property that is the subject of the rendition and provide information measuring the use of

the property within Texas and within other states or nations. The form must permit the property owner to state an opinion of the total market value of the property and the amount of value that should be allocated to each taxing unit in which the property has situs. Model Rendition of Property Qualified for Allocation of Value (Form 50-145-1) is adopted by reference.

(f) If the chief appraiser determines that the property was within the taxing jurisdiction of this state and within the taxing jurisdiction of another state or nation for the same calendar year, he shall allocate to each taxing unit in which the property has situs the portion of the property's market value that fairly reflects its use in this state. If an allocation formula specified in this subsection does not fairly reflect the use of the property in this state and other situs jurisdictions, the chief appraiser may use another formula that more adequately reflects use. Such alternate formulas may include revenue-ton miles, equipment load factors, or other measures of property use.

(1) For commercial aircraft property, as defined by Tax Code, §21.055, the chief appraiser shall use the following allocation formula: the fair market value of the aircraft multiplied by a fraction, the numerator of which is the product of 1.5 and the number of revenue departures by the aircraft from Texas during the preceding tax year and the denominator of which is the greater of:

(A) the number of hours in a year (8,760); or

(B) the numerator.

(2) For vessels, the chief appraiser will normally use an allocation formula based on port days. The ratio of the days the vessel spends in port in Texas to total days spent in port in all situs jurisdictions is the allocation ratio.

(3) For motor vehicles and rolling stock, not including vessels or aircraft, the chief appraiser will normally use an allocation formula based on mileage. The ratio of total miles traveled in Texas during the year to the total miles traveled in all situs jurisdictions during the year is the allocation ratio.

(4) For business aircraft property as defined by Tax Code, §21.055, the chief appraiser shall use the following allocation formula: the fair market value of the aircraft multiplied by a fraction, the numerator of which is the number departures by the aircraft from a location in Texas during the preceding tax year and the denominator of which is the number departures by the aircraft from all locations during the preceding tax year.

(5) [~~(4)~~] For other equipment, the chief appraiser will normally use an allocation formula based on time. The ratio of time spent in Texas during the year to the total time spent in all situs jurisdictions during the year is the allocation ratio.

(g) If the appraisal office allocates the value of property in a given year:

(1) the chief appraiser shall note on the property's appraisal record for the year:

(A) that the allocation has been granted;

(B) the market value of the property;

(C) the allocation formula factor; and

(D) the appraised value of the property after allocation.

(2) the chief appraiser shall retain a record of the allocation for three years after it is granted, including:

(A) the rendition form requesting allocation;

(B) supporting documents filed by the property owner; and

(C) the formula chosen and calculations used in making the allocations.

(h) Copies of the forms listed in subsections (b)(2) and (e) of this section are available for inspection at the offices of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling [~~our~~] toll-free [~~number~~] 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

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 December 4, 2003.

TRD-200308291
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §14.1

The Texas Department of Public Safety proposes an amendment to §14.1, concerning School Bus Transportation. Figure: 37 TAC §14.1(1), Medical Examination Report for Commercial Driver Fitness Determination is amended to include the new updated form as required by the Federal Motor Carrier Safety Administration.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state government; however, there is some potential that school districts may incur additional costs for physicals, depending on the physician. There are approximately 40,000 physicals done annually.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be physically fit school bus drivers. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Charley Kennington, Program Administrator, School Bus Transportation, 1617 East Crest Drive, Waco, Texas 76705-1598, (254) 759-7111.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, Chapter 521 are affected by this proposal.

§14.1. Appendix.

The following figures apply to Chapter 14 School Bus Transportation:

(1) Medical Examination Report for Commercial Driver Fitness Determination;
Figure: 37 TAC §14.1(1)

(2) Request for Special Consideration of Medical Disqualification as a School Bus Driver;
Figure: 37 TAC §14.1(2) (No change.)

(3) School Bus Driver's Driving Record Evaluation;
Figure: 37 TAC §14.1(3) (No change.)

(4) Instructor's Certificate for School Bus Driver Safety Training in Texas;
Figure: 37 TAC §14.1(4) (No change.)

(5) School Bus Driver Safety Training Verification;
Figure: 37 TAC §14.1(5) (No change.)

(6) Texas School Bus Driver Safety Training Certificate Example;
Figure: 37 TAC §14.1(6) (No change.)

(7) Application for School Bus Driver Enrollment Certificate;
Figure: 37 TAC §14.1(7) (No change.)

(8) Specifications for Text Upload File for DPS Bus Driver Database;
Figure: 37 TAC §14.1(8) (No change.)

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

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

TRD-200308370
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 424-2135

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SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §§14.51 - 14.53

The Texas Department of Public Safety proposes amendments to §14.51 and §14.52, and new §14.53, concerning School Bus Transportation.

For consistency purposes, the title of the subchapter is changed from "School Bus Transportation" to "School Bus Safety Standards" as a result of the passage of House Bill 3042, 78th Legislature, Regular Session (2003).

Amendment to §14.51 is necessary in order to clarify that open-enrollment charter schools must also comply with the school bus specifications as required by Texas Education Code, §12.109.

As a result of the passage of House Bill 3042, amendment to §14.52 clarifies which school bus specification publications will be used.

New §14.53 is necessary in order to provide for a current set of specifications for school bus chassis and body manufacturers to comply with; provides assistance for school districts in confirming that the school bus they are buying meets Texas specifications; requires manufacturers to place a decal on a Multifunction School Activity Bus (MFSAB) before delivery to the school district; and verifies compliance with Texas specifications to insure student safety. The proposed school bus specifications were developed after receiving input and recommendations from the Texas Education Agency, Texas Building and Procurement Commission, Texas Association of School Business Officials, National School Transportation Association, Texas Association for Pupil Transportation, and manufacturers' representatives.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no additional fiscal implications for state government as a result of enforcing or administering these sections. Mr. Haas has also determined that for the first five-year period the sections are in effect, there will be fiscal implications for local government, including school districts and small or large businesses which own and/or operate school buses to transport students. The economic costs cannot be determined. There is no anticipated economic cost to individuals. The anticipated cost to small or large businesses which own and/or operate school buses to transport students cannot be determined due to the variance in maintenance schedules, nature of individual replacement needs and wide difference in cost of new or reconditioned replacement parts across the state.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the ability to clearly identify a school bus and maintain minimum uniform lighting and warning device equipment standards on school buses to increase the safety of students transported.

Comments on the proposal may be submitted to Charley Kennington, Program Administrator, School Bus Transportation, 1617 East Crest Drive, Waco, Texas 76705-1598, (254) 759-7111.

The amendments and new section are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §547.102, which authorizes the Texas Department of Public Safety to adopt standards and specifications which apply to lighting and warning device equipment required for a school bus in order to enable school administrators to establish and

operate a safer school bus transportation system and make the school bus a safer and highly identifiable vehicle on the road.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.102 are affected by this proposal.

§14.51. Applicability.

This rule applies to all school districts and county transportation systems that own, operate, rent, contract or lease school buses and those commercial transportation companies which contract with a public school or county transportation system to transport public school students in school buses. In this chapter, the term "school district" also means a charter school with open enrollment that is providing transportation according to Texas Education Code, §12.109.

§14.52. Lighting and Warning Device Equipment.

At a minimum, the following list of lighting and warning device equipment on a school bus shall be maintained at a level equal to or above the standards found in the specification requirements as set forth in the department's [~~General Services Commission's publication,~~] Texas School Bus Specifications or the previous publications of the Texas School Bus Specifications by the Texas Building and Procurement Commission (formerly the General Services Commission), which was current during the year of the school bus' manufacture, including the following:

(1) the exterior paint color of the bus,

(2) emergency exit lettering,

(3) logos,

(4) school bus lettering,

(5) school name lettering,

(6) alternately flashing signal lamps,

(7) backup lamps,

(8) identification lamps,

(9) operating units and flashers,

(10) tail and stop lamps,

(11) turn signal/hazard warning lamps,

(12) three triangular warning devices,

(13) backup alarm,

(14) stop arm (if required at time of manufacture), and

(15) student safety crossing arm (optional equipment).

§14.53. Texas School Bus Specifications.

(a) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all school buses offered for sale to or use by the public school systems in Texas meet or exceed all standards, specifications, and requirements as specified in the department's publication Texas School Bus Specifications. The department hereby adopts the current Texas Building and Procurement Commission's school bus specifications for 2003 Model School Buses. The Texas School Bus Specifications remain in effect until the department's specifications committee adopts new specifications.

(b) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all multifunction school activity buses offered for sale to or use by the public school systems in Texas meet or exceed all federal standards, specifications, and requirements of a multifunction school activity bus as specified in the Code of Federal Regulations, Title 49 Part 571.

(1) A multifunction school activity bus can be painted any color except school bus yellow.

(2) A multifunction school activity bus cannot be used for home to school or school to home transportation. Before delivery of a multifunction school activity bus, the manufacturer must place a label in the direct line of site of the driver while seated in the driver's seat stating: "This vehicle is not to be used for home to school or school to home transportation".

(c) Used school buses purchased or operated by a public school system in Texas shall meet or exceed all Federal and State requirements for public school buses that were in effect in Texas on the date the vehicle was manufactured. Prior to the sale, the dealer selling the used school bus must provide the buyer (school district) with:

(1) Documentation of their "Dealer General Distinguishing Number" which is required by Texas Transportation Code, §503.029.

(2) Documentation of what state the used school bus was originally manufactured.

(3) A copy of the specifications the school bus was originally manufactured to.

(4) Documentation of all modifications that were made to each school bus to bring it into compliance with Texas School Bus Specifications that were in place on the date the school bus was originally manufactured.

(5) Public school districts or contractors must notify the department in writing within 30 days of purchasing any used school bus. The notification must include:

(A) The date of purchase and delivery.

(B) The name of the dealer and the dealer's General Distinguishing Number from whom the used school bus was purchased.

(C) Who manufactured the school bus, date of manufacture, and to which states specifications the school bus was manufactured.

(6) Used school buses purchased by school districts that were not originally manufactured to Texas specifications at the time the school bus was manufactured may be inspected by the department to verify compliance with federal and state specifications.

(d) Any new school bus or used school bus as described in subsection (b) of this section found out of compliance with Texas specifications that were in effect in Texas on the date the vehicle was manufactured may be placed out of service until it is brought into compliance.

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 December 5, 2003.

TRD-200308371
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 424-2135

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SUBCHAPTER E. ADVERTISING GENERAL PROVISIONS

37 TAC §14.61

The Texas Department of Public Safety proposes amendments to §14.61, concerning School Bus Transportation. Amendment to §14.61(2) is necessary as a result of the passage of House Bill 3042, 78th Legislature, Regular Session (2003) which changed Texas Transportation Code and Texas Education Code by adding the department as the primary agency responsible for school bus specifications.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Charley Kennington, Program Administrator, School Bus Transportation, 1617 East Crest Drive, Waco, Texas 76705-1598, (254) 759-7111.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §547.101, which authorizes the department to adopt rules necessary to administer this chapter.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§14.61. Definitions.

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

(1) Advertisement--any communication brought to the attention of the public by paid announcement or in return for public recognition in connection with an event or offer or sale of a product or service, except for a single-line listing of a carrier name or manufacturer logo approved by the [~~General Services Commission and the~~] Texas Department of Public Safety.

(2) Safety Warning Equipment--that equipment which identifies a school bus including, but not limited to, the exterior color of the school bus painted national school bus yellow (Color No. 13432 of Federal Standard No. 595a), all lights, reflectors, "school bus" identification markings, emergency exit locations, stop signal arm, student crossing gate and reflective tape described in the department's [~~General Services Commission annual manual,~~] Texas School Bus Specifications or any previous Texas School Bus Specifications published by the Texas Building and Procurement Commission (formerly the General Services 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 December 5, 2003.

TRD-200308372

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: January 18, 2004
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

The Texas Department of Protective and Regulatory Services (PRS) proposes amendments to §§700.801, 700.820, and 700.821; proposes the repeal of §700.863; and proposes new §700.863, concerning the adoption assistance program, in its Child Protective Services chapter. The purpose of the sections is to clarify definitions and jurisdictional requirements. In 2001, the rules pertaining to adoption assistance were revised to simplify the language. Since adoption of the rules, changes needed to further clarify the requirements have been identified. Also, adoption of the clarifications will reflect the department's compliance with federal law and policy.

Donna Krueger, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Krueger also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that there will be additional clarity to the rules and requirements in the adoption assistance program. There will be no effect on large, small, or micro-businesses because the sections do not impose any requirements on these businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Susan Klickman at (512) 438-3302 in PRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-268, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §700.801

The amendment is proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The amendment implements the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.801. What do certain words and terms in this subchapter mean?

In Subchapter H, the following words and terms have the stated meanings:

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

(4) The term "Title IV-E" refers to the federal program for adoption assistance that is established under Title IV-E of the Social Security Act, 42 U.S.C. §673[~~, and administered by PRS~~].

(5) - (6) (No change.)

(7) The term "licensed child-placing agency" or "LCPA" refers to a private, nonprofit agency that is licensed or certified [~~by the State of Texas~~] to place children for adoption by the State of Texas or another state.

(8) The term "adoptive parent(s)" refers to the person(s) who commit(s) to adopting a special needs child who is placed for adoption in accordance with licensing minimum standards established in the state where the LCPA is licensed or certified, which must include Title IV-E requirements regarding criminal background checks [~~for child-placing agencies~~].

(9) - (13) (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 December 5, 2003.

TRD-200308354
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 438-3437

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DIVISION 2. TITLE IV-E ELIGIBILITY REQUIREMENTS

40 TAC §700.820, §700.821

The amendments are proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The amendments implement the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.820. How do I get Title IV-E adoption assistance for my child?

(a) To be eligible for any adoption assistance benefits, your child must be a special needs child and you must sign an agreement with us before the child's adoption is finalized. In addition, benefits are only available to those who meet:

(1) the federal law requirements of U.S. citizenship or special immigration status, as described in §700.824 of this title (relating to What if the child is not a U.S. citizen?); and[~~.~~]

(2) Title IV-E requirements regarding criminal background checks.

(b) - (c) (No change.)

(d) If an LCPA is managing conservator for the child you are adopting, you need to contact the child welfare agency in the state where you reside. We are only responsible for providing adoption assistance if:

(1) we are the managing conservator for the child; or

(2) you live in Texas and an LCPA is managing conservator for the child.

§700.821. What are the additional Title IV-E eligibility requirements?

A special needs child must be in an adoptive placement and meet one of the following conditions to be eligible for Medicaid and possible monthly payments under an agreement:

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

(3) We already determined that the child was eligible for Title IV-E foster care assistance at removal, and the child is also AFDC eligible in the month the adoption petition is filed; or

(4) Just before the adoptive placement and immediately prior to termination of the minor parent's parental rights, the child was living [~~The child lives~~] with a minor parent in foster care, and eligible to receive Title IV-E foster care payments under 42 U.S.C. §675(4)(B) [~~the child's costs are included in the Title IV-E foster care payments being made on behalf of the minor parent~~].

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 December 5, 2003.

TRD-200308355
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 438-3437

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DIVISION 4. CHANGES IN CIRCUMSTANCES

40 TAC §700.863

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

The repeal is proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The repeal implements the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.863. Does a child remain eligible for benefits in a subsequent adoption?

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 December 5, 2003.

TRD-200308356
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 438-3437

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40 TAC §700.863

The new section is proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The new section implements the Texas Family Code, Chapter 162, Subchapter D, Adoption Assistance Program, and Title IV-E of the Social Security Act (42 U.S.C. §673), which require that the department implement an adoption assistance program for special needs children.

§700.863. Does a child remain eligible for benefits in a subsequent adoption?

(a) Yes; if you live in Texas and plan to adopt a child that had been receiving adoption assistance under a signed adoption assistance agreement, that child can remain eligible for adoption assistance benefits if the following conditions are met:

(1) the child was receiving adoption assistance from us or as a result of having been determined eligible under Title IV-E by another state's child welfare agency;

(2) we determine that the child is a special needs child, as described in §700.804 of this title (relating to Who is a special needs child?); and

(3) a new adoption assistance agreement is signed with us before you finalize the adoption.

(b) A child is not eligible in a subsequent adoption if the child's eligibility to receive adoption assistance benefits from another state was not based upon Title IV-E.

(c) Benefits may be suspended if we do not receive a certified copy of the Decree of Adoption for the subsequent adoption with 24 months after the effective date of the new agreement.

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 December 5, 2003.

TRD-200308357
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 438-3437

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §746.1315, §746.1329

The Texas Department of Protective and Regulatory Services (PRS) proposes amendments to §746.1315 and §746.1329, concerning cardiopulmonary resuscitation (CPR), in its Minimum Standards for Child-Care Centers chapter. Current minimum standards for child day-care operations require that CPR training be conducted by the American Red Cross (ARC), American Heart Association (AHA) or by a training program that has been approved by the local Emergency Medical Services Authority, or is offered through the local hospital. Training offered by persons with instructor certification from the ARC or AHA or training approved by the Texas Department of Health-Bureau of Emergency Management for EMS certification will also comply. The standards regarding CPR training were written to ensure that instructors know and train caregivers on up-to-date techniques and information, from organizations recognized as setting, or which subscribe to, the national standards for emergency cardiac care. Although the organizations listed in the minimum standard are readily available and easily recognized in all parts of Texas, the list narrowed the variety of resources for CPR training. As a result, a number of concerns have been expressed by businesses that operate outside the parameters of the current rules but want to continue offering CPR training to caregivers. In response to these concerns, the rules are amended to broaden the scope of acceptable sources for CPR training, and facilitate the availability of these businesses to the child-care community, while still meeting the purpose of the standard. Additionally, rules addressing the verification of CPR/first-aid training are revised to allow a photocopy of the training certification card or letter to be maintained in the personnel record, rather than the original. Many caregivers prefer to carry the original certification card with them at all times. Adding the phrase "college credit hours" will make §746.1329 consistent with existing §746.1321, which allows college courses to count toward annual training requirements.

Donna Krueger, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Krueger also has determined that for each year of the first five years the sections are in effect the public benefit anticipated

as a result of enforcing the sections will be that an increased variety of resources will be available for child-care operators to select from for CPR training when meeting the minimum standards. There will be no effect on large, small, or micro-businesses because the rules should not affect the cost of doing business; do not impose new requirements on any business; and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Michele Adams at (512) 438-3262 in PRS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-267, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendments are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards to carry out the provisions of the HRC, Chapter 42; and HRC §42.002, which gives the department primary responsibility for regulating child care operations.

The amendments implement the Human Resources Code, §42.042 and §42.0426.

§746.1315. Who must have first-aid and CPR training?

(a) (No change.)

(b) One caregiver or employee per child-care center, and one caregiver or employee for each group of children away from the child-care center, must have current training in CPR for infants, children, and adults [~~issued by the American Red Cross, American Heart Association, or by a training program that has been approved by the local Emergency Medical Services Authority, or is offered through a local hospital~~].

(c) CPR training and re-certification must adhere to the guidelines for cardiopulmonary resuscitation (CPR) for laypersons established by the American Heart Association, and consist of a curriculum that includes use of a CPR manikin and both written and hands-on skill-based instruction, practice, and testing.

(d) [~~(c)~~] CPR and first-aid training must not be obtained through self-instructional training.

§746.1329. What documentation must I provide to Licensing to verify that training requirements have been met?

(a) Except as provided in this section, you [~~You~~] must maintain original certificates documenting CPR/first-aid and annual training in each employee's personnel record at the child-care center. To be counted toward compliance with the minimum standards, the trainer or training source must provide the participant with an original certificate or letter showing:

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

(4) The trainer's name, or the source of the training for self-instructional training; and

(5) Length of the training specified in clock hours, [~~or~~] CEUs, or college credit hours, as appropriate. [~~; and~~]

[~~(6) The expiration date for CPR and first-aid training, as determined by the organization providing the training.~~]

(b) Documentation of CPR/first-aid training must include the same information in subsection (a) of this section, and must also include the expiration date of the training, as determined by the organization providing the training. A photocopy of the original CPR/first-aid certificate or letter may be maintained in the personnel record, as long as the employee can provide an original document upon request by Licensing.

(c) [~~(b)~~] You must obtain a signed and dated statement from the employee and the person providing the orientation and pre-service training stating the employee has received the orientation and pre-service training, or you may obtain documentation as specified in subsection (a) of this section.

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 December 5, 2003.

TRD-200308352
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 438-3437

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES
SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §747.1313, §747.1327

The Texas Department of Protective and Regulatory Services (PRS) proposes amendments to §747.1313 and §747.1327, concerning cardiopulmonary resuscitation (CPR), in its Minimum Standards for Child-Care Homes chapter. Current minimum standards for child day-care operations require that CPR training be conducted by the American Red Cross (ARC), American Heart Association (AHA) or by a training program that has been approved by the local Emergency Medical Services Authority, or is offered through the local hospital. Training offered by persons with instructor certification from the ARC or AHA or training approved by the Texas Department of Health-Bureau of Emergency Management for EMS certification will also comply. The standards regarding CPR training were written to ensure that instructors know and train caregivers on up-to-date techniques and information, from organizations recognized as setting, or which subscribe to, the national standards for emergency cardiac care. Although the organizations listed in the minimum standard are readily available and easily recognized in all parts of Texas, the list narrowed the variety of resources for CPR training. As a result, a number of concerns have been expressed by businesses that operate outside the parameters

of the current rules but want to continue offering CPR training to caregivers. In response to these concerns, the rules are amended to broaden the scope of acceptable sources for CPR training, and facilitate the availability of these businesses to the child-care community, while still meeting the purpose of the standard. Additionally, rules addressing the verification of CPR/first-aid training are revised to allow a photocopy of the training certification card or letter to be maintained in the personnel record, rather than the original. Many caregivers prefer to carry the original certification card with them at all times. Adding the phrase "college credit hours" will make §747.1327 consistent with existing §747.1319, which allows college courses to count toward annual training requirements.

Donna Krueger, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Krueger also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that an increased variety of resources will be available for child-care operators to select from for CPR training when meeting the minimum standards. There will be no effect on large, small, or micro-businesses because the rules should not affect the cost of doing business; do not impose new requirements on any business; and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Michele Adams at (512) 438-3262 in PRS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-267, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendments are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards to carry out the provisions of the HRC, Chapter 42; and HRC §42.002, which gives the department primary responsibility for regulating child care operations.

The amendments implement the Human Resources Code, §42.042 and §42.0426.

§747.1313. Who must have first-aid and CPR training?

(a) (No change.)

(b) The primary caregiver and any substitute caregiver, and one assistant caregiver for each group of children in care away from the child-care home, must have current training in CPR for infants, children, and adults [~~issued by the American Red Cross, American Heart Association or by a training program that has been approved by the local Emergency Medical Services Authority, or is offered through the local hospital~~].

(c) CPR training and re-certification must adhere to the guidelines for cardiopulmonary resuscitation (CPR) for laypersons established by the American Heart Association, and consist of a curriculum that includes use of a CPR manikin and both written and hands-on skill-based instruction, practice, and testing.

(d) [~~(c)~~] CPR and first-aid training must not be obtained through self-instructional training.

§747.1327. What documentation must I provide to Licensing to verify that training requirements have been met?

(a) Except as provided in this section, you [~~You~~] must maintain original certificates documenting training in each caregiver's personnel record at your child-care home. To be counted toward compliance with the minimum standards, the trainer or training source must provide the participant with an original certificate or letter showing:

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

(4) The trainer's name, or the source of the training for self-instructional training; and

(5) Length of the training specified in clock hours, [~~or~~] CEUs, or college credit hours, as appropriate. [~~; and~~]

[~~(6) The expiration date for CPR and first-aid training, as determined by the organization providing the training.~~]

(b) Documentation of CPR/first-aid training must include the same information in subsection (a) of this section, and must also include the expiration date of the training, as determined by the organization providing the training. A photocopy of the original CPR/first-aid certificate or letter may be maintained in the personnel record, as long as the employee can provide an original document upon request by Licensing.

(c) [~~(b)~~] You may obtain a signed statement stating the caregiver has received the orientation or you may use original certificates, as specified in this division.

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 December 5, 2003.

TRD-200308353
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: January 29, 2004
For further information, please call: (512) 438-3437

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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 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.25

The Texas State Board of Pharmacy has withdrawn from consideration the proposed new §291.25 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8500).

Filed with the Office of the Secretary of State on December 3, 2003.

TRD-200308247
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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22 TAC §291.26

The Texas State Board of Pharmacy has withdrawn from consideration the proposed new §291.26 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8504).

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.31 - 291.34

The Texas State Board of Pharmacy has withdrawn from consideration the proposed amendments to §§291.31 - 291.34 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8513).

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TRD-200308249
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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22 TAC §291.36

The Texas State Board of Pharmacy has withdrawn from consideration the proposed repeal of §291.36 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8521).

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TRD-200308250
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §§291.52 - 291.55

The Texas State Board of Pharmacy has withdrawn from consideration the proposed amendments to §§291.52 - 291.55 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8522).

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §§291.72 - 291.76

The Texas State Board of Pharmacy has withdrawn from consideration the proposed amendments to §§291.72 - 291.76 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8527).

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Gay Dodson, R.Ph.
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Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy has withdrawn from consideration the proposed amendments to §291.104 which appeared in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8541).

Filed with the Office of the Secretary of State on December 3, 2003.

TRD-200308253
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 3, 2003
For further information, please call: (512) 305-8028

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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 1. ADMINISTRATION

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION

SUBCHAPTER A. PURCHASING

1 TAC §113.19

The Texas Building and Procurement Commission proposes the adoption of amendments to §113.19, Chapter 113, Title 1, Texas Administrative Code, related to the Registration of Information System Vendors with changes to the text published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7897). No public comments were received.

The changes to the published text are required to restore references in the rules to the Commission rather than to TBPC and to correct a reference to the Texas Information Resources Management Act.

The amendments are proposed to comply with the new provisions of the Texas Government Code, Chapter 2157. The amendments streamline the vendor registration process and provide vendors greater flexibility in developing their on-line catalogs for posting on the Internet. The amended rules will change the title of the purchasing method to Catalog Information System Vendor (CISV).

The amendments to §113.19 are proposed under the authority of the Texas Government Code, §2152.003 and §2157.066.

The following codes are affected by these rules: Texas Government Code, §2152, §2157, and §2155.

§113.19. Centralized Master Bidder's List.

(a) Upon registration on the commission's Centralized Master Bidders List (CMBL), a vendor wishing to sell or lease automated information systems to governmental entities in accordance with this rule shall register with the commission as a catalog information systems vendor (CISV) by submitting a catalog Universal Resource Locator (URL),i.e., web site address.

(b) In this section a governmental entity is a state agency subject to the Information Resources Management Act (Texas Government Code, Title 10, Subtitle B, Chapter 2054) or a local government entity that participates in the Cooperative Purchasing Program under the Texas Local Government Code, Title 8, Subtitle C, Subchapter D.

(c) Each vendor's catalog shall:

(1) contain a statement acknowledging that any terms and conditions in the vendor's catalogue that conflict with the Constitution or laws of the State of Texas shall not be enforceable and, therefore, will not be binding.

(2) Conform to requirements set forth in Texas Government Code, §2157.066 and any other requirements established by the commission.

(3) be maintained on a website in accordance with subsection (2) of this section and include indexing and keywords consistent with the commission's online catalog Landing Page Requirements. The vendor's catalog maintained on the website and in compliance with this rule shall be the official version of the catalog.

(d) Vendors are responsible for maintaining a current price list on their catalog.

(e) The director shall promulgate guidelines for the revision process of a vendor's catalog.

(f) Failure of a vendor to remain active on the CMBL, or failure to conform to any other commission rules may result in suspension or removal of CISV status. A vendor that has been suspended or removed may not market or sell products or services from its CISV catalog to the state until the cause of the suspension or removal has been resolved.

(g) Preference shall be given to CISV who sell or lease products in Texas in accordance with provisions of the Texas Government Code, §2155.444 and §2155.4441.

(h) The CISV vendor is encouraged to:

(1) use, produce, or provide products that contain recycled or remanufactured content, are environmentally sensitive, or possess energy saving features;

(2) identify recycled or remanufactured products and if possible, include the percentage of the total product that is recycled or remanufactured and/or the percentage of the total post-consumer recycled material content in its product literature or other representations; and

(3) use recycled/recyclable paper if printing a catalog for marketing purposes.

(i) The State of Texas is committed to assisting historically underutilized businesses (HUBs) to receive a portion of the total value of all contracts that an agency will award. If the vendor qualifies as a HUB, but is not certified by the State of Texas as such, the vendor should contact the commission to obtain a HUB certification application. Upon the request of a governmental entity, the vendor will be required to detail the amount of expenditures that have been made to material suppliers and subcontractors that are Texas certified HUBs. A vendor that has demonstrated past HUB participation is still expected to provide documentation using the reporting forms provided by a governmental entity to show its good faith effort in meeting or exceeding the state's procurement utilization goals identified in TBPC's HUB Rules (1 TAC §111.14).

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 December 2, 2003.

TRD-200308217
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: December 22, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-4257

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.17

The Department of Information Resources (department) adopts amendments to 1 TAC §201.17 concerning advisory committees. Section 201.17 is adopted without changes to the text published in the September 19, 2003, *Texas Register* (28 TexReg 8069) and will not be republished. No comments were received in response to publication of the proposed changes to the rule.

Subsection (a) of the rule describes the composition and responsibilities of the State Strategic Plan for Information Resources Management Advisory Committee. Subsection (b) identifies the Electronic Government Program Management Office Advisory Committee. The e-Procurement Advisory Committee is described and its responsibilities are set forth in subsection (c) of the rule. Subsection (d)(1) identifies the number and composition of the Enterprise Architecture Steering Committee. Subsection (d)(2) provides that the State's Chief Information Officer shall appoint the Steering Committee members. Subsection (d)(3) provides that the Steering Committee shall elect a chair and that the chair may appoint subcommittees. The tasks of the Enterprise Architecture Steering Committee are set forth in subsection (d)(4). Administrative matters, including that the department may provide facilitation of the meetings of the Steering Committee, may have staff attend the meetings, may not reimburse members for expenses associated with serving on the Steering Committee and will receive written reports from the Steering Committee on its activities, are delineated in subsections (d)(5) through (8), respectively.

Amended 1 TAC §201.17 is adopted pursuant to Texas Government Code, §2054.052(a), which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act and Texas Government Code, §2110.005, which requires that a state agency that establishes an advisory committee state the purpose and tasks of the advisory committee and how it will report to the state agency, by agency rule.

Texas Government Code, §2110.005, is affected by the 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 December 5, 2003.

TRD-200308358
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: December 25, 2003
Proposal publication date: September 19, 2003
For further information, please call: (512) 475-2153

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Health and Human Services Commission (HHSC or Commission) adopts the amendments to §354.1003, Time Limits for Submitted Claims, with changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8731). The text of the rule will be republished

The Health and Human Services Commission (HHSC) adopts the amendments to Chapter 354, Subchapter A, Division 1. Division 1 addresses procedures for Medicaid enrolled providers. The amendments to §354.1003, Time Limits for Submitted Claims, added new language to clarify the existing rule, in addition to other changes to the rule that are listed below:

New language for a claim payment deadline of 24 months from the date of service;

Changed the appeal deadline from 180 days to 120 days;

New language was added for an exception to the 95-day filing deadline that includes retroactive eligibility;

New language for exceptions to the 120-day appeal deadline;

New language for outlining the timeframe for submitting an appeal to the state.

The amendments to the rule are necessary because the state is transitioning from an insured arrangement to a fiscal agent arrangement for the payment of claims. The amendments to the rule support the fiscal agent arrangement for claims payment. The amended rules are effective 20 days after submission to the Secretary of State.

The Commission received written comments concerning §354.1003 during the 30-day comment period from October 10, 2003 to November 10, 2003. A summary of the comments and HHSC's responses follow.

Comment: Concerning §354.1003(a)(5)(C), HHSC received a comment from the Texas Hospital Association about the term "processed is not defined and, as a consequence, it is unclear

whether the Medicaid filing deadline will continue to be based on the date of any final appeal decision rendered by Medicare." The association suggested adding "or final determination of any Medicare appeal decision" at the end of the sentence for clarity.

Response: HHSC concurs with the commenter and is making the recommended revision to the rule.

Comment: HHSC received comments from the Texas Hospital Association and the Texas Medical Association expressing concern about the decrease in the appeal deadline from 180 days to 95 days. The associations argued that the 95-day deadline does not provide enough time for providers to review determinations of claims and to go through the necessary processes for appeal. Both associations recommended a compromise of establishing a 120-day appeal deadline.

Response: HHSC acknowledges the comments and agrees to revise the 95-day appeal deadline to a 120-day deadline. The 95-day appeal deadline was proposed by HHSC to offer providers maximum opportunity to appeal to the state after exhausting the appeal process through the claims administrator. The 95-day deadline was believed to be more provider friendly because providers would need to remember a 95-day timeframe for filing claims and for appealing claims. HHSC agrees to revise the proposed 95 days to 120 days because this would be consistent with the Medicare appeal deadline of 120 days.

Comment: One comment from the Texas Hospital Association expressed concern about §354.1003(e)(1)(C) only addressing "electronic claim or system implementation problems experienced by the provider." The transition from National Heritage Insurance Company to Texas Medicaid and Healthcare Partnership on January 1, 2004, may cause claims processing issues for providers and this rule does not cover those instances.

Response: HHSC agrees with the commenter. The rule is revised to reflect this comment and recommended language.

Comment: HHSC received a comment from the Texas Hospital Association to make §354.1003(e)(2)(D) consistent with §354.1003(e)(1)(C) and address what information would be required from the provider if the HHSC designee is unable to process claims on a timely basis due to system implementation or claims processing issues.

Response: HHSC agrees with the commenter and the rule is revised to incorporate the suggested language.

Comment: A comment was submitted to HHSC from the Texas Hospital Association expressing concern about §354.1003(f). The association contends that "the amount of information that must be sent with an exception request" could result in a large volume of claims and a lot of work for the providers. "In these instances, it would be more appropriate for the provider to provide the HHSC with a listing of the claims that are being appealed with some identifying information ... and provide a statement that outlines the errors made by the third party payor or vendor."

Response: HHSC acknowledges the comment. The intent of the statement in §354.1003(f), is for providers to include all of the claim information, including all of the claims for which they are requesting an exception. The exception will be made one time for the claims in question and will not be granted for additional claims. HHSC is revising the language to more clearly convey the intent of the statement.

Comment: HHSC received comments from staff at the Texas Department of Health concerning the lack of information about any exception criteria for the 24-month claim payment deadline.

Response: HHSC acknowledges the comment and agrees to add language describing any exceptions to the 24-month claim payment deadline.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

§354.1003. Time Limits for Submitted Claims.

(a) Claims filing deadlines. Claims must be received by the Health and Human Services Commission (HHSC) or its designee in accordance with the following time limits to be considered for payment. Due to the volume of claims processed, claims that do not comply with the following deadlines will be denied payment.

(1) Inpatient hospital claims. Final inpatient hospital claims must be received by HHSC or its designee within 95 days from the date of discharge or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. In the following situations, hospitals may, and in one instance, must file interim claims:

(A) Hospitals reimbursed according to prospective payment may submit an interim claim after the patient has been in the facility 30 consecutive days or longer.

(B) Children's hospitals reimbursed according to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) methodology may submit interim claims prior to discharge and must submit an interim claim if the patient remains in the hospital past the hospital's fiscal year end.

(2) Outpatient hospital claims must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later.

(3) Claims from all other providers delivering services reimbursed by the Texas Medicaid acute care program must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. This requirement does not apply to providers who deliver long-term care services and are subject to the billing requirements of 40 TAC §49.9.

(4) All claims must adhere to claim filing and appeal deadlines and must be paid within 24 months of the date of service. Submitted claims that exceed this time frame and do not qualify for one of the exceptions listed in subsection (g) of this section will not be considered for payment by the Texas Medicaid program.

(5) The following exceptions to the claims-filing deadline apply to all claims received by HHSC or its designee regardless of provider or service type.

(A) Claims on behalf of an individual who has applied for Medicaid coverage but has not been assigned a Medicaid recipient number on the date of service must be received by HHSC or its designee within 95 days from the date the Medicaid eligibility is added to Husk's eligibility file. This date is referred to as the "add date".

(B) If a client loses Medicaid eligibility and is later determined to be eligible, or if the Medicaid eligibility is established retroactively, the claim must be received by HHSC or its designee within 95 days from the "add date" and within 365 days from the date of service.

(C) When a service is a benefit of Medicare and Medicaid, and the client is covered by both programs, the claim must first be filed with Medicare. Claims processed by Medicare must be received by HHSC or its designee within 95 days from the date of Medicare disposition or final determination of any Medicare appeal decision.

(D) When a client is eligible for Medicare Part B only, the inpatient hospital claim for services covered as Medicaid only should be submitted directly to Medicaid. The time limits in paragraph (1) of this subsection apply.

(E) When a service is billed to another insurance resource, the claim must be received by HHSC or its designee within 95 days from the date of disposition by the other insurance resource.

(F) When a service is billed to a third party resource that has not responded, the claim must be received by HHSC or its designee within 365 days from the date of service. However, 110 days must elapse after the third party billing before submitting the claim to HHSC or its designee.

(G) When a Title XIX family planning service is denied by Title XX prior to being submitted to Medicaid, the claim must be received by HHSC or its designee within 95 days of the date on the Title XX Denial Remittance Advice.

(H) Claims for services rendered by out-of-state providers must be received by HHSC or its designee within 365 days from the date of service.

(I) Claims for services rendered by health care programs, such as School Health and Related Services or County Indigent Health Care Program, where the program must also account for which also require a certification of the expenditures of local or state funds, are due to HHSC or its designee within the 365 day federal filing deadline.

(b) All appeals of claims and requests for adjustments must be received by HHSC or its designee within 120 days from the date of the last denial of and/or adjustment to the original claim. Appeals must comply with §354.2217 of this title.

(c) Claims received by HHSC or its designee which are lacking the information necessary for processing are denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by HHSC or its designee within 120 days from the last denial date.

(d) Extension. If a filing deadline falls on a weekend or holiday, the filing deadline shall be extended to the next business day following the weekend or holiday.

(e) Exceptions to the 95-day claim filing deadline. HHSC shall consider exceptions only when at least one of the situations included in this subsection exists. The final decision of whether a claim falls within one of the exceptions will be made by HHSC.

(1) Exceptions to the filing deadline are considered when one of the following situations exists:

(A) catastrophic event that substantially interferes with normal business operations of the provider, or damage or destruction of the provider's business office or records by a natural disaster, including but not limited to fire, flood, or earthquake; or damage or destruction of the provider's business office or records by circumstances that are clearly beyond the control of the provider, including but not limited to criminal activity. The damage or destruction of business records or criminal activity exception does not apply to any negligent or intentional act of an employee or agent of the provider because these persons are presumed to be within the control of the provider. The presumption can only be rebutted when the intentional acts of the employee or agent leads to termination of employment and filing of criminal charges against the employee or agent; or

(B) delay or error in the eligibility determination of a recipient, or delay due to erroneous written information from HHSC or its designee, or another state agency; or

(C) delay due to electronic claim or system implementation problems experienced by HHSC and its designee or providers; or

(D) submission of claims occurred within the 365-day federal filing deadline, but the claim was not filed within 95-days from the date of service because the service was determined to be a benefit of the Medicaid program and an effective date for the new benefit was applied retroactively; or

(E) recipient eligibility is determined retroactively and the provider is not notified of retroactive coverage.

(2) Under the conditions and circumstances included in paragraph (1) of this subsection, providers must submit the following documentation, if appropriate, and any additional requested information to substantiate approval of an exception. All claims that are to be considered for an exception must accompany the request. HHSC will consider only the claims that are attached to the request.

(A) All exception requests. The provider must submit an affidavit or statement from the provider stating the details of the cause for the delay, the exception being requested, and verification that the delay was not caused by neglect, indifference, or lack of diligence of the provider or the provider's employee or agent. This affidavit or statement must be made by the person with personal knowledge of the facts.

(B) Exception requests within paragraph (1)(A) of this subsection. The provider must submit independent evidence of insurable loss; medical, accident, or death records; or police or fire report substantiating the exception of damage, destruction, or criminal activity.

(C) Exception requests within paragraph (1)(B) of this subsection. The provider must submit the written document from HHSC or its designee that contains the erroneous information or explanation of the delayed information.

(D) Exception requests within paragraph (1)(C) of this subsection.

(i) The provider must submit the written repair statement, invoice, computer or modem generated error report (indicating attempts to transmit the data failed for reasons outside the control of the provider), or the explanation for the system implementation problems. The documentation must include a detailed explanation made by the person making the repairs or installing the system, specifically indicating the relationship and impact of the computer problem or system implementation to claims submission, and a detailed statement explaining why alternative billing procedures were not initiated after the delay in repairs or system implementation was known.

(ii) If the provider is requesting an exception based upon an electronic claim or system implementation problem experienced by HHSC or its designee, the provider must submit a written

statement outlining the details of the electronic claim or system implementation problems experienced by HHSC or its designee that caused the delay in the submission of claims by the provider, any steps taken to notify the state or its designee of the problem, and a verification that the delay was not caused by the neglect, indifference, or lack of diligence on the part of the provider or its employees or agents.

(E) Exception requests within paragraph (1)(D) of this subsection. The provider must submit a written, detailed explanation of the facts and documentation to demonstrate the 365-day federal filing deadline for the benefit was met.

(F) Exception requests within paragraph (1)(E) of this subsection. The provider must submit a written, detailed explanation of the facts and activities illustrating the provider's efforts in requesting eligibility information for the recipient. The explanation must contain dates, contact information, and any responses from the recipient.

(f) Exceptions to the 120-day appeal deadline. HHSC shall consider exceptions to the 120-day appeal deadline for the situations listed below. The final decision about whether a claim falls within one of the exceptions will be made by HHSC. This is a one-time exception request; therefore, all claims that are to be considered within the request for an exception must accompany the request. Claims submitted after HHSC's determination has been made for the exception will be denied consideration because they were not included in the original request.

(1) An exception request must be received by HHSC within 18 months from the date of service in order to be considered. This requirement will be waived for the exceptions listed in paragraph (2)(B) and (C) of this subsection and subsection (g) of this section.

(2) The following exceptions to the 120-day appeal deadline will be considered if the criteria in paragraph (1) of this subsection is met and there is evidence to support subparagraph (A) or (B) of this paragraph:

(A) Errors made by a third party payor that were outside the control of the provider. The provider must submit a statement outlining the details of the cause for the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee, or agent. This affidavit or statement should be made by the person with personal knowledge of the facts. In lieu of the above affidavit or statement from the provider, the provider may obtain an affidavit or statement from the third party payor including the same information, and provide this to HHSC as part of the request for appeal.

(B) Errors made by the reimbursement entity that were outside the control of the provider. The provider must submit a statement from the original payor outlining the details of the cause of the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee or agent. In lieu of the above reimbursement entity's statement, the provider may submit a statement including the same information, and provide this to HHSC as part of the request for appeal.

(C) Claims were adjudicated, but an error in the claim's processing was identified after the 120-day appeal deadline. The error is not the fault of the provider but an error occurred in the claims processing system that is identified after the 120-day appeal deadline has passed.

(g) Exceptions to the 24 month claim payment deadline. HHSC shall consider exceptions to the 24-month claim payment deadline for the situations listed in paragraphs (1) - (3) of this subsection. The final decision about whether a claim falls within one of the exceptions will be made by HHSC.

(1) Refugee Eligible Status: The payable period for all Refugee Medicaid eligible recipient claims is the federal fiscal year in which each date of service occurs plus one additional Federal Fiscal year. The date of service for inpatient claims is the discharge date.

(2) Medicare/Medicaid Eligible Status: The payable period for Medicaid/Medicare eligible recipient claims filed electronically is 24 months from the date the file is received from Medicare by the claims administrator for Medicaid. The payable period for Medicaid/Medicare eligible recipient claims filed on paper is 24 months from the date listed on the Medicare Remittance Advice.

(3) Retroactive Supplemental Security Income Eligible: The payable period for Supplemental Security Income (SSI) Medicaid eligible recipients when the Medicaid eligibility is determined retroactively is 24 months from the date the Medicaid eligibility is added to the eligibility file. This date is referred to as the "add date."

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 December 5, 2003.

TRD-200308373
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: December 25, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 424-6576

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SUBCHAPTER I. MEDICAID PROGRAM APPEALS PROCEDURES
DIVISION 1. GENERAL

1 TAC §354.2201

The Health and Human Services Commission (HHSC or Commission) adopts the amendments to §354.2201, Definitions, without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8734) and will not be republished.

The amendments to the rule are necessary because the state is transitioning from an insured arrangement to a fiscal agent arrangement for the payment of claims. The amendments to the rule support the fiscal agent arrangement for claims payment. The amended rules are effective 20 days after submission to the Secretary of State.

The Commission did not receive written comments concerning §354.2201 during the 30-day comment period from October 10, 2003 to November 10, 2003.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

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 December 5, 2003.

TRD-200308374
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: December 25, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 424-6576

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DIVISION 3. APPEALS

1 TAC §354.2217

The Health and Human Services Commission (HHSC or Commission) adopts new §354.2217, Provider Appeals and Reviews, with changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8735). The text of the rule will be republished.

The Health and Human Services Commission (HHSC) amends Chapter 354, Subchapter I, Division 3 with the addition of new §354.2217, Provider Appeals and Reviews. The new section outlines the processes and requirements for requesting Administrative Claim and Medical Appeals, and Utilization Reviews.

The addition of the new section is necessary because the state is transitioning from an insured arrangement to a fiscal agent arrangement for the payment of claims. The section supports the fiscal agent arrangement for claims payment. The section is effective 20 days after submission to the Secretary of State.

The Commission received written comments concerning §354.2217 during the 30-day comment period from October 10, 2003 to November 10, 2003. A summary of the comments and HHSC's responses follow:

Comment: The Commission received a comment from the Texas Hospital Association (THA) expressing concern about the 95-day appeal deadline proposed in §354.2217(a)(3)(D) and §354.2217(b)(2)(B). THA requested consideration of a 120-day appeal deadline "that would address the HHSC's desire to shorten the period for appeals and at the same time provide a more reasonable timeframe for provider to identify, compile, and submit valid appeals."

Response: The HHSC acknowledges the comment and agrees to extend the appeal deadline from 95 days to 120 days. The language will be revised in the above-referenced rule to include this change.

Comment: A comment was received from the THA about §354.2217(b)(4) contending that "this provision seems to suggest that a decision will be made on the appeal within 60 days of receipt of the request, it is not clear whether the appeal will only be reviewed or whether a decision on the appeal also will be made within that timeframe." THA supports timely decisions and recommended clarifying language.

Response: HHSC acknowledges the comment and agrees to revise the language within the referenced rule to incorporate the recommendation made by THA.

Comment: The Commission received a comment from THA expressing concern about §354.2217(a), "administrative and medical appeals does not require the HHSC to make a determination on submitted appeals within a specified timeframe." THA recommended a 60 day timeframe for the administrative and medical appeal determinations.

Response: HHSC acknowledges the comment. The Commission agrees to revise the language to specify a timeframe for determinations of the administrative and medical appeals; however, a 60-day timeframe is not adequate for these types of appeals. HHSC agrees to include a 90-day timeframe in §354.2217(a)(7) for administrative and medical appeal determinations.

Comment: The Commission received a comment from THA about the current process for appeal of a utilization review determination. THA expressed support for continuation of a Utilization Review appeal; however, the association contends that, "While the proposed rules do not amend the HHSC utilization review rules, §§371.200 - 371.210, the adoption of a new appeal rules at §354.2217 might raise questions about the continuation of existing appeal procedures, including the oral appeals process, followed by the HHSC Medicaid Utilization Review Department." THA encourages HHSC to continue these procedures.

Response: HHSC acknowledges the comment. The HHSC Medicaid Fraud and Abuse Division conducts utilization reviews. The Medicaid/CHIP Resolution Services, Medical and Administrative Appeals Unit conduct the appeals of the utilization review determinations. HHSC does not anticipate a change in the process for appeal of utilization review cases at this time. The Medicaid/CHIP Resolution Services, Medical and Administrative Appeals Unit, will continue to conduct written and oral appeals of the utilization review determinations.

Comment: The Commission received a comment from Texas Medical Association (TMA) expressing concern about §354.2217(a)(6), "The amendment would allow physicians only 21 calendar days from the date of written request from HHSC to submit additional information regarding review of a medical or administrative appeal." The association contends that 21 calendar days "is not reasonable to ask a physician practice to collect this information" in that timeframe. TMA requests that HHSC extend the 21 calendar days to 60 days. In addition, TMA requested that "at the end of 30 days, the practice has not responded, HHSC should send a second request to the physician stating that if the requested information is not supplied by the 60-day deadline, the case will be closed." The association also asked HHSC to consider adopting "the same exceptions to the 60-day deadline as allowed for claim filing deadlines."

Response: HHSC acknowledges the comment. The purpose for allowing providers 21 calendar days to respond is to ensure that the Commission receives the information so that a proper determination can be made in a timely manner. Under the fiscal agent arrangement, it is imperative that determinations are made timely so that providers may be reimbursed within the 24-month timeframe. The purpose of this requirement is to allow providers an opportunity to submit the requested information while the case remains open. If the information is not received within the specified timeframe, the case is closed, and a notice to the provider is generated informing them that the case is closed. The case can be reopened if additional information is submitted and is within the appeal deadlines. This is current practice now and the rule formalizes current practice. No change was made to the rule in response to this comment.

Comment: The Commission received a comment from staff at the Texas Department of Health expressing concern with the statement that "HHSC Medicaid/CHIP Administrative Claim and Medical Appeals will only review appeals that are received within 18 months from the date-of-service." Appeals would be directed to the state for claims exceeding the 24 month timeframe and the exceptions listed in §354.1003(f)(2)(B) and (C) and §354.1003(g), but the rules do not allow for appeals with dates of service greater than 18 months.

Response: HHSC acknowledges the comment and agrees with the commenter. The rule language in §354.2217(a)(4) will be revised to include the exceptions referenced above.

The new section is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation.

§354.2217. Provider Appeals and Reviews.

(a) Administrative Claim and Medical Appeals

(1) An administrative claim appeal is a request for a review as defined in §354.2201(2) of this title.

(2) A medical appeal is a request for review as defined in §354.2201(9) of this title.

(3) An administrative or medical appeal must be:

(A) submitted in writing to HHSC Medicaid/CHIP Administrative Claim and Medical Appeals by the provider delivering the service or claiming reimbursement for the service, and

(B) submitted to HHSC Medicaid/CHIP Administrative Claim and Medical Appeals after the appeals process with the claims administrator or claims processing entity has been exhausted, and the documentation to the state must contain evidence of previous claims administrator or claims processing entity appeal dispositions, and

(C) a complete request and contain all of the information necessary for consideration and determination by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals, including a written explanation of the request for appeal and supporting documentation for the request, and

(D) received by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals within 120 days from the date of disposition by the claims administrator or claims processing entity as evidenced by the Remittance and Status report sent to providers.

(4) HHSC Medicaid/CHIP Administrative Claim and Medical Appeals will only review appeals that are received within 18 months from the date-of-service. This requirement will be waived for the exceptions listed in §354.1003(f)(2)(B) and (C) and §354.1003(g) of this title.

(5) Providers must adhere to all filing and appeal deadlines for an appeal to be reviewed by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals or its designee. The filing and appeal deadlines are described in 354.1003 of this title.

(6) Additional information requested by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals must be returned to HHSC within 21 calendar days from the date of the letter from HHSC Medicaid/CHIP Administrative Claim and Medical Appeals. If the information is not received within 21 calendar days, the case will be closed.

(7) HHSC Medicaid/CHIP Administrative Claim and Medical Appeals is responsible for all administrative claim and medical appeals . An administrative claim or medical appeal will be reviewed and a determination made by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals within 90 days of the date a complete request for appeal is received at HHSC. A determination made by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals is the final decision for administrative claim and medical appeals.

(b) Utilization Review Appeals

(1) A utilization review appeal is a request for review as defined in §354.2201(11) of this title.

(2) A utilization review appeal must be:

(A) submitted in writing by the provider delivering the service or claiming reimbursement for the service, and

(B) received by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals within 120 days from the date of the decision letter from HHSC Medicaid Fraud and Abuse Utilization Review.

(C) a complete request and contain all the information required by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals including a written explanation of the request for appeal, and any necessary medical information.

(3) Additional information requested by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals must be returned to HHSC Medicaid/CHIP Administrative Claim and Medical Appeals within 21 calendar days of the request. If the information is not received within 21 calendar days, the case will be closed.

(4) A utilization review appeal will be reviewed and a determination made by HHSC within 60 days of the date a complete appeal is received at HHSC. A determination made by HHSC Medicaid/CHIP Administrative Claim and Medical Appeals is the final decision in a utilization review appeal.

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 December 5, 2003.

TRD-200308375
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: December 25, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 424-6576

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.5902

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.5902 without changes to the proposed text as published in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9343) and will not be republished.

This amendment removes the hourly payment rate for required annual and other assessments performed by an agency registered nurse for 1929(b) clients participating in the Consumer Directed Services payment option since the assessments will no longer be performed by the agency registered nurse, but will be performed by the Texas Department of Human Services nurse. The proposal also removes the name of Family Care from the Primary Home Care title because Family Care services is just one of three services under the Primary Home Care program and does not need to be separately identified in the title.

HHSC received no comments regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308297
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: December 25, 2003
Proposal publication date: October 31, 2003
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 10. SEED CERTIFICATION STANDARDS

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §10.8

The Texas Department of Agriculture (the department) and State Seed and Plant Board (the Board) adopt amendments to §10.8 concerning seed certification, without changes to the proposal published in October 24, 2003, issue of the *Texas Register* (28 TexReg 9149). The department is the certifying agency in the administration of the Seed and Plant Certification Act, and is charged with administering and enforcing the standards adopted by the Board. The amendments are adopted to modify existing language and to conform to statutory language. The adopted amendments to §10.8 change the terminology and inspection requirements for seed conditioning to conform with the Board's recommendations and current state law.

No comments were received regarding the proposal.

The amendments 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 §62.002, which provides the Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest.

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 December 4, 2003.

TRD-200308295
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 24, 2003
Proposal publication date: October 24, 2003
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER C. EXAMINATION AND LICENSING

22 TAC §51.85

The Texas State Board of Barber Examiners adopts amendments to §51.85 Reciprocal/Endorsement Licensing of Barbers. The amendments provide that an applicant for a license by reciprocity shall submit a licensing fee of $80 rather than $70 and a fee for his or her own copy of the current hand book published by the Board containing the law and regulations governing the practice of barbering. The amendments delete the archaic amount ($70) for a renewal fee. The amendments are adopted without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8774).

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the requirements of the Texas Occupations Code Chapter 1601.155 Authority to Set Fees, and 1601.151 General Powers and Duties of the Board which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2003.

TRD-200308227
Douglas A Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: December 23, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 458-0111

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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 235. LICENSING

SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.4

The Board of Vocational Nurse Examiners adopts an amendment to §235.4 relating to Applicants for Relicensure by Examination without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8278).

The adopted amendment will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this 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 December 5, 2003.

TRD-200308325
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.5

The Board of Vocational Nurse Examiners adopts an amendment to §235.5 relating to Qualifications for Licensure by Examination on Basis of Professional Nursing Education without changes to the proposed text published in the September 26, 2003, issue of the Texas Register (28 TexReg 8278).

The adopted amendment will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this 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 December 5, 2003.

TRD-200308326
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.7

The Board of Vocational Nurse Examiners adopts an amendment to §235.7, relating to Graduates of Vocational Nursing Programs without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8278).

The adopted amendment will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

No comments were received relative to the adoption of this amendment.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, §302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308327

Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.11

The Board of Vocational Nurse Examiners adopts an amendment to §235.11, relating to Policies Concerning Professional Graduates, without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8279).

The adopted amendment will extend the applicant's opportunity to successfully pass the national licensure examination from one year to four years.

No comments were received relative to the adoption of this amendment.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, §302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308328
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.13

The Board of Vocational Nurse Examiners adopts repeal of §235.13 relating to Military Graduates Assigned to Overseas Duty Prior to Examination without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8279). This rule is repealed because it is redundant.

The adopted repeal is eliminating redundancy.

No comments were received relative to the adoption of this rule.

The repeal is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this 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 December 5, 2003.

TRD-200308329
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.14

The Board of Vocational Nurse Examiners adopts repeal of §235.14 relating to Failure To Make Application for the Licensing Examination within One Year of Eligibility without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8280).

The adopted repeal is eliminating redundancy.

No comments were received relative to the adoption of this rule.

The repeal is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this 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 December 5, 2003.

TRD-200308330
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.15

The Board of Vocational Nurse Examiners adopts an amendment to §235.15 relating to Out-of-State Practical/Vocational Nurse Graduate, without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8280).

The adopted amendment includes statutory language requirements for an applicant to pass an examination to be licensed. State Board Test Pool Exams (SBTPE) were licensing examinations.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this 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 December 5, 2003.

TRD-200308331
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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22 TAC §235.16

The Board of Vocational Nurse Examiners adopts an amendment to §235.16 relating to Request To Extend One-Year Limit Regarding Taking the Examination, without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8281).

The adopted amendment includes statutory language requirements for an applicant to pass an examination to be licensed. State Board Test Pool Exams (SBTPE) were licensing examinations.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this 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 December 5, 2003.

TRD-200308332
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §235.52

The Board of Vocational Nurse Examiners adopts new §235.52, relating to Fees, without changes to the proposed text published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8281).

The adopted section, concerning fee increases, is necessary in order to meet the funding goals necessary for appropriations required to support legislative requisites. The most substantial fee increases are due to two bills passed by the 78th Regular Session. The two bills are House Bill 3126 (Workforce Data Center) and House Bill 2985 (Office of Patient Protection).

House Bill 3126 was passed for the purpose of addressing the nursing shortage and encouraging individuals to enter the nursing field by authorizing larger Texas Grants to nursing students. This grant money is to come from the Tobacco Lawsuit Fund. The Board is required to increase the LVN's renewal fees by $2.00 to fund a nursing resource section of a workforce data center which will be managed by the Statewide Health Coordinating Council. The fee specifically will fund a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state. The Board is to receive an analysis of these funds in an annual accounting.

House Bill 2985 establishes an Office of Patient Protection (OPP) within the Health Professions Council for the purpose of providing public information about the complaint process at each health occupational licensing agency, increasing public awareness of a telephone complaint system and the sanction processes of each agency, and adopting a standard complaint form for each licensing agency to use. Each of the health professional agencies involved are to add a $5 fee increase to initial licensure fees and to add $1.00 each year to the renewal fee to each licensee to pay for this service. Since the Board requires renewal biannually, the renewal fee would increase by $2.00. The funds for this bill were not appropriated during the 78th Regular Legislative Session. If the appropriations are not approved in a 78th Special Session the OPP funds will go into the general fund.

No comments were received relative to the adoption of this section.

The new section is adopted under Chapter 302, Texas Occupations Code, Subchapter D, §302.151(b) of the Texas Occupations Code which provides the Board of Vocational Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

No other rules, codes, or statues will be affected by this new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308324
Terrie L. Hairston
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 25, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-7652

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.2, §271.5

The Texas Optometry Board adopts amendments to §271.2 and §271.5 without changes to the proposed text published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8113).

The Optometry Board license application requires applicants to provide a criminal history. The amendments to §271.2 will subject applicants to disciplinary action if the applicant fails to provide a complete criminal history. Such information is required to satisfy the statutory requirement in Section 351.254 of the Optometry Act that each applicant be of good moral character, and to safeguard the public health by determining whether the applicant should be denied license because of prior criminal convictions pursuant to Section 351.501 and Section 53.012 of the Occupations Code.

The amendments to §271.5 impose a deadline to submit applications for License Without Examination of 30 days before the considering board meeting. The deadline will give the Board sufficient time to review and verify the statements made in the application.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.251, §351.2595 and §351.501. No other section is affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.251 and §351.501 as requiring applicants to be of good moral character and authorizing the Board to refuse to issue a license because of past criminal convictions, failure to provide accurate information, or failure to follow Board rules. The Board interprets §351.2595 as defining the requirements for License Without Examination.

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 December 8, 2003.

TRD-200308400
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: December 28, 2003
Proposal publication date: September 19, 2003
For further information, please call: (512) 305-8502

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CHAPTER 273. GENERAL RULES

22 TAC §273.4, §273.8

The Texas Optometry Board adopts amendments to §273.4 and §273.8 without changes to the proposed text published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8114).

Section 273.4 is being amended for the benefit of licensees to identify the two statutory required fees included in the Board's license fee: the fee required by Section 351.153 of the Act, and the fee required by House Bill 2985, 78th Legislature, Regular Session. The rule amendment does not raise the license fee, however House Bill 2985, 78th Legislature does impose an additional $1.00 for licenses renewed after January 1, 2004 (and an additional $5.00 fee for new licenses issued after that date).

The Optometry Board license renewal requires licensees to report criminal convictions. The amendments to §273.8 will subject licensees to disciplinary action if the licensee fails to make an accurate report. Such information is required to safeguard the public health by determining whether the license should be revoked or suspended because of a criminal conviction pursuant to Section 351.501 of the Optometry Act and Section 53.021 of the Occupations Code. The proposed amendment further adds a requirement to report a criminal conviction within 30 days of the conviction.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.153, House Bill 2985, 78th Legislature, Regular Session and §351.501. No other section is affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.153 and House Bill 2985, 78th Legislature as setting additional fees to be added to the license fee set by the Board. The Board interprets §351.501 as authorizing the Board to suspend or revoke a license because of criminal convictions, failure to provide accurate information, or failure to comply with Board 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 December 8, 2003.

TRD-200308401
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: December 28, 2003
Proposal publication date: September 19, 2003
For further information, please call: (512) 305-8502

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy adopts amendments to §291.1, concerning Pharmacy License Application. The amendments are adopted with one change to the proposed text as published in the October 3, 2003, issue of the *Texas Register*

(28 TexReg 8496). The change adds language that the Board will specify the conditions under which a pre-inspection may be waived.

The adopted amendments specify that the Board may waive a pre-inspection prior to issuing a pharmacy license for good cause shown by the applicant. This amendment adds this waiver authority to the current authority which specifies that the Board may waive a pre-inspection if the applicant holds an active pharmacy license in Texas on the date of application.

No comments were received regarding the amendments.

The amendments are adopted under §§551.002, 554.051, and 560.052 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.052 as authorizing the agency to require information on a pharmacy application that the Board determines necessary for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application including the following information:

(1) name and address of pharmacy;

(2) type of ownership;

(3) names, home addresses, dates of birth, phone numbers, and social security numbers of all owners; if a partnership or corporation, the name, title, home address, home phone number, date of birth, and social security number of all managing officers;

(4) name and license number of the pharmacist-in-charge and of other pharmacists employed by the pharmacy;

(5) anticipated date of opening and hours of operation;

(6) copy of lease agreement or alternatively, a notarized statement signed by the lessee and lessor certifying the existence of a lease agreement, or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;

(7) the signature of the pharmacist-in-charge;

(8) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;

(9) federal tax ID number of the owner;

(10) description of business services that will be offered;

(11) name and address of malpractice insurance carrier or statement that the business will be self-insured;

(12) the certificate of authority, if applicant is an out-of-state corporation;

(13) the articles of incorporation, if the applicant is a corporation;

(14) a current Texas Franchise Tax Certificate of Good Standing; and

(15) any other information requested on the application.

(b) Subsection (c) of this section applies to new pharmacy applications for Class A (Community) pharmacies or Class C (Institutional) pharmacies owned by a management company with the following exceptions.

(1) Subsection (c) of this section does not apply to a new pharmacy application submitted by an entity which already owns a pharmacy licensed in Texas.

(2) Subsection (c)(1) and (3) of this section do not apply to each individual owner or managing officer listed on a new pharmacy application if the individual possesses an active pharmacist license in Texas.

(c) If the pharmacy is to be licensed as a Class A (Community) Pharmacy or as a Class C (Institutional) pharmacy owned by a management company, the applicant must submit copies of the following documents in addition to the information required in subsection (a) of this section:

(1) the birth certificate or passport of each individual owner, or, if the pharmacy is owned by a partnership or a closely held corporation:

(A) one of these documents for each managing officer; and

(B) a list of all owners of the corporation;

(2) an approved credit application from a primary wholesaler or other documents showing credit worthiness as approved by the Board; and

(3) a current driver license or state issued photo ID card of each individual owner, or, if the pharmacy is owned by a partnership or a closely held corporation, a current driver license or state issued photo ID card for each managing officer.

(d) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(e) For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(f) Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(g) If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (f) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2003.

TRD-200308238

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 23, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 305-8028

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SUBCHAPTER A. ALL CLASSES OF PHARMACIES

The Texas State Board of Pharmacy adopts the repeal of §291.6, concerning Pharmacy License Fees and simultaneously adopts new §291.6, concerning Pharmacy Licensing Fees. The repeal of §291.6 is adopted without changes to the proposal as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8497). The new rule is adopted with one change to the proposed text which deletes a reference to Texas Online licensure fees for initial pharmacy licenses because the fee has not yet been set by the Texas Online authority. The total fee to the licensee has not been changed.

The new rule increases the initial licensing fee by $5 and the renewal fee by $2 to fund the Office of Patient Protection as authorized by House Bill 2985 passed by the 78th Texas Legislature.

No comments were received regarding the repeal and new section.

22 TAC §291.6

The repeal is adopted under §§554.051, 554.006, and 564.051 of Texas Pharmacy Act, Chapter 551 - 566, Occupations Code, and §101.307, Occupations Code. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.006 as authorizing the agency to establish reasonable fees sufficient to cover the costs of administering the Texas Pharmacy Act. The Board interprets §564.051 as authorizing the Board to add a surcharge to fund a program to aid impaired pharmacists and pharmacy students. The Board interprets §101.307 as authorizing the agency to add a surcharge to fund the Office of Patient Protection.

The statutes affected by the repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director/Secretary
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22 TAC §291.6

The new section is adopted under §§554.051, 554.006, and 564.051 of Texas Pharmacy Act, Chapter 551 - 566, Occupations Code, and §101.307, Occupations Code. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.006 as authorizing the agency to establish reasonable fees sufficient to cover the costs of administering the Texas Pharmacy Act. The Board interprets §564.051 as authorizing the Board to add a surcharge to fund a program to aid impaired pharmacists and pharmacy students. The Board interprets §101.307 as authorizing the agency to add a surcharge to fund the Office of Patient Protection.

The statutes affected by this section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for the an initial license shall be $368 for a two year registration and is composed of the following:

(A) $351 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006;

(B) $12 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051; and

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(2) New pharmacy licenses shall be assigned an expiration date and initial registration fee shall be prorated based on the assigned expiration date.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee. The fee for biennial renewal of a pharmacy license shall be $365 and is composed of the following:

(1) $341 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006;

(2) $12 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(3) $10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(4) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Duplicate or Amended Certificates. The fee for issuance of an amended pharmacy license renewal certificate shall be $20.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER A. ALL CLASSES OF PHARMACIES

The Texas State Board of Pharmacy adopts repeal of §291.8, concerning Return of Prescription Drugs and simultaneously adopts new §291.8, concerning Return of Prescription Drugs. The repeal of §291.8 is adopted without changes to the proposal as published in the October 3, 2003, issue of the *Texas Register*(28 TexReg 8948). The new section is adopted with changes as described below.

The new rule implements the provisions of §2.126, of House Bill 2292 passed by the 78th Legislative Session by establishing procedures: (1) for a consultant pharmacist in health care facilities to return unused drugs to pharmacies; and (2) for pharmacies to handle the returned drugs.

Comments were received from State Representative Diane White Delisi, Omnicare, Inc., and the Long Term Care Pharmacy Alliance (LTCPA).

Section 291.8(b)(2)(B)--Rep. Delisi, Omnicare, Inc., and LTCPA recommended that the definition of a health care facility be limited to nursing homes. The Board agrees with this recommendation and amended the definition to include only nursing homes.

LTCPA recommended adding a definition for a dispensing pharmacy. The Board disagrees with the comment and did not add the definition to the rules because it would limit the pharmacies that would be able to return drugs.

Section 291.8(b)(3)(B)--LTCPA recommended adding a statement that a healthcare facility may not return any drug product that has not been subject to the inspection of the dispensing pharmacy. The Board believes this comment is covered by §291.8(b)(4)(A).

Section 291.8(b)(3)(C)--Rep. Delisi, Omnicare, Inc., and LTCPA recommended that the duties described be allowed to be performed under the supervision of the consultant pharmacist. The Board disagrees with this comment because in §291.8(b)(4)(A) it requires the drugs to be examined by a pharmacist at the dispensing pharmacy.

Section 291.8(b)(3)(D)--Rep. Delisi, and LTCPA recommended that the health care facility be responsible for sending the inventory to appropriate parties. The Board agrees with this recommendation and changed the rule to require the healthcare facility to preform this task.

Section 291.8(b)(4)(B)--LTCPA recommended that the pharmacy reimburse or credit the state Medicaid program for the cost of an unused drug paid for by Medicaid, less the dispensing fee, that is returned to the pharmacy in a condition suitable for identification, repackaging and reissue. The Board disagrees with this comment because the reimbursement or credit for the prescription will be established by the Texas Department of Health and Human Services Commission.

Omnicare, Inc., was concerned that the rule required a pharmacy to accept returns of drugs and issue credits to private payers. The Board disagrees with this comment since participation in the return of the drugs is voluntary on the part of the pharmacy. Therefore, the pharmacy may choose what type of returns it will accept.

22 TAC §291.8

The repeal is adopted under §551.002 and §554.051(a) of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §291.8

The new section is adopted under §§551.002, 554.051(a), 562.1085, and 562.1086 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.1085 and §562.1086 as authorizing the agency to adopt rules to implement the provisions of the section.

The statutes affected by this section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.8. Return of Prescription Drugs.

(a) General prohibition on return of prescription drugs. As specified in §431.021(w), Health and Safety Code, a pharmacist may not accept an unused prescription or drug, in whole or in part, for the purpose of resale or re-dispensing to any person, after the prescription or drug has been originally dispensed, or sold except as provided in subsection (b) of this section.

(b) Return of prescription drugs from health care facilities.

(1) Purpose. The purpose of this subsection is to outline procedures for the return of unused drugs from a health care facility to a dispensing pharmacy as specified in the §562.1085 of the Occupations Code. Nothing in this section shall require a consultant pharmacist, health care facility or pharmacy to participate in the return of unused drugs.

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

(A) Consultant pharmacist--A pharmacist who practices in or serves as a consultant for a health care facility in this state.

(B) Health care facility--A facility regulated under Chapter 242, Health and Safety Code.

(3) Consultant pharmacist/health care facility responsibilities. A consultant pharmacist may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy.

(A) The unused drugs must:

(i) be approved by the federal Food and Drug Administration and be:

(I) sealed in the manufacturer's original unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging;

(II) oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;

(III) topical or inhalant drugs in sealed unit-of-use containers approved by the federal Food and Drug Administration; or

(IV) parenteral medications in sealed multiple-dose containers approved by the federal Food and Drug Administration from which doses have not been withdrawn; and

(ii) not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(B) A healthcare facility may not return any drug product that:

(i) has been compounded;

(ii) appears on inspection to be adulterated;

(iii) requires refrigeration; or

(iv) has less than 120 days until the expiration date or end of the shelf life.

(C) The consultant pharmacist shall be responsible for assuring an inventory of the drugs to be returned to a pharmacy is completed. The following information shall be included on this inventory:

(i) name and address of the facility or institution;

(ii) name and pharmacist license number of the consultant pharmacist;

(iii) date of return;

(iv) date the prescription was dispensed;

(v) unique identification number assigned to the prescription by the pharmacy;

(vi) name of dispensing pharmacy;

(vii) name, strength, and quantity of drug;

(viii) signature of consultant pharmacist;

(D) The health care facility shall send a copy of the inventory specified in subparagraph (C) of this paragraph to:

(i) the pharmacy with the drugs returned; and

(ii) the Health and Human Services Commission.

(4) Dispensing/Receiving pharmacy responsibilities. If a pharmacy accepts the return of unused drugs from a health care facility, the following is applicable.

(A) A pharmacist employed by the pharmacy shall examine the drugs to ensure the integrity of the drug product.

(B) The pharmacy shall reimburse or credit the entity that paid for the drug including the state Medicaid program for an unused drug returned to the pharmacy. The pharmacy shall maintain a record of the credit or reimbursement containing the following information:

(i) name and address of the facility or institution which returned the drugs;

(ii) date and amount of the credit or reimbursement was issued;

(iii) name of the person or entity to whom the credit or reimbursement was issued;

(iv) date the prescription was dispensed;

(v) unique identification number assigned to the prescription by the pharmacy;

(vi) name, strength, and quantity of drug;

(vii) signature of the pharmacist responsible for issuing the credit.

(C) After the pharmacy has issued credit or reimbursement, the pharmacy may restock and redispense the unused drugs returned under this section.

(5) Limitation on Liability.

(A) A pharmacy that returns unused drugs and a manufacturer that accepts the unused drugs under §562.1085, Occupations Code, and the employees of the pharmacy or manufacturer are not liable for harm caused by the accepting, dispensing, or administering of drugs returned in strict compliance with §562.1085, Occupations Code, unless the harm is caused by:

(i) wilful or wanton acts of negligence;

(ii) conscious indifference or reckless disregard for the safety of others; or

(iii) intentional conduct.

(B) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer under Chapter 82, Civil Practice and Remedies Code.

(C) This section does not apply if harm results from the failure to fully and completely comply with the requirements of §562.1085, Occupations Code.

(D) This section does not apply to a pharmacy or manufacturer that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.
Executive Director/Secretary
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22 TAC §291.29

The Texas State Board of Pharmacy adopts the repeal of §291.29, concerning Exemption from Pharmacy Technician Certification Requirements. The repeal is adopted without changes to the proposal as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8512).

The repeal eliminates a section of the rules that is no longer necessary since the provisions of this section are incorporated into new §§297.1 - 297.9.

No comments were received regarding the repeal.

The repeal is adopted under §554.051 of Texas Pharmacy Act, Chapter 551 - 566, Occupations Code. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 295. PHARMACISTS

The Texas State Board of Pharmacy adopts a repeal of §295.5 and §295.6, concerning Pharmacist License Fees and simultaneously adopts new §295.5, concerning Pharmacist Licensing Fees. The repeal is adopted without changes to the proposal as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8541). New §295.5 is adopted with changes to the proposed text as published. The change is due to a grammatical error in subsection (b)(1).

The new section decreases the biennial renewal fee for a pharmacist license by $2 from $227 to $225 and increase the initial fee for a pharmacist license by $1 from $227 to $228. The $2 reduction for the renewal fee is a result of a $2 decrease in the licensing fee, a $2 decrease in the surcharge to fund a program to aid impaired pharmacists, and the addition of a $2 fee to fund the Office of Patient Protection as authorized by House Bill 2985 passed by the 78th Texas Legislature. The $1 fee increase for the issuance of a new license is a result of a $2 decrease in the licensing fee, a $2 decrease in the surcharge to fund a program to aid impaired pharmacists, and a $5 increase for the initial licensing fee to fund the Office of Patient Protection as authorized by House Bill 2985 passed by the 78th Texas Legislature.

No comments were received regarding the repeal and new section.

22 TAC §295.5, §295.6

The repeal is adopted under §§554.051, 554.006, and 564.051 of Texas Pharmacy Act, Chapter 551 - 566, Occupations Code, §2054.053, Government Code, and §101.307, Occupations Code. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.006 as authorizing the agency to establish reasonable fees sufficient to cover the costs of administering the Texas Pharmacy Act. The Board interprets §564.051 as authorizing the Board to add a surcharge to fund a program to aid impaired pharmacists and pharmacy students. The Board interprets §2054.053 as authorizing the agency to add a surcharge to fund TexasOnline. The Board interprets §101.307 as authorizing the agency to add a surcharge to fund the Office of Patient Protection.

The statutes affected by this repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §295.5

The new section is adopted under §§554.051, 554.006, and 564.051 of Texas Pharmacy Act, Chapter 551 - 566, Occupations Code, §2054.053, Government Code, and §101.307, Occupations Code. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.006 as authorizing the agency to establish reasonable fees sufficient to cover the costs of administering the Texas Pharmacy Act. The Board interprets §564.051 as authorizing the Board to add a surcharge to fund a program to aid impaired pharmacists and pharmacy students. The Board interprets §2054.053 as authorizing the agency to add a surcharge to fund TexasOnline. The Board interprets §101.307 as authorizing the agency to add a surcharge to fund the Office of Patient Protection.

The statutes affected by this section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be $228 for a two year registration and is composed of the following:

(A) $203 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006;

(B) $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051; and

(C) $10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(D) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacist license shall be $225 and is composed of the following:

(1) $203 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006;

(2) $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(3) $10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(4) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (b) of this section.

(e) Duplicate or Amended Certificates.

(1) The fee for issuance of an amended pharmacist's license renewal certificate shall be $20.

(2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be $35.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 297. PHARMACY TECHNICIANS

22 TAC §§297.1 - 297.9

The Texas State Board of Pharmacy adopts new §§297.1, 297.5, 297.7, and 297.9, concerning Purpose, Pharmacy Technicians Trainees, Pharmacy Technician Training, and Notifications without changes to the proposed text published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8543). The Board adopts new §§297.2 - 297.4, 297.6, and 297.8, concerning Definitions, Registration Requirements, Fees, Exemptions from Pharmacy Technician Certification Requirements, and Continuing Education Requirements with changes to the proposed text based on staff recommendations for clarification.

The new sections establish a system for the registration of pharmacy technicians.

Comments were received from the National Pharmacy Technician Association (NPTA), the Texas Pharmacy Association (TPA), the Texas Society of Health System Pharmacists (TSHP), and one individual.

Section 297.4, Fees--NPTA commented that the fees are comparable and appropriate. The Board agrees with this comment.

TPA commented that the fees charged may be a hardship for certain pharmacy technicians. TPA also suggested giving technicians additional options for paying registration fees. In addition, one individual stated that $50 is an appropriate fee for pharmacy technicians. The Board understands this concern expressed by the commentors but would point out that the processing fee charged by the Board is $48. The other fees assessed for registration (Texas Online and Office of Patient Protection) are mandated by other laws.

Section 297.8, Continuing Education Requirements--NPTA suggested that continuing education be provided only by Board approved providers. The Board disagrees with this comments because, at this time, the accrediting body for pharmacy education does not accredit pharmacy technician programs.

Both TPA and one individual indicate that access to two hours of pharmacy law may be a problem. TSHP also expressed concern about the requirement for two hours of continuing education in pharmacy law. The Board agrees and has modified the rules to match the continuing education requirements for the certification requirements of the Pharmacy Technician Certification Board. The Board will also encourage providers to offer these types of programs.

TPA requested that continuing education (CE) hours be reported to the Board. The Board agrees and the rules, as adopted, will require a technician to report completion of the required hours on renewal of registration.

The new sections are adopted under §§552.002, 554.002, 554.006, 554.051, 554.053, and Chapter 568, Occupations Code, and §2054.053, Government Code, and §101.307,

Occupations Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.002 as authorizing the agency to regulate the training, qualifications, and employment of a pharmacist-intern and pharmacy technician. The Board interprets §554.006 as authorizing the agency to establish reasonable fees sufficient to cover the costs of administering the Texas Pharmacy Act. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the agency to establish rules for the use and the duties of a pharmacy technician in a pharmacy licensed by the board. The Board interprets Chapter 568 as authorizing the agency to establish a system for the registration of pharmacy technicians including the issuance and renewal of registrations, the establishment of grounds for discipline of pharmacy technicians, and the establishment of reasonable fees sufficient to cover the cost of establishing a system to register pharmacy technicians. The Board interprets §2054.053 as authorizing the agency to add a surcharge to fund Texas On-line. The Board interprets §101.307 as authorizing the agency to add a surcharge to fund the Office of Patient Protection.

The statutes affected by the sectoins: Chapters 551 - 566 and 56 8- 569, Texas Occupations Code.

§297.2. Definitions.

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

(1) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code, as amended.

(2) Board--The Texas State Board of Pharmacy.

(3) Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.

(4) Pharmacy technician trainee--A person who is not registered as a pharmacy technician by the board and is either;

(A) participating in a pharmacy's technician training program; or

(B) currently enrolled in a:

(i) pharmacy technician training program accredited by the American Society of Health-System Pharmacists; or

(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.

(5) Registered Pharmacy Technician--A pharmacy technician who is registered with the board.

§297.3. Registration Requirements.

(a) General. Effective June 1, 2004, all persons employed as pharmacy technicians must be either registered pharmacy technicians or pharmacy technician trainees as follows.

(1) All persons who have passed the required pharmacy technician certification examination must be registered with the board under the provisions of this section.

(2) All persons who have not taken and passed the required pharmacy certification examination shall be designated pharmacy technician trainees under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).

(b) Initial registration.

(1) Each applicant for registration shall:

(A) have a high school or equivalent diploma, e.g., GED, or be currently enrolled in a program which awards such a diploma; and

(B) either have:

(i) taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; or

(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and

(C) complete the Texas application for registration. Any fraudulent statement made in the application is grounds for denial of the application; if such application is granted, any fraudulent statement is grounds for suspension or revocation of any registration granted by the board; and

(D) pay the registration fee specified in §297.4 of this title (relating to Fees).

(2) New pharmacy technician registrations shall be assigned an expiration date and the fee shall be prorated based on the assigned expiration date.

(3) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician and of his or her pharmacy technician registration number.

(c) Renewal.

(1) All applicants for renewal shall:

(A) complete the Texas application for registration. Any fraudulent statement made in the application is ground for suspension or revocation of any registration renewed by the board;

(B) pay the renewal fee specified in §297.4 of this title; and

(C) complete 20 contact hours of continuing education per renewal period in as specified in §297.8 of this title (relating to Continuing Education).

(2) A pharmacy technician registration expires on the last day of the assigned expiration month.

(3) If the completed application and renewal fee is not received in the board's office on or before the last day of the assigned expiration month, the person's pharmacy technician registration shall expire. A person shall not practice as a pharmacy technician with an expired registration.

(4) If a pharmacy technician registration has expired, the person may renew the registration by paying to the board the renewal fee and a delinquent fee that is equal to the renewal fee as specified in §297.4 of this title.

(5) If a pharmacy technician registration has expired for more than one year, the pharmacy technician may not renew the registration and must complete the requirements for initial registration as specified in subsection (b) of this section.

(6) After review, the board may determine that paragraph (5) of this subsection does not apply if the registrant is the subject of a pending investigation or disciplinary action.

§297.4. Fees.

(a) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(b) Initial Registration Fee.

(1) The fee for initial registration shall be $56 for a two year registration and is composed of the following fees:

(A) $48 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) a $3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(2) The initial registration fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be $53 and is composed of the following:

(1) $48 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(2) a $3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(3) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician registration renewal certificate shall be $20.

§297.6. Pharmacy Technician Training.

(a) Pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual. Such training:

(1) shall meet the requirements of subsections (e) or (f) of this section; and

(2) may not be transferred to another pharmacy unless:

(A) the pharmacies are under common ownership and control and have a common training program; and

(B) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(b) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(c) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(1) name of the person receiving the training;

(2) date(s) of the training;

(3) general description of the topics covered;

(4) a statement that certifies that the pharmacy technician is competent to perform the duties assigned;

(5) name of the person supervising the training; and

(6) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(d) A person who has previously completed the training program outlined in subsection (e) of this section, a licensed nurse, or physician assistant is not required to complete the entire training program outlined in subsection (e) of this section if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(e) Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(1) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(A) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(B) specify duties which may and may not be performed by pharmacy technicians; and

(2) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(A) Orientation;

(B) Job descriptions;

(C) Communication techniques;

(D) Laws and rules;

(E) Security and safety;

(F) Prescription drugs:

(i) Basic pharmaceutical nomenclature;

(ii) Dosage forms;

(G) Drug orders:

(i) Prescribers;

(ii) Directions for use;

(iii) Commonly-used abbreviations and symbols;

(iv) Number of dosage units;

(v) Strengths and systems of measurement;

(vi) Routes of administration;

(vii) Frequency of administration; and

(viii) Interpreting directions for use;

(H) Drug order preparation:

(i) Creating or updating patient medication records;

(ii) Entering drug order information into the computer or typing the label in a manual system;

(iii) Selecting the correct stock bottle;

(iv) Accurately counting or pouring the appropriate quantity of drug product;

(v) Selecting the proper container;

(vi) Affixing the prescription label;

(vii) Affixing auxiliary labels, if indicated; and

(viii) Preparing the finished product for inspection and final check by pharmacists;

(I) Other functions;

(J) Drug product prepackaging; and

(K) Written policy and guidelines for use of and supervision of pharmacy technicians.

(f) Pharmacy technicians compounding non-sterile pharmaceuticals shall meet the training and education requirements specified in the rules for the class of pharmacy in which the pharmacy technician is working.

(g) Pharmacy technicians compounding sterile pharmaceuticals shall meet the training and education requirements specified in the rules for class of pharmacy in which the pharmacy technician is working.

§297.8. Continuing Education Requirements.

(a) All pharmacy technicians shall be exempt from the continuing education requirements during their initial registration period.

(b) All pharmacy technicians must complete 20 contact hours of approved continuing education per renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 10 of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).

(c) One hour specified in subsection (a) of this section shall be related to pharmacy law.

(d) Pharmacy technicians are required to maintain records of completion of continuing education for three years from the date of reporting the hours on a renewal application. The records must contain at least the following information:

(1) name of participant;

(2) title and date of program;

(3) program sponsor or provider (the organization);

(4) number of hours awarded; and

(5) dated signature of sponsor representative.

(e) The board shall audit the records of pharmacy technicians for verification of reported continuing education credit. The following is applicable for such audits.

(1) Upon written request, a pharmacy technician shall provide to the board copies of the record required to be maintained in subsection (d) of this section or certificates of completion for all continuing education contact hours reported during a specified registration period. Failure to provide all requested records by the specified deadline constitutes prima facie evidence of a violation of this rule.

(2) Credit for continuing education contact hours shall only be allowed for programs for which the pharmacy technician submits copies of records reflecting that the hours were completed during the specified registration period(s). Any other reported hours shall be disallowed.

(3) A pharmacy technician shall not submit false or fraudulent records to the board.

(f) Pharmacy technicians who are certified by the Pharmacy Technician Certification Board and maintain this certification shall be considered as having met the continuing education requirements of this section and shall not be subject to audit 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 December 3, 2003.

TRD-200308246
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: December 23, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 305-8028

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PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.3

The Structural Pest Control Board adopts an amendment to §593.3, concerning insurance requirements without changes to the proposed text as published in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6667).

Justification for the rule is to follow the mandate of HB 1329 passed in the 78th Regular Session of the Legislature. HB 1329 modified Chapter 1951.312 of the Occupations Code and permits wood treaters to obtain insurance without the care, custody and control requirement.

The rule will function to allow wood treaters to obtain insurance for wood treated on commercial property owned by the applicant.

Only one comment was received which spoke in favor of the proposed rule.

The group making the comment for the rule was from industry.

The Board agrees with the comment of the industry member.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, Tex.Rev.Civ.Stat.Ann., which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 December 4, 2003.

TRD-200308293
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: December 24, 2003
Proposal publication date: August 22, 2003
For further information, please call: (512) 305-8270

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 3. MEMORANDUMS OF UNDERSTANDING WITH OTHER STATE AGENCIES

25 TAC §3.41

The Texas Department of Health (department) adopts new §3.41, concerning the adoption by reference of the memorandum of understanding (MOU) concerning interagency coordination of special education services to students with disabilities in residential facilities. The section is adopted without changes to the proposed text as published in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6671), and will not be republished.

Texas Education Code, §29.012, requires that the Texas Education Agency (TEA), the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort to develop and, by rule, adopt a memorandum of understanding to establish the respective responsibilities of the agencies for the provision of a free appropriate public education for children with disabilities who reside in facilities operated or regulated by the agencies. The MOU is contained in a rule adopted by the TEA at 19 Texas Administrative Code, §89.1115, effective August 6, 2002.

The MOU establishes the respective responsibilities of school districts and of residential facilities for the provision of a free appropriate public education, as required by the Individuals with Disabilities Education Act, and addresses the respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, students with disabilities receiving special education services who live in residential facilities. The MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies. In the event that federal and/or state laws are amended, federally interpreted, or judicially interpreted so as to render continued implementation of the MOU unreasonable or impossible, the participating agencies may agree to amend or terminate the MOU.

No comments were received concerning the proposal during the comment period.

The new section is adopted under Texas Education Code, §29.012, which authorizes the Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, the Department of Protective and Regulatory Services, the Interagency Council on Early Childhood Intervention, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, and the Texas Youth Commission by a cooperative effort to develop and by rule adopt a memorandum of understanding; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308385
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: December 25, 2003
Proposal publication date: August 22, 2003
For further information, please call: (512) 458-7236

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CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §38.10

The Texas Department of Health (department) adopts an amendment to §38.10, concerning the payment of claims in the Children with Special Health Care Needs (CSHCN) Services Program. Section 38.10 is adopted with changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8548).

Because the claims payment contractor and many of the providers are the same for both the Medicaid and the CSHCN programs, and for simplification of claim processing procedures, claims filing and correction or resubmission deadlines for the CSHCN Program historically have been the same as those for the Medicaid program. The CSHCN Program and the Medicaid program are transitioning from an insured arrangement to a fiscal agent arrangement for the payment of claims. The amendments support the fiscal agent arrangement.

Specifically, the amendment to §38.10(1) changes the claim filing deadline from 90 to 95 days; adds language extending any filing deadline to the next business day when the deadline falls on a weekend or holiday; authorizes the CSHCN Division Director or his/her designee(s) rather than the Commissioner of Health to waive the filing deadlines; and authorizes payment of a claim "within 24 months of the date of service" rather than before "the end of the second state fiscal year following the state fiscal year in which the service was provided." The amendment to §38.10(1)(B)(ii) changes the correction and resubmission deadline from 180 to 95 days. The amendment to §38.10(2) changes the filing deadline for claims involving health insurance coverage, CHIP, or Medicaid from 90 to 95 days following the date of disposition by the third party resource. The amendment to §38.10(3)

lists the circumstances under which the CSHCN Division Director or his/her designee will consider requests for exceptions to the 95-day claim filing deadline. The amendment to §38.10(4) describes the information providers must submit to support requests for exceptions to the 95-day claim filing deadline. The amendment to §38.10(5) lists the circumstances under which the CSHCN Division Director or his/her designee will consider requests for exceptions to the 95-day correction and resubmission deadline. Paragraphs in §38.10(3) - 38.10(5) have been renumbered, but were otherwise unchanged.

The department is making the following minor changes to clarify the intent and improve the accuracy of the section.

Change: Concerning §38.10(1), the paragraph has been amended to correct grammar and rule citations. The phrases, "within 95 days from the date the client's eligibility is added to program automation systems," and "whichever is later" have been added to the rule about claim receipt deadlines to add a deadline and to clarify that the program will use the later of several possible deadlines. In addition, the order of the last two sentences in the paragraph has been reversed, and the phrase, "the deadlines provided in this paragraph," has been changed to, "this time frame," to state more accurately when the 24-month deadline applies.

Change: Concerning §38.10(3), the paragraph has been reworded for clarification and ease of understanding and to change the singular "deadline" to the plural "deadlines."

Change: Concerning §38.10(3)(B)(ii), punctuation has been corrected.

Change: Concerning §38.10(3)(C), the subparagraph has been amended to add two phrases, "constraint imposed by the program" and "and/or claims processing." These phrases expand upon the types of program delays or errors that may be reasons for exceptions to the 95-day claim receipt deadlines.

Change: Concerning §38.10(3)(D), the phrase "other documented and verifiable problems with claims submission" has been added as a reason for exceptions to the 95-day claim receipt deadlines.

Change: Concerning subparagraph §38.10(3)(E), the subparagraph has been deleted, because the exception it described now is incorporated by the addition of the new language in subparagraph §38.10(3)(C).

Change: Concerning §38.10(4), punctuation and a rule citation have been corrected, and text was added to clarify that providers must submit all exception requests to the program within 18 months from the date of service.

Change: Concerning §38.10(4)(A)(iii), punctuation has been corrected.

Change: Concerning §38.10(4)(C), the subparagraph has been amended by changing "the written document" to "written documentation" to allow for multiple documents, and the phrase "of the delay, error, and/or constraint" has been added to the end of the subparagraph to describe more completely the type of information contained in the documentation.

Change: Concerning §§38.10(4)(D)(i), 38.10(4)(D)(ii), and 38.10(4)(D)(iii) have been amended to simplify the exception request described and to include other claim submission problems not individually or specifically defined by the rules.

Change: Concerning §38.10(4)(E), the subparagraph has been deleted, because the exception circumstances it described now are incorporated in the new and more general language found in subparagraph §38.10(4)(C).

Change: Concerning §38.10(5), the paragraph has been amended to describe other exceptions to claim receipt deadlines due to delays caused by entities other than the provider or the program. Specifically, the heading has been changed to say, "Other exceptions to claims receipt deadlines," instead of "Exceptions to the 95-day correction and resubmission deadline." Subparagraph 38.10(5)(C)(i) has been renumbered as paragraph 38.10(5)(D) and reworded for comprehensiveness and clarity. Subparagraph 38.10(5)(C)(ii) and the text of proposed paragraph 38.10(5)(D) have been deleted, because the amended language at the new paragraph 38.10(5)(D) incorporates their meaning.

Change: Concerning §38.10(6), punctuation has been corrected.

No public comments were received during the comment period for the rule.

The amendment is adopted under the Health and Safety Code, §35.009, which authorizes the Texas Board of Health (board) to adopt reasonable procedures and standards for the determination of fees; and §12.001, which provides the board with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

§38.10. Payment of Services.

The CSHCN program reimburses participating providers for covered services for CSHCN clients. Payment may be made only after the delivery of the service, with the exception of meals, transportation, and lodging and insurance premium payments. Excluding allowable insurance or health maintenance organization co-payments, the client or client's family must not be billed for the service or be required to make a preadmission or pretreatment payment or deposit. Providers must agree to accept established fees as payment in full. The program may negotiate reimbursement alternatives to reduce costs through requests for proposals, contract purchases, and/or incentive programs.

(1) Payment or denial of claims. All payments made on behalf of a client will be for claims received by the CSHCN program or its payment contractor within 95 days of the date of service, within 95 days from the date of discharge from inpatient hospital and inpatient rehabilitation facilities, within 95 days from the date the client's eligibility is added to program automation systems, or within the submission deadlines listed in paragraphs (1)(B)(ii) and (2) of this section, whichever is later. If the 95th day for receipt of a claim falls on a weekend or holiday, the deadline shall be extended to the next business day following the weekend or holiday. Claims will either be paid or denied within 30 days. The CSHCN Division Director or his/her designee(s) may waive the filing deadlines according to the conditions and circumstances specified in paragraphs (3)-(5) of this section. A claim must be processed and paid within 24 months of the date of service. Claims received by the CSHCN program or its payment contractor after this time frame will not be considered for payment by the CSHCN program.

(A) Claims will be paid if submitted on the CSHCN program-approved claim form (including electronic claims submission systems), and if the required documentation is received with the claim.

(B) Denied claims are claims which are incomplete, submitted on the wrong form, lack necessary documentation, contain

inaccurate information, fail to meet the filing deadline, and/or are for ineligible recipients, services, or providers.

(i) Corrected claims must be submitted on the CSHCN program-approved claim form along with required documentation within the filing deadline established in clause (ii) of this subparagraph.

(ii) Denied claims may be corrected and resubmitted for reconsideration if received within 95 days of denial. If the results of the reconsideration process are unsatisfactory, denied claims may be appealed according to §38.13 of this title (relating to Right of Appeal).

(2) Claims involving health insurance coverage, CHIP or Medicaid. Any health insurance that provides coverage to the client must be utilized before the CSHCN program can pay for services. Providers must file a claim with health insurance, CHIP, or Medicaid prior to submitting any claim to the CSHCN program for payment. Claims with health insurance must be received by the CSHCN program within 95 days of the date of disposition by the other third party resource, and no later than 365 days from the date of service. The CSHCN program will consider claims received for the first time after the 365-day deadline, if a third party resource recoups a payment made in error; however, the claim must be received by the CSHCN program within 95 days from the third party's disposition.

(A) Health insurance denial or nonresponse. If a claim is denied by health insurance, the provider may bill the CSHCN program, if the letter of denial also is submitted with the claim form. If the denial letter is not available, the provider must include on the claim form the date the claim was filed with the insurance company, the reason for the denial, name and telephone number of the insurance company, the policy number, the name of the policy holder and identification numbers for each policy covering the client, the name of the insurance company employee who provided the information on the denial of benefits, and the date of the contact. If more than 110 days have elapsed from the date a claim was filed with the third party resource and no response has been received, the claim may be submitted to the CSHCN program for consideration of payment. Claims must be submitted with documentation indicating the third party resource has not responded.

(B) Explanation of benefits (EOB). The health insurance EOB must accompany any claim sent to the CSHCN program for payment, if available. If the EOB is unavailable, the provider must include on the claim form the name and telephone number of the insurance company, the amount paid, the policy number, and name of the insured for each policy covering the client.

(C) Late filing. Claims denied by health insurance on the basis of late filing will not be considered for payment by the CSHCN program.

(D) Deductibles and coinsurance. If the client has other third party coverage, the CSHCN program may pay a deductible or coinsurance for the client as long as the total amount paid to the provider does not exceed the maximum allowed for the covered service, and conforms with current CSHCN program policies regarding third party resources, deductible, and coinsurance.

(3) Exceptions to the 95-day claim receipt deadlines. The CSHCN Division Director or his/her designee(s) will consider a provider's request for an exception to the 95-day claim receipt deadlines provided in paragraphs (1) and (2) of this section, if the delay in claim receipt is due to one of the following reasons:

(A) damage to or destruction of the provider's business office or records by a catastrophic event or natural disaster, including but not limited to fire, flood, or earthquake, that substantially interferes with normal business operations of the provider;

(B) damage to or destruction of the provider's business office or records caused by the intentional acts of an employee or agent of the provider, only if:

(i) the employment or agency relationship has been terminated; and

(ii) the provider has filed criminal charges against the former employee or agent;

(C) delay or error or constraint imposed by the program in the eligibility determination of a recipient and/or in claims processing, or delay due to erroneous written information from the program or its designee, or another state agency; or

(D) delay due to problems with the provider's electronic claim system or other documented and verifiable problems with claims submission.

(4) Exception requests. Providers requesting an exception under paragraph (3)(A)-(D) of this section must submit an affidavit or statement from a person with personal knowledge of the facts detailing the exception being requested; the cause for the delay; verification that the delay was not caused by neglect, indifference, or lack of diligence of the provider or the provider's employee or agent; and any additional information requested by the program. All claims for which the provider requests an exception must accompany the request. The program will consider only the claim(s) attached to the request, and the exception request must be received by the program within 18 months from the date of service.

(A) For exception requests under paragraph (3)(A) of this section, the provider must submit:

(i) independent evidence of insurable loss;

(ii) medical, accident, or death records; or

(iii) a police or fire department report substantiating the damage or destruction.

(B) For exception requests under paragraph (3)(B) of this section, the provider must submit a police or fire report substantiating the damage or destruction caused by the former employee or agent's criminal activity.

(C) For exception requests under paragraph (3)(C) of this section, the provider must submit written documentation from the program, its designee, or another state agency containing the erroneous information or explanation of the delay, error, and/or constraint.

(D) For exception requests under paragraph (3)(D) of this section, the provider must submit the following:

(i) a written repair statement or invoice; a computer or modem generated error report indicating attempts to transmit the data failed for reasons outside the control of the provider; or an explanation for the system implementation or other claim submission problems;

(ii) a detailed, written statement concerning the relationship of the computer problem to delayed claims submission; and

(iii) the reason alternative billing procedures were not initiated after the problem(s) became known.

(5) Other exceptions to claims receipt deadlines. The CSHCN Division Director or his/her designee(s) will consider a provider's request for an exception to claims receipt deadlines due

to delays caused by entities other than the provider and the program under the following circumstances:

(A) all claims that are to be considered for the same exception must accompany the request;

(B) only the claim(s) that are attached to the request will be considered;

(C) the exception request has been received by the program within 18 months from the date of service; and

(D) the exception request includes an affidavit or statement from a representative of an original payer, a third party payer, and/or a person who has personal knowledge of the facts, stating the exception being requested, documenting the cause for the delay, and providing verification that the delay was caused by another entity and not the neglect, indifference, or lack of diligence of the provider or the provider's employee(s) or agent(s).

(6) CSHCN program fee schedules. The CSHCN program or its designee shall reimburse claims for covered medical, dental, and other services according to the following fee schedules:

(A) meals, lodging, and transportation:

(i) meals--up to the amount specified in the current State of Texas Travel Allowance Guide as per diem meal expenses;

(ii) lodging:

(I) hotel--the amount as contracted with the Texas Medicaid Medical Transportation Program (MTP), not to exceed the amount specified in the current State of Texas Travel Allowance Guide as per diem lodging expenses plus all applicable hotel occupancy taxes; and

(II) Ronald McDonald House--the amount contracted with the MTP; and

(iii) transportation:

(I) mileage--the distance and amount per mile as specified in the current State of Texas Travel Allowance Guide;

(II) by contract--the amount as negotiated by the MTP with contractors such as intercity buses, vans, cabs, or urban mass transit authorities;

(III) air fare--the ticket price reflecting the state discount if ordered by MTP, or the billed amount, if MTP had no opportunity to coordinate transportation in an emergency; and

(IV) cab fare--the billed amount, if other transportation is unavailable, or the MTP is unable to coordinate transportation;

(B) administrative fee to social service organizations--the percentage of the charge for meals, lodging, and transportation negotiated by the MTP with these entities;

(C) ambulance service--the lower of the billed amount or the maximum charge allowed by the Texas Medicaid Program;

(D) transportation of remains:

(i) first call--$75;

(ii) embalming--$100;

(iii) container--$75;

(iv) mileage billed by funeral home--$1.00 per mile; and

(v) air freight--the billed amount;

(E) nutritional products--the lower of the billed amount or the Average Wholesale Price (AWP) per unit according to the prices in the current edition of the Drug Topics Red Book, published by Medical Economics Company, Inc., Montvale, New Jersey 07645-1742, on file with the CSHCN program. For products not listed in the current edition of the Drug Topics Red Book, reimbursement shall be based on the same methodology using the AWP supplied by the manufacturer of the product;

(F) nutritional services--the lower of the billed amount or the maximum charge allowed by the Texas Medicaid Program;

(G) out-patient medications:

(i) medications covered by Medicaid when billed by pharmacies--the same drug costs and dispensing fees allowed by the Texas Medicaid Vendor Drug Program;

(ii) medications not covered by Medicaid when billed by pharmacies--the lower of the billed amount or the drug cost available through the database used by the Texas Medicaid Vendor Drug Program plus the same dispensing fees allowed by the Texas Medicaid Vendor Drug Program;

(iii) medications covered by Medicaid when billed by hospitals--(the lower of the billed amount or the drug cost available through the database used by the Texas Medicaid Vendor Drug Program plus $2.28) / 0.970; and

(iv) hemophilia blood factor products--the lower of the billed price or the United States Public Health Service (USPHS) price in effect on the date of service plus a dispensing fee of $.04 per unit of factor;

(H) expendable medical supplies-the lower of the billed amount or the amount allowable by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if available, or by the Texas Medicaid Program;

(I) durable medical equipment:

(i) non-customized--the lower of the billed amount or the amount allowable by the CMS, if available, or the Texas Medicaid Program;

(ii) customized:

(I) customized, non-powered equipment--the lower of the billed amount or the manufacturer's suggested retail price (MSRP) less 18%;

(II) power wheelchairs--the lower of the billed amount or the MSRP less 15%; and

(III) other--when no MSRP has been published, the lower of the billed amount or the dealer's cost plus 25%; and

(IV) delayed delivery penalty--a claim submitted for customized durable medical equipment that was delivered to the client more than 75 days after the authorization date shall be reduced by 10%;

(iii) orthotics and prosthetics--the lower of the billed amount or the amount allowed by the CMS, if available, or the Texas Medicaid Program;

(J) total parenteral nutrition/hyperalimentation (including equipment, supplies and related services)--the lower of the billed amount or the maximum amount allowed by the Texas Medicaid Program;

(K) home health nursing services (provided only through CSHCN program participating home and community support

service agencies)--reimbursement for a maximum of 200 hours per client per year, with an additional 200 hours per client per year available, if justification of need and cost effectiveness are documented;

(i) services provided by a registered nurse--the lower of the billed amount or $36 per hour;

(ii) services provided by a licensed vocational nurse--the lower of the billed amount or $28 per hour; and

(iii) services provided by a home health aide or home health medication aide (including those legally delegated by a supervising registered nurse)--the lower of the billed amount or $12 per hour;

(L) outpatient physical therapy, occupational therapy, speech-language pathology, and respiratory therapy:

(i) services provided by therapists other than physicians--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; and

(ii) services provided by physicians--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(M) audiological testing and amplification devices:

(i) for clients under age 21--payment is made through the Program for Amplification for Children of Texas (PACT); and

(ii) for clients ineligible for PACT and those age 21 and over--the lower of the billed amount or the amount allowed by PACT;

(N) insurance premium payment assistance program--the lowest available premium for a plan which covers the client, if cost-effective;

(O) hospital (inpatient and outpatient care) and inpatient psychiatric care--reimbursed at 80% of the rate authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which is equivalent to the hospital's Medicaid interim rate;

(P) inpatient rehabilitation care--reimbursed at 80% of TEFRA rates, for a maximum of 90 inpatient days per calendar year;

(Q) hospice services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(R) care for renal disease--

(i) renal dialysis services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program; and/or

(ii) renal transplant services--renal transplants may be covered if the projected cost for the transplant and follow-up care is less than that of continuing renal dialysis. Negotiated coverage and cost are based on prior authorization documentation of cost effectiveness;

(S) freestanding ambulatory surgical centers--the lower of the billed amount or the amount allowed by the Texas Medicaid Program based upon Ambulatory Surgical Code Groupings approved by the CMS and the Texas Department of Health;

(T) hospital ambulatory surgical centers--the lower of the amount billed or the amount allowed by the Texas Medicaid Program based upon Ambulatory Surgical Code Groupings approved by the CMS and the Texas Department of Health;

(U) covered professional services by physicians, podiatrists, advanced practice nurses, psychologists, licensed professional counselors, or other providers that are not otherwise specified--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(V) independent laboratory--the lowest of the following:

(i) the amount allowed by the Texas Medicaid Program state fee schedule;

(ii) the amount allowed by the CMS national fee schedule; or

(iii) the billed amount;

(W) radiology services--the lower of the billed amount or the amount allowed by the Texas Medicaid program;

(X) dental services--the lower of the billed amount or the amount allowed by the Texas Medicaid program; and

(Y) vision services--the lower of the billed amount or the amount allowed by the Texas Medicaid Program;

(7) Required documentation. The CSHCN program may require documentation of the delivery of goods and services from the provider.

(8) Overpayments.

(A) Overpayments are payments made by the CSHCN program due to the following:

(i) duplicate billings;

(ii) services paid by public or private insurance or other resources;

(iii) payments made for services not delivered;

(iv) services disallowed by the CSHCN program; and

(v) subrogation.

(B) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, offset against current claims due to the provider for services to other clients. The department also shall require reimbursement of overpayments from any person or persons who have a legal obligation to support the client and have received payments from a payer of other benefits. Providers, clients, and person(s) responsible for clients may appeal proposed recoupment of overpayments by the department according to §38.13 of this title (relating to Right of Appeal).

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 December 5, 2003.

TRD-200308387
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: January 1, 2004
Proposal publication date: October 3, 2003
For further information, please call: (512) 458-7236

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CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER E. CHILDREN'S OUTREACH HEART PROGRAM

25 TAC §§61.71 - 61.83

The Texas Department of Health (department) adopts new §§61.71-61.83, concerning the Children's Outreach Heart Program. Sections 61.72-61.74, 61.76, and 61.80-61.81 are adopted with changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8551). Sections 61.71, 61.75, 61.77-61.79, and 61.82-61.83 are adopted without changes, and the sections will not be republished.

Health and Safety Code, §39.002, authorizes the department to establish a children's outreach heart program to provide prediagnostic cardiac screening and follow-up evaluation services, as well as training to local physicians and public health nurses in screening and diagnostic procedures for heart diseases and defects. Health and Safety Code, §39.003, directs the Texas Board of Health (board) to adopt rules it considers necessary to define the scope of this program and the medical and financial standards for eligibility. Specifically, the sections address purpose, definitions, eligibility for client services, contractor staff, clinic facilities and equipment, services, records management, patient rights, program income and patient co-payment, tracking/follow-up, coordination of community services, evaluation, and funding of children's outreach heart program contractor.

The department is making the following minor changes to clarify the intent or improve the accuracy of the sections.

Change: Concerning §§61.72(1)(C), 61.74(2), 61.80(a)(2), 61.80(c), and 61.81(c), references to "care/service plan," "treatment plan," or "plan of care" have been changed to "individualized care/service plan" for consistency.

Change: Concerning §61.72(3), the phrase "An individual or entity" has been changed to "One or more individuals or entities" to clarify the department's authority to select more than one contractor to deliver program services.

Change: Concerning §61.73, client eligibility requirements have been restated for clarity.

Change: Concerning §61.76(d), the phrase "address the needs of Spanish/bilingual" clients has been amended to clarify that the department requires application of this section for any clients unable to communicate effectively in English.

No public comments were received on the proposal during the comment period.

The new sections are adopted under the Health and Safety Code, §39.003, which directs the board to adopt rules defining the scope of the Children's Heart Outreach Program and the medical and financial standards for eligibility; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

§61.72. Definitions.

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

(1) Cardiac outreach clinic--A primary or secondary level health care facility staffed by local and secondary or tertiary level outreach personnel and equipped to perform the following functions:

(A) screening and assessment of children for cardiac disease;

(B) identification and referral of children with cardiac disease to the closest appropriate tertiary center for definitive diagnostic procedures and, if needed, surgery; and

(C) clinic management of children with heart disease to include development of an individualized care/service plan, tracking, and periodic follow-up and coordination with local case management services providers, if available.

(2) CHIP--The Children's Health Insurance Program administered by the Texas Health and Human Services Commission under 42 U.S.C. §1397aa et seq.

(3) Contractor--One or more individuals or entities selected by the department to provide Children's Outreach Heart Program services, including departments, agencies, boards, educational institutions, county governments, municipal governments, states, or the United States.

(4) Co-pay/co-payment--A cost-sharing arrangement in which a client pays a specified charge for a specified health care service, usually at the time the service is provided.

(5) CSHCN--The Children with Special Health Care Needs Services Program; Health and Safety Code, Chapter 35.

(6) Department--The Texas Department of Health.

(7) HIPAA--The Health Insurance Portability and Accountability Act of 1996; 42 U.S.C. §1320d-2 et seq.

(8) Physician--A person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(9) Program--The Children's Outreach Heart Program.

(10) Program income--All revenues received by a contractor as a result of providing services under this subchapter, including third party payments, such as Medicaid, CHIP, CSHCN, and private insurance; and patient co-payments.

§61.73. Eligibility for Client Services.

An applicant less than 21 years of age who may have heart disease or defects shall be eligible for program services if the applicant's family income is:

(1) at or below 200% of the Federal Poverty Income Limits (FPIL); or

(2) above 200% of FPIL, but the applicant is not eligible for public assistance with medical expenses. An applicant whose family income exceeds 200% of the FPIL may be required to pay a co-payment based on family income and size.

§61.74. Contractor Staff.

The contractor shall assure that clients have access to:

(1) a coordinator who communicates with clinic staff as frequently as necessary to process referrals, schedule appointments, coordinate the activities of the clinics, if more than one exists, and track clients if follow-up is necessary;

(2) an outreach physician who is a board-certified pediatric cardiologist responsible for supervising the clinic(s), coordinating the screening and assessment process, developing clients' individualized care/service plans, making appropriate recommendations for referral when necessary, sending follow-up letters to referral sources, and maintaining appropriate medical records for clients;

(3) a registered nurse with at least one year of clinical pediatric experience, preferably with pediatric cardiology experience, who shall be on site during clinic hours; and

(4) identification and referral to local case management services or the department's regional social work staff by a social worker licensed by the department, or a qualified clinic staff member.

§61.76. Services.

(a) Routine clinic services shall include a comprehensive history and physical exam, as well as laboratory studies, electrocardiograms, and chest x-rays as determined necessary by the physician. Echocardiography may be performed if the results are of acceptable quality for pediatric patients and reviewed and interpreted by the cardiologist responsible for the clinic.

(b) The outreach physician shall develop an individualized care plan for each client identified with heart disease who is referred by the clinic to a secondary or tertiary center.

(c) The clinic staff shall work as a team in conjunction with the client, family, the referral source, and the secondary or tertiary center to develop the plan. Clinic staff shall track clients if the plan of care requires follow-up. Clinic services shall be integrated into the overall service needs of each client through clinic staff cooperation and sharing of information with local case management services providers, if available.

(d) The clinic(s) shall ensure that translation and interpreter services are available to all clients who are unable to communicate effectively in English, and shall provide services in a culturally sensitive manner.

(e) The following clinical services shall not be approved or reimbursed by the program at cardiac outreach clinics:

(1) echocardiography for routine screening purposes;

(2) exercise testing;

(3) catheterization; and

(4) surgery.

§61.80. Tracking/follow-up.

(a) The clinic(s) shall utilize a tracking system to monitor each client's health status and use of health care services. The tracking system shall:

(1) schedule contacts with the client/family at regular intervals according to program guidelines/protocols, and coordinate with other services/opportunities as needed;

(2) monitor the status of the individualized care/service plan, including compliance and the need for revisions;

(3) monitor broken appointments and establish a system for rescheduling appointments;

(4) alert staff for follow-up concerning conditions identified as priorities for care;

(5) track referrals made to other providers/agencies; and

(6) follow-up with the client/family, as appropriate, to ensure that services were accessed.

(b) If a client moves out of the identified service area, clinic(s) shall attempt to maintain continuity of care by providing the client and family with information on available services in the area to which they are relocating, including case management.

(c) Clinic(s) shall evaluate the effectiveness of services provided on an ongoing basis and shall adjust the individualized care/service plan when needed to maximize the client's health.

§61.81. Coordination of Community Services.

(a) The contractor shall inform the local communities, including local physicians, community service groups, and the general public, of the clinic and its services within three months of a funding award.

(b) The contractor shall provide a report addressing the number of patients served, services provided, and diagnoses to the county/local medical society annually.

(c) Clinic physician(s) shall communicate with the client's local/primary physician, medical home, or referral source concerning the client's history, physical exam, and diagnosis and must involve the local physician in the development of the child's individualized care/service plan.

(d) The contractor shall encourage local physicians to participate in the clinic(s). The outreach clinic physician and clinic staff should provide continuing education in the areas of diagnosis, evaluation, and treatment of children with suspected and confirmed cardiovascular disease for local physicians and other community professionals involved with the clinic population.

(e) The clinic(s) shall coordinate services with other community activities in an effort to facilitate the public's access to the clinic(s) and other community services, and to prevent duplication of services.

(f) If local pediatric cardiology expertise becomes available which meets the needs expressed in the clinic proposal and is community-supported, the contractor shall phase out services in coordination with the local providers.

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 December 5, 2003.

TRD-200308386
Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: October 3, 2003
For further information, please call: (512) 458-7236

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CHAPTER 73. LABORATORIES

The Texas Department of Health (department) adopts the repeal of §73.22 and amendments to §§73.51, 73.54 and 73.55, concerning fees for laboratory services. Section 73.54 and §73.55 are adopted with changes to the proposed text as published in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6677). The repeal of §73.22 and the amendments to §73.51 are adopted without changes and will not be republished.

The amended sections include editorial changes to the existing rules; increases to the maximum cap on existing fees and new fees for clinical and environmental testing and other laboratory services such as calibration of thermometers. The repeal of §73.22, which is the fee schedule for certification and accreditation of environmental laboratories, is necessary because the Texas Commission for Environmental Quality now administers

this program. Section 73.51 contains editorial changes to correct misspelled chemical names and to expand some of the definitions. Section 73.54 and §73.55 contain the fee schedules for clinical, newborn screening, environmental testing, and other laboratory services. These sections include new fees and increased maximum caps on existing fees. Adoption of these rules allows the department to offer tests that were previously unavailable to submitters on a fee for service basis and to recover costs for laboratory services whenever possible without jeopardizing the public's health.

No public comments were received concerning the proposal during the comment period; however, the department made the following minor changes due to staff comments.

Change: Concerning §73.54(1)(C)(ix) and §73.55(2)(A)(i)(XVI), punctuation and grammar were corrected to improve the clarity of the sections.

25 TAC §73.22

The repeal is adopted under 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 the commissioner of health; §12.031 and §12.032, which allows the board to charge fees to a person who receives public health services from the Texas Department of Health; §12.034, which requires the board to establish collection procedures and §12.035, which required the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the Texas Department of Health public health service fee fund; and §12.0122, which allows the department to enter into a contract for laboratory services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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25 TAC §§73.51, 73.54, 73.55

The amendments are adopted under 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 the commissioner of health; §12.031 and §12.032, which allows the board to charge fees to a person who receives public health services from the Texas Department of Health (department); §12.034, which requires the board to establish collection procedures and §12.035, which required the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the Texas Department of Health public health service fee fund; and §12.0122, which allows the department to enter into a contract for laboratory services.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

Fees for clinical testing and newborn screening shall not exceed the following amounts.

(1) Human specimens.

(A) Bacteriology.

(i) Aerobic isolation, comprehensive--$119.

(ii) Anaerobic isolation, comprehensive--$94.

(iii) Bioterrorism:

(I) culture--$119; and

(II) smear--$19.

(iv) *Bordetella pertussis*:

(I) culture--$138; and

(II) molecular testing--$125.

(v) *C. botulinum* isolation--$94.

(vi) Diphtheria culture--$113.

(vii) Drug susceptibility testing:

(I) VRE (vancomycin resistant enterococcus)--$63;

(II) VRSA (vancomycin resistant *Staphylococcus aureus*)--$63;

(III) MRSA (methicillin resistant *Staphylococcus aureus*)--$63;

(IV) *Neisseria gonorrhoeae*--$63; and

(V) One drug susceptibility testing--$63.

(viii) Enteric pathogens--$88.

(ix) Magnetic bead enrichment for *E. coli, Enterohemorrhagic E. coli* (EHEC)--$50.

(x) Fatty acid analysis--$63.

(xi) Genetic probe:

(I) gonorrhea/chlamydia (GC/CT)--$31;

(II) amplified probe for gonorrhea--$31;

(III) amplified probe for chlamydia--$31; and

(IV) amplified probe for gonorrhea/chlamydia--$63.

(xii) Identification and typing:

(I) EHEC only--$128;

(II) *Haemophilus influenzae*--$119;

(III) *Neisseria meningitides*--$119;

(IV) noncomplex typing (*Vibrio, Brucella*, etc.)--$63;

(V) other complex typing--$130;

(VI) *Salmonella*--$119;

(VII) *Shigella*--$73;

(VIII) *Streptococcus*, Group A (GAS)--$88; and

(IX) Streptococcus, typing Groups B, C, D, G--$88.

(xiii) Molecular studies:

(I) pulsed-field gel electrophoresis (PFGE)--$125; and

(II) polymerase chain reaction (PCR)--$56.

(xiv) Mycolic acid studies--$31.

(xv) *Neisseria gonorrhoeae* culture--$56.

(xvi) Pure culture identification:

(I) aerobes--$56;

(II) anaerobes--$100;

(III) *Campylobacter*--$69; and

(IV) *Neisseria gonorrhoeae*--$69.

(xvii) *Streptococcus* screen--$25.

(xviii) Tissue:

(I) Lyme disease--$75;

(II) Rocky Mountain Spotted Fever (RMSF)--$75; and

(III) relapsing fever--$113.

(xix) Toxin studies:

(I) *Botulinum* toxin--$163;

(II) *Clostridium* toxin--$44;

(III) Shiga toxin--$94;

(IV) Toxic Shock Syndrome Toxin-1 (TSST)--$88; and

(V) *Vibrio cholera* toxin--$88.

(xx) *Vibrio* culture--$88.

(B) Clinical chemistry.

(i) Blood typing:

(I) ABO typing--$9.00;

(II) antibody screen (blood type)--$25;

(III) antigen typing (blood type)--$13;

(IV) antigen titering--$13; and

(V) Rh typing--$13.

(ii) Cholesterol:

(I) cholesterol and high density lipoprotein (HDL)--$9.00; and

(II) cholesterol only--$8.00.

(iii) Glucose:

(I) glucose, postprandial, 0 and 2 hours--$14;

(II) glucose, random, fasting--$7.00;

(III) glucose tolerance test, 1 hour--$14;

(IV) glucose tolerance test, 2 hour--$21; and

(V) glucose tolerance test, 3 hour--$28.

(iv) Hemoglobin, total--$6.00.

(v) Hemoglobinopathy--$15.

(vi) Lead screen--$11.

(vii) Lipid profile, includes cholesterol; triglycerides; HDL; and low-density lipoprotein (LDL)--$28.

(viii) Phenylalanine--$38.

(ix) Phenylalanine/Tyrosine--$38.

(x) Tyrosine--$38.

(xi) Thyroid profile includes total thyroxine (T4); free T4; and thyroid stimulating hormone (TSH)--$63.

(xii) TSH--$31.

(xiii) Free T4--$19.

(xiv) Total T4--$16.

(C) DNA (Deoxyribonucleic acid) analysis:

(i) Beta-Globin 6 mutation panel (HbS, HbC, Hb E, HbD, Beta-Thalassemias-29 and -88)--$150;

(ii) Beta-Globin 5 mutation panel (HbS, HbC, Hb E, Beta-Thalassemias-29 and -88)--$138;

(iii) Hemoglobin S and C mutation Test--$88;

(iv) Hemoglobin E mutation test--$88;

(v) Beta-Thalassemia-29 and -88 mutation test--$100;

(vi) Beta-Thalassemia-29 mutation test--$63;

(vii) Beta-Thalassemia-88 mutation test--$63;

(viii) Hemoglobin D mutation test--$63;

(ix) Beta-Globin sequencing (from 105 of cap site to IVS-1-60)--$188;

(x) Beta-Globin sequencing (from 105 of cap site to IVS-1-60) added to another test--$100;

(xi) Congenital adrenal hyperplasia--$538;

(xii) Congenital adrenal hyperplasia, DNA carrier analysis of family member--$206;

(xiii) Galactosemia--$506;

(xiv) Galactosemia, DNA carrier analysis of family member--$206;

(xv) Phenylketonuria--$600; and

(xvi) Phenylketonuria, DNA carrier analysis of family member--$206.

(D) Genetics:

(i) alpha fetoprotein (AFP)--$31;

(ii) ß-human chorionic gonadotropin (ß-HCG)--$16;

(iii) unconjugated estriol-3 (UE3)--$22; and

(iv) triple screen, includes ß-HCG, UE3, and AFP--$63.

(E) Mycobacteriology/mycology.

(i) Acid fast bacillus (AFB):

(I) amplification only--$69;

(II) identification, referred isolates--$31;

(III) primary drug panel--$56;

(IV) probe only--$44;

(V) Pyrazinamide (PZA) only--$19;

(VI) secondary drug panel--$163;

(VII) smear and culture--$56;

(VIII) smear only--$19; and

(IX) smear, culture and fungal culture--$131.

(ii) Direct High Performance Liquid Chromatography (HPLC), only--$31.

(iii) Fungus:

(I) culture--$75;

(II) identification--$69; and

(III) probe only--$44.

(iv) *M. kansasi* susceptibility, Rifampin--$13.

(F) Newborn screening test kit, including screening panel--$38. (Fees are based on the newborn screening test kits described in §73.21 of this title (relating to Newborn Screening), which includes the costs of the screening panel.)

(G) Parasitology.

(i) Blood/tissue parasites--$156.

(ii) *Giardia/Cryptosporidium* antigen screen--$94.

(iii) Intestinal parasites--$119.

(iv) Parasite culture--$169.

(v) Pinworm swab--$31.

(vi) Worm identification--$44.

(H) Serology.

(i) Arbovirus:

(I) immunoglobulin G (IgG)--$63;

(II) immunoglobulin M (IgM)--$88; and

(III) panel--$150.

(ii) *Aspergillus*--$31.

(iii) *Brucella*--$16.

(iv) Cat scratch fever (*Bartonella*)--$50.

(v) Cytomegalovirus (CMV):

(I) IgG--$38;

(II) IgM--$44; and

(III) panel--$44.

(vi) *Erlichia*--$50.

(vii) FTA (fluorescent triponemal antibody) only--$38.

(viii) Fungus:

(I) identification--$69; and

(II) panel--$88.

(ix) Hantavirus, IgG/IgM--$94.

(x) Hepatitis A:

(I) IgM--$56; and

(II) total--$13.

(xi) Hepatitis B:

(I) core antibody--$38;

(II) surface antibody (Ab)--$19; and

(III) surface antigen (Ag)--$13.

(xii) Hepatitis B e Ab--$25.

(xiii) Hepatitis B e Ag--$19.

(xiv) Hepatitis C (HCV)--$15.

(xv) Hepatitis C (RIBA)--$175.

(xvi) Human immunodeficiency virus (HIV):

(I) confirmation--$44;

(II) screen--$13; and

(III) viral load--$175.

(xvii) HIV/HCV panel--$28.

(xviii) Influenza A and B--$50.

(xix) *Legionella*--$69.

(xx) Lyme (*Borrelia*) IgG/IgM panel--$38.

(xxi) Miscellaneous serological tests--$38.

(xxii) Mumps:

(I) IgG--$38; and

(II) IgM--$38.

(xxiii) Parvovirus B-19, IgG/IgM--$75.

(xxiv) Plague (*Yersinia*)--$19.

(xxv) Poliomyelitis (polio) I, II, III--$88.

(xxvi) Q-fever--$63.

(xxvii) *Rickettsia* Panel--$69.

(xxviii) *Rickettsia/Ehrlichia* Panel--$119.

(xxix) RPR (rapid plasma reagent test)--$6.00.

(xxx) RPR/syphilis confirmation--$16.

(xxxi) Rubella:

(I) IgG--$19;

(II) IgM--$38; and

(III) screen--$9.00.

(xxxii) Rubeola:

(I) IgG--$38; and

(II) IgM--$44.

(xxxiii) Toxoplasmosis:

(I) IgG--$50; and

(II) IgM--$50.

(xxxiv) Tularemia (*Francisela*)--$56.

(xxxv) *Varicella zoster*--$56.

(xxxvi) VDRL (venereal disease research laboratory) test--$28.

(xxxvii) West Nile virus (WNV)--$19.

(I) Virology.

(i) *Chlamydia* culture--$100.

(ii) *Dengue* isolation--$100.

(iii) Electron microscope studies only--$356.

(iv) Herpes simplex isolation--$106.

(v) Influenza:

(I) surveillance--$156; and

(II) subtyping--$131.

(vi) Virus:

(I) detection by PCR--$313;

(II) virus identification on submitted isolate (reference specimen)--$313; and

(III) virus isolation, comprehensive--$263.

(2) Non-human specimens.

(A) Bacteriology.

(i) Environmental:

(I) Swabs--$31;

(II) *Legionella*--$88;

(III) bioterrorism--$250;

(IV) bioterrorism smear--$19;

(V) thermometer calibration--$38; and

(VI) weight calibration--$38.

(ii) Food.

(I) Bioterrorism--$250.

(II) Botulism (*C. botulinum*)--$150.

(III) Pathogen panel:
(-a-) basic--$144; and
(-b-) complex--$350;

(IV) Single organism--$56.

(V) Standard plate count--$31.

(VI) Toxin--$56.

(iii) Milk and dairy products.

(I) Dairy, cultured--$44.

(II) Ice cream--$88.

(III) Milk:
(-a-) pasteurized milk panel--$119;
(-b-) raw milk panel--$150; and
(-c-) single test--$88.

(iv) Seafood:

(I) brevitoxin--$250;

(II) fecal coliform--$50;

(III) standard plate count--$44; and

(IV) *Vibrios*--$75.

(v) Water.

(I) Bay waters--$38.

(II) Coliform:
(-a-) fecal--$38; and
(-b-) coliform, total--$50.

(III) Potable water--$31.

(IV) Reagent water suitability--$113.

(B) Entomology.

(i) Insect examination, Chaga's disease--$31.

(ii) Insect identification--$25.

(iii) Mosquito identification:

(I) adult, per carton--$63;

(II) egg paddle, per paddle--$8.00; and

(III) larvae, per vial--$56.

(iv) Tick examination:

(I) Lyme disease, *Borrelia* and Rocky Mountain Spotted Fever (RMSF)--$44;

(II) relapsing fever--$44; and

(III) tick identification, per vial--$31.

(C) Parasitology. Water filter examination--$219.

(D) Serology.

(i) Arbovirus, equine, includes western equine encephalitis (WEE); eastern equine encephalitis (EEE); and west nile virus (WNV)--$63.

(ii) Hantavirus, animal--$94.

(iii) Plague (*Yersinia*), animal--$19.

(E) Virology.

(i) Arbovirus isolation:

(I) avian--$44; and

(II) mosquito--$75.

(ii) Arbovirus PCR:

(I) avian--$313; and

(II) mosquito--$313.

(iii) Avian serology:

(I) arbovirus--$69; and

(II) arbovirus (chicken)--$38.

(iv) Rabies testing--$81.

(v) Rabies virus typing:

(I) molecular--$156; and

(II) monoclonal--$44.

(F) Handling fees.

(i) Pathogenic agents--$75;

(ii) Clinical specimens and environmental samples--$38.

§73.55. Fee Schedule for Chemical Testing of Environmental Samples.

Fees for chemical testing of environmental samples shall not exceed the following amounts.

(1) The following fees apply to the analysis of organic compounds in air:

(A) formaldehyde, National Institute Of Occupational Safety and Health (NIOSH) methods--$163;

(B) pesticides, NIOSH method--$200; and

(C) VOCs, NIOSH method--$186.

(2) The following fees apply to the analysis of drinking water (including bottled water) samples.

(A) Inorganic parameters.

(i) Individual tests:

(I) alkalinity, total and phenolphthalein, Standard Methods (SM), 18th edition, 2320B--$29;

(II) bicarbonate-carbonate, with alkalinity, SM, 18th edition, 2320B--$19;

(III) bicarbonate-carbonate, without alkalinity, SM, 18th edition, 2320B--$29;

(IV) boron, SM, 18th edition, 4500B--$66;

(V) bromate, Environmental Protection Agency (EPA) method 300.1--$138;

(VI) bromide, EPA method 300.0--$31;

(VII) carbon, total organic, SM, 18th edition, 5310C--$54;

(VIII) chlorate, EPA method 300.0--$69;

(IX) chloride, EPA method 300.0--$24;

(X) chlorine, SM, 19th edition, 4500-Cl F--$25;

(XI) chlorine dioxide, SM, 19th edition, 4500-ClO2 B--$100;

(XII) chlorite, EPA method 300.0--$69;

(XIII) chloramines, SM, 19th edition, 4500-ClO2 D--$25;

(XIV) color, SM, 18th edition, 2120B--$30;

(XV) conductivity, SM, 18th edition, 2510B--$24;

(XVI) cyanide, total, SM, 18th edition, 4500 CN-B+C+E--$69;

(XVII) fluoride, EPA method 300.0--$24;

(XVIII) hardness, EPA method 130.1--$54;

(XIX) nitrate and nitrite as nitrogen, EPA method 353.2--$28;

(XX) nitrate as nitrogen, EPA method 353.2--$28;

(XXI) nitrite as nitrogen, EPA method 353.2--$28;

(XXII) odor, EPA method 140.1, 2150B--$63;

(XXIII) perchlorate, EPA method 314.0--$69;

(XXIV) perchlorate, Unregulated Contamination Monitoring Regulation (UCMR), EPA method 314.0--$76;

(XXV) pH, EPA method 150.1--$24;

(XXVI) phenolics, total recoverable, EPA method 420.1--$60;

(XXVII) residue, total, SM, 18th edition, 2540B--$28;

(XXVIII) silica, dissolved, SM, 18th edition, 4500Si F--$30;

(XXIX) solids, suspended, volatile or fixed, SM, 18th edition, 2540G--$39;

(XXX) solids, total dissolved, calculated, SM, 18th edition, 1030F--$18;

(XXXI) solids, total dissolved, determined, SM, 18th edition, 2540C--$39;

(XXXII) solids, total suspended, SM, 18th edition, 2540D--$39;

(XXXIII) sulfate, EPA method 300.0--$24; and

(XXXIV) turbidity, EPA method 180.1--$25.

(ii) Routine water mineral group, EPA methods 150.1, 300.0, and 353.2, and SM, 18th edition, 2320B, 2510B, and 2540C--$214.

(B) Metals analysis. A preparation fee applies to all drinking water samples analyzed by inductively coupled plasma (ICP) or by inductively coupled plasma-mass spectrometry (ICP-MS) with turbidity greater than or equal to 1 Nephelometric Turbidity Unit (NTU). The total analysis cost includes the sample preparation fee and the per-element or per-group fee.

(i) Sample preparation fee--total recoverable metals digestion, EPA method 200.2--$36.

(ii) Per-element analysis fees:

(I) mercury, EPA method 245.1--$31;

(II) single ICP, EPA method 200.7--$24; and

(III) single ICP-MS, EPA method 200.8--$31.

(iii) Group fees:

(I) all metals drinking water group, EPA methods, 200.7, 200.8, and 245.1--$330;

(II) ICP/ICP-MS metals drinking water group, EPA methods 200.7 and 200.8--$206; and

(III) lead/copper, EPA method 200.8--$30.

(C) Organic compounds:

(i) chlorinated pesticides and PCBs in drinking water, EPA method 508--$258;

(ii) chlorophenoxy herbicides, EPA method 515.1 or EPA method 515.4--$275;

(iii) chlorophenoxy herbicides, UCMR, EPA method 515.1 or EPA method 515.4--$303;

(iv) diquat and paraquat EPA method 549--$303;

(v) ethylene dibromide (EDB) and dibromochloropropane (DBCP), EPA method 504.1--$195;

(vi) endothall, EPA method 548--$446;

(vii) glyphosate, EPA method 547--$211;

(viii) haloacetic acids and dalapon, EPA method 552.2--$275;

(ix) chlorinated disinfection-by-products (haloacetonitriles) EPA method 551.1--$235;

(x) methylcarbamoyloximes and n-methylcarbamates (carbamate) pesticides, EPA method 531.1--$250;

(xi) organochlorine pesticides, EPA methods 505 and 508--$230;

(xii) phenols, UCMR List 2, EPA method 528.1--$263;

(xiii) phenylurea, UCMR List 2, EPA method 532.1--$263;

(xiv) PHA and phthalates, UCMR, EPA method 525.2--$396;

(xv) PCB screening by perchlorination, EPA method 508A--$366;

(xvi) polynuclear aromatic hydrocarbons (PHA) and phthalates, EPA method 525.2--$360;

(xvii) semi-volatile organic compounds, EPA method 525.2--$360;

(xviii) semi-volatile organic compounds, UCMR List 2, EPA method 526.1--$263;

(xix) trihalomethanes, EPA method 502.2--$84;

(xx) trihalomethanes, EPA method 524.2--$84;

(xxi) VOCs, EPA method 524.2--$183; and

(xxii) VOCs, UCMR, EPA method 524.2--$223.

(D) Radiochemicals:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--$165;

(ii) carbon-14, Liquid Scintillation--$123;

(iii) gross alpha and beta, EPA method 900.0--$113;

(iv) gross alpha or beta, EPA method 900.0--$100;

(v) gamma emitting isotopes, EPA method 901.1--$94;

(vi) plutonium isotopes, DOE-RESL A-20 Alpha Spectrometry--$90;

(vii) radium-226, EPA method 903.1--$83;

(viii) radium-228, EPA method 904.0--$118;

(ix) radon, EPA method 903.1--$83;

(x) strontium-89 or 90, EPA method 905.0--$126;

(xi) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--$90;

(xii) total alpha emitting radium, EPA method 903.0--$90;

(xiii) tritium, EPA method 906.0--$64;

(xiv) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--$95; and

(xv) Composite/storage fee--$19.

(3) The following fees apply to the analysis of food and food products.

(A) Inorganic analyses:

(i) added substances, Association of Official Analytical Chemists (AOAC) calculation--$16;

(ii) added water, AOAC calculation--$16;

(iii) benzoate, AOAC method 960.38--$101;

(iv) cereal, USDA CRL method--$80;

(v) deterioration, canned products, AOAC chart--$30;

(vi) fat, dairy products, AOAC method 46.616--$44;

(vii) fat, paly screen, AOAC method 46.616--$44;

(viii) fat, soxhlet extraction, USDA method Fat-1--$101;

(ix) filth, AOAC methods--$44;

(x) filth, beverages, AOAC method 965.38--$44;

(xi) filth, cereal foods, AOAC method 971.32--$44;

(xii) filth, AOAC method 941.16--$44;

(xiii) filth, spices, AOAC method 945.83--$44;

(xiv) food coloring, AOAC method 988.13--$73;

(xv) fumonisin in corn products by high performance liquid chromatography (HPLC)--$250;

(xvi) insect identification, Food and Drug Administration (FDA) Technical Bulletin #2--$44;

(xvii) maximum internal temperature, USDA ICT 2 method--$101;

(xviii) meat protein, AOAC calculation--$19;

(xix) moisture (total water), USDA M01 method--$21;

(xx) moisture-protein ratio, AOAC calculation--$40;

(xxi) package exam for rodent contamination, AOAC method 973.63--$30;

(xxii) pH of food products, AOAC method 981.12--$25;

(xxiii) protein, total, USDA protein block digestion--$73;

(xxiv) rodent pellet, identification, FDA Microscope Analytical Methods in Food and Drug Control--$44;

(xxv) salt, USDA method SLT--$131;

(xxvi) soy protein concentrate, USDA SOY1 method--$80;

(xxvii) soya, USDA SOY1 method--$80;

(xxviii) sulfite, AOAC method 980.17--$83;

(xxix) water activity, AOAC method 978.18--$44; and

(B) Organic analysis, tetracycline in milk, FDA/AOAC methods--$125.

(C) Metals analyses. A sample preparation fee applies to all food samples analyzed by FLAA, GFAA, GHAA, ICP or ICP-MS techniques. The total analysis fee includes the sample preparation fee and the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fee--total recoverable metals digestion, EPA methods 200.2, 200.3, or SW-846 method 3050B--$46.

(ii) Per-element fees:

(I) mercury, EPA methods 245.1, 245.5, and 245.6, and SW-846 methods 7470A and 7471A--$40;

(II) single metal, FLAA or ICP, EPA 200 series methods and EPA SW-846 methods 6010 or 7000 series--$24;

(III) single metal, GFAA or GHAA, EPA 200 series methods and EPA SW 846 methods 7000 series, and SM, 18th edition, 3114--$38; and

(IV) single metal, ICP-MS, EPA method 200.8, EPA SW-846 method 6020--$31.

(4) The following fees apply to the analysis of soil and solids:

(A) pH, Soil, EPA method 9045B--$28.

(B) Metals analysis. A sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. The total cost of the analysis will be the sample preparation fee plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fee--acid digestion of sediments, sludges, and soils, EPA SW-846 Method 3050B--$44.

(ii) Per-element fee:

(I) lead in paint by FLAA--$44;

(II) lead in pottery leachate by FLAA--$33;

(III) lead and cadmium in pottery leachate by FLAA--$59;

(IV) lead in soil by FLAA--$46;

(V) lead in solids by FLAA--$44;

(VI) mercury, sediment, EPA method 245.5 and EPA SW-846 method 7471A--$40;

(VII) non-routine single metal, EPA 200 series methods and EPA SW-846 methods: 6010B, 6020, and 7000's--$60;

(VIII) silver, EPA method 200.7, and EPA SW-846 methods 6010B, 7760A, and 7761--$60;

(IX) single metal, FLAA or ICP, EPA 200 series methods, 200.7, and EPA SW-846 6010B and 7000 series methods--$26;

(X) single metal, graphite furnace atomic absorption spectrometry (GFAA) or gas hydride atomic absorption spectrometry (GHAA), EPA 200 series methods and EPA SW-846 methods 7000 series, 7062, and 7742, and SM, 18th edition, 3114--$38; and

(XI) single metal, ICP-MS, EPA method 200.8 and EPA SW-846 method 6020--$31.

(C) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--$154;

(ii) gross alpha and beta, EPA method 900.0--$101;

(iii) gross alpha or beta, EPA method 900.0--$81;

(iv) gamma emitting isotopes, EPA method 901.1--$140;

(v) plutonium isotopes, DOE-RESL A-20 Alpha Spectrometry--$90;

(vi) radium-226, DOE-RESL A-20/EPA method 903.1--$133;

(vii) radium-228, DOE-RESL A-20/EPA method 904.0--$110;

(viii) strontium-89 or 90, EPA method 905.0--$147;

(ix) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--$88;

(x) tritium, EPA method-Azeotopic Distillation--$99; and

(xi) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--$86.

(5) The following fees apply to the analysis of tissue and vegetation samples. A tissue preparation (homogenization) fee applies to all seafood tissue samples analyzed for organic compounds and/or metals. The total analysis cost includes the tissue preparation fee, any analyte specific sample preparation fee, and the per-element or per-group test fee.

(A) Tissue preparation fees:

(i) fillets, EPA method 200.3--$46; and

(ii) whole fish and crabs, EPA method 200.3--$80.

(B) Metals analyses. A sample preparation fee applies to all tissue samples analyzed by ICP or ICP-MS. The total analysis cost includes the sample preparation fee and the per-element or per-group fee:

(i) sample preparation fee--total recoverable metals digestion, EPA method 200.3--$46.

(ii) per-element fees:

(I) mercury, EPA method 245.6--$40;

(II) single metal, FLAA or ICP, EPA 200 series methods, 200.7, or EPA SW-846 methods 6010B, or 7000's--$24;

(III) single metal, GFAA or GHAA, EPA 200 series, methods and EPA SW-846 methods 7000 series, 7062, and 7742, and SM, 18th edition, 3114--$38;

(IV) single metal, ICP-MS, EPA method 200.8, EPA SW-846 method 6020--$31; and

(iii) fish tissue (includes per group fee and total recoverable metals digestion fee)--$283.

(C) Organic analyses. The organic analysis fee includes any required sample cleanup procedures:

(i) organochlorine pesticides and PCB's, fish fillets, PAM 304 E1 and EPA SW-846 methods 8081A--$1015;

(ii) organochlorine pesticides and PCB's, whole fish, PAM 304 E1 and EPA SW-846 methods 8081A--$1206;

(iii) semi-volatile organic compounds by gas chromatography/mass spectrometry (GC/MS), fish, JAOAC method and EPA SW-846 methods 3540C and 8270C--$648;

(iv) VOCs, GC/MS, fish, JAOAC method 64;653:ff and EPA SW-846 method 8260B--$311; and

(v) organochlorine pesticides in vegetables by Gas Chromatography (GC)--$755.

(D) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--$154;

(ii) gamma emitting isotopes, EPA method 901.1--$138;

(iii) gross alpha and beta, EPA method 900.0--$111;

(iv) gross alpha or beta, EPA method 900.0--$81;

(v) plutonium isotopes, DOE-RESL A-20 Alpha Spectrometry--$90;

(vi) radium-226, DOE-RESL A-20/EPA method 903.1--$136;

(vii) radium-228, DOE-RESL A-20/EPA method 904.0--$98;

(viii) strontium-89 or 90, EPA method 905.0--$149;

(ix) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--$88;

(x) tritium, EPA Method 906.0 Azeotopic Distillation--$99; and

(xi) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--$85.

(6) The following fees apply to the analysis of water and wastewater.

(A) Inorganic parameters:

(i) odor, EPA method 140.1--$65;

(ii) phenolics, total recoverable, EPA method 420.1--$60; and

(iii) UV 254, SM 19th edition, 5910--$69.

(B) Metals analysis. The following sample preparation fees apply to the analysis of water and/or wastewater samples. The total cost of the analysis will be the required sample preparation fee plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fees:

(I) total recoverable metals digestion, EPA method 200.2 and EPA SW-846 methods 3005A, 3010A, and 3020A--$38; and

(II) filtration (dissolved metals), EPA SW-846 method 3005A--$26.

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 method 7470A--$40;

(II) silver (includes separate digestion), EPA method 200.7 and EPA SW-846 methods 6010B, 7760A, and 7761--$54;

(III) single metal, FLAA or ICP, EPA method 200.8, 200.7 and EPA SW-846 methods 6010B, and 7000 series--$24;

(IV) single metal, GFAA or GHAA, EPA method 200 series and EPA SW-846 methods 7000 series, 7062, and 7742, and SM, 18th edition, 3114--$38; and

(V) single metal, ICP-MS, EPA method 200.8, and EPA SW-846 method 6020--$31.

(C) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--$165;

(ii) carbon-14, Liquid Scintillation--$123;

(iii) gross alpha and beta, EPA method 900.0--$113;

(iv) gross alpha or beta, EPA method 900.0--$100;

(v) gamma emitting isotopes, EPA method 901.1--$94;

(vi) plutonium, isotopes, DOE-RESL A-20 Alpha Spectrometry--$90;

(vii) radium-226, EPA method 903.1--$101;

(viii) radium-228, EPA method 904.0--$85;

(ix) radon, EPA method 903.1--$83;

(x) strontium-89 or 90, EPA method 905.0--$126;

(xi) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--$88;

(xii) total alpha emitting radium, EPA method 903.0--$88;

(xiii) tritium, EPA method 906.0--$64; and

(xiv) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--$90.

(7) The following fees apply to the analysis of wipes/filters/cartridges.

(A) Lead analysis, FLAA--$40.

(B) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--$154;

(ii) carbon-14, Liquid Scintillation--$145;

(iii) gross alpha and beta, EPA method 900.0--$65;

(iv) gross alpha or beta, EPA method 900.0--$50;

(v) gamma emitting isotopes, EPA method 901.1--$80;

(vi) plutonium isotopes, DOE-RESL A-20 Alpha Spectroscopy--$90;

(vii) radium-226, DOE-RESL A-20/EPA method 903.1--$136;

(viii) radium-228, DOE-RESL A-20/EPA method 904.0--$98;

(ix) strontium-89 or 90 EPA method 905.0--$148;

(x) thorium isotopes, DOE-RESL A-20 Alpha Spectroscopy--$88;

(xi) tritium, Azeotopic Distillation--$64; and

(xii) uranium isotopes, DOE-RESL A-20 Alpha Spectroscopy--$85.

(8) Other chemical testing:

(A) blood identification, Source Book Forensic Serology--$31;

(B) dust identification--$58;

(C) identification of feces stains, AOAC method 981.22--$159; and

(D) urine stain identification, AOAC methods 963.28, and 959.14--$44.

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 December 5, 2003.

TRD-200308395
Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: August 22, 2003
For further information, please call: (512) 458-7236

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CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

The Texas Department of Health (department) adopts the repeal of §§98.1 - 98.6, 98.8, 98.21 - 98.25, 98.27, 98.28, 98.30, 98.31, 98.41 - 98.44, 98.61 - 98.66, 98.68, 98.81 - 98.84, 98.86, 98.87, 98.89, 98.90, and 98.131 - 98.146, concerning the human immunodeficiency virus (HIV) Services Grant Program, the HIV Prevention Grant Programs, and the HIV H.O.P.E. (Health Options to Promote Employment) Project. The repeals are adopted without changes to the proposal as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8559), and will not be republished.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). The sections have been reviewed, and the department has determined that the reasons for adopting the various sections of Subchapters A, B, and D no longer exist. The repeal of Subchapter A, HIV Services Grant Program, and Subchapter B, HIV Prevention Grant Programs, eliminates duplicative language that is already contained in various sections of the Health and Safety Code or in the department's policies and procedures; and therefore, does not need to be repeated in rule form. The repeal of Subchapter D abolishes the HIV H.O.P.E. Project. The project was established under Rider 54 to the department's portion of the General Appropriations Act of the 75th Legislature. The purpose of the project was to provide assistance to HIV-infected individuals not eligible for assistance through the Texas HIV Medication Program in obtaining medications that have been shown to be effective in the treatment of HIV disease and HIV-related conditions. Assistance could be in the form of direct provision of medications or insurance assistance benefits. Administration of the project was legislatively contingent upon the receipt of private donations. The department has received no private donations to continue the project and does not receive legislative appropriations to administer the project; thus, repeal of the subchapter is necessary. The title of the chapter was changed from "HIV and STD Prevention" to "Texas HIV Medication Program."

The department published a Notice of Intention to Review for the sections in the *Texas Register* on April 28, 2000 (25 TexReg 3801). No public comments were received due to the publication of this notice.

No public comments were received concerning the proposal during the comment period.

SUBCHAPTER A. HIV SERVICES GRANT PROGRAM

DIVISION 1. GENERAL PROVISIONS

25 TAC §§98.1 - 98.6, 98.8

The repeals are adopted under the Health and Safety Code, §85.016, which provides the Board of Health (board) authority to adopt rules necessary to implement Subchapters A through F, Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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DIVISION 2. AIDS/HIV SERVICES PROVIDERS

25 TAC §§98.21 - 98.25, 98.27, 98.28, 98.30, 98.31

The repeals are adopted under the Health and Safety Code, §85.016, which provides the Board of Health (board) authority to adopt rules necessary to implement Subchapters A through F, Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and Health and Safety Code, §12.001, which provides the board with the authority to adopt

rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
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DIVISION 3. AIDS/HIV SERVICES; CLIENTS

25 TAC §§98.41 - 98.44

The repeals are adopted under the Health and Safety Code, §85.016, which provides the Board of Health (board) authority to adopt rules necessary to implement Subchapters A through F, Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. HIV PREVENTION GRANT PROGRAMS

DIVISION 1. GENERAL PROVISIONS

25 TAC §§98.61 - 98.66, 98.68

The repeals are adopted under the Health and Safety Code, §85.016, which provides the Board of Health (board) authority to adopt rules necessary to implement Subchapters A through F, Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. AIDS/HIV EDUCATION PROVIDERS

25 TAC §§98.81 - 98.84, 98.86, 98.87, 98.89, 98.90

The repeals are adopted under the Health and Safety Code, §85.016, which provides the Board of Health (board) authority to adopt rules necessary to implement Subchapters A through F, Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. HIV H.O.P.E. (HEALTH OPTIONS TO PROMOTE EMPLOYMENT) PROJECT

25 TAC §§98.131 - 98.146

The repeals are adopted under the Health and Safety Code, §85.016, which provides the Board of Health (board) authority to adopt rules necessary to implement Subchapters A through F, Chapter 85, Acquired Immune Deficiency Syndrome and Human

Immunodeficiency Virus Infection; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER D. GENERAL

25 TAC §289.205

The Texas Department of Health (department) adopts an amendment to §289.205, concerning radiation control hearing and enforcement procedures. The amendment is adopted with changes to the proposed text as published in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6695), as a result of comments received during the 30-day comment period.

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). Section 289.205 has been reviewed, and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule were necessary as outlined in this preamble.

The department published a Notice of Intention to Review for §289.205 in the *Texas Register* (28 TexReg 1663) on February 21, 2003. No public comments were received by the department on this section following publication of the notice.

The revision changed references to the Formal Hearing Procedures throughout the rule to properly cite the references. The words "agency rule" and "rules" were deleted throughout the section and replaced with "requirements of this chapter" for consistency with language used throughout the chapter. The definition of "Administrative Law Judge (ALJ)" was added to §289.205(b) to state accurately who will be responsible for conducting hearings for the department. Subsequently, the definition of "Hearing examiner" was deleted since this term is now obsolete as a result of the responsibility for conducting the department's hearings now belonging to the administrative law judge. As a result of deleting the definition of "hearing examiner," the term "hearing examiner" was deleted throughout the section and replaced with "ALJ." In §289.205(b)(18), the word "Fund" was changed to "Account" and the words "A fund" were changed to "An account" to state accurately the name of the account as a result of implementing changes authorized by House Bill 1678 (78th Legislature 2003). The word "writing" was deleted and replaced with the words "submitting a written request to" to clarify the intent of the rule in §289.205(c)(2), (g)(3), (h)(2), and (i)(9). In §289.205(g)(1)(C), the words "violation of, or" were added at the beginning of the sentence for consistency with language used throughout the chapter. At the end of the last sentence of §289.205(g)(2), the word "receipt" was replaced with the word "service" to be consistent with the use of this term as addressed in this section. In §289.205(g)(3), (h)(2), and (i)(9), the words "or date of mailing" were deleted and replaced with "of the notice" to use the correct term as addressed in this section. In §289.205(i)(3)(C), the word "applicable" was replaced with the words "any of the" for consistency with language used throughout the chapter. The words "occupational and" were added before the words "...public health..." to be consistent with language used throughout this chapter. In §289.205(j), the term "administrative penalties" was changed from upper case to lower case to reflect the correct form and style for rule text. The words "...that could have been prevented by corrective action and for which the licensee, registrant, or certified industrial radiographer did not take effective corrective action" were deleted at the end of §289.205(j)(3)(A) to more accurately describe the process for administering administrative penalties. The wording "returning the source of registration to a licensee" was changed to "returning the source of radiation to a licensee" in §289.205(l)(2)(C) because the original wording was incorrect. The last sentence of current §289.205(l)(4), was deleted as this language was redundant. In §289.205(m)(5)(B), "Fund" was replaced with "Account" to state accurately the name of the account as a result of implementing changes authorized by House Bill 1678 (78th Legislature 2003). In the last sentence of §289.205(m)(6), the words "makes a written application to the agency for a hearing" were replaced with "submits a written request to the director," the words "date of the" were added before "order," and the word "date" was deleted at the end to clarify the intent of the rule. Throughout the section, the words "of the State Office of Administrative Hearings" replaced the word "agency" to accurately state the hearing location.

The following changes were made because the requirements are not limited to licensees, registrants, or certified industrial radiographers. The requirements apply to any person not complying with the requirements of this chapter. In new §289.205(b)(9), the word "person" replaces "licensee, registrant, or a certified industrial radiographer." The definition of "Notice of Violation" in §289.205(b)(13) was changed from "The notice normally requires the licensee, registrant, certified mammography system, or certified industrial radiographer to provide..." to "The notice requires the person receiving the notice to provide..." and in §289.205(b)(13)(A) the word "person" replaces "the licensee, registrant, certified mammography system, or certified industrial radiographer." The words "and other persons" were added to the end of the title of §289.205(i). Section 289.205(i)(1) was changed from "A licensee, registrant, or certified industrial radiographer who commits..." to "A licensee, registrant, certified industrial radiographer, or other person who commits..." The words ", or other persons" were added to the title of §289.205(k) and §289.205(k)(1). In §289.205(m), the words "for licenses, certificates of registration, or certified industrial radiographers" were deleted since emergency orders can be issued to any person in accordance with Health and Safety Code, §401.056. The last sentence of §289.205(m)(1) was deleted. The word "licensee" was replaced with the word "person" in §289.205(m)(2)(B). The words "licensee, registrant, or certified industrial radiographer" were replaced with the words "person receiving the order" in the first sentence of §289.205(m)(6) and

the word "person" replaced the words "licensee, registrant, or certified industrial radiographer" in the second sentence of that same paragraph.

This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

The department made the following changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning new §289.205(b)(9), the words "management of" were deleted after the words "...agency with" for clarification.

Change: Concerning §289.205(i)(3), subparagraph (D) was added to state that a license, certificate of registration, or industrial radiographer certification may also be modified, suspended, or revoked in whole or in part as a result of existing conditions that constitute a substantial threat to the public health or safety or the environment.

Change: Concerning §289.205(j)(3)(A), the words "will be considered" were replaced with "may be imposed" for clarification and to be consistent with language used in this subparagraph.

Change: Concerning §289.205(n)(6)(B), the words "by the ALJ" were deleted after the words "...funds estimated" since the ALJ does not estimate the funds.

The following comment was received concerning the proposed section. Following the comment is the department's response and any resulting change(s).

Comment: Concerning the change of the following text throughout the section, the commenter expressed a major concern with replacing the words "licensee, registrant, certified industrial radiographers...," etc. with the word "person." The commenter agreed that unlicensed or unauthorized individuals using radioactive material should be addressed. However, the commenter expressed concern that regulatory agencies will interpret "person" so broadly that individual employees of a licensed company will be negatively impacted. Additionally, the commenter stated that historically employees of a company have fallen under the protection of the company umbrella unless they commit fraud or intentionally commit actions which are outside the normal scope of their duties and that numerous court cases have upheld this position. The commenter strongly suggested that the department revisit the reasons and potential interpretations that initiated the proposed change.

Response: The department disagrees with the commenter. The words "licensee, registrant, certified industrial radiographers...," etc. were replaced with the word "person" because the requirements are not limited to licensees, registrants, or certified industrial radiographers. The requirements apply to any person not complying with the requirements of this chapter and, therefore, it is appropriate to use the current broad definition of "person." In addition, the enforcement provisions of Health and Safety Code, Chapter 401, Subchapter J, are directed towards persons and not just licensees, registrants, and certified industrial radiographers. The department's definition of "person" in §289.201(b) of this title is, "Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than NRC, and other than federal government agencies licensed or exempted by NRC." No change was made as a result of the comment.

The commenter was a representative from Radiation Technology, Inc. The commenter was neither for nor against the rule in its entirety; however, the commenter raised a question and expressed concern regarding the proposal as discussed in the summary of the comment.

The amendment is adopted under the Health and Safety Code, §401.051, which provides the Texas Board of Health (board) with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

§289.205. Hearing and Enforcement Procedures.

(a) Purpose. This section governs the following in accordance with the Texas Radiation Control Act (Act), the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health):

(1) proceedings for the granting, denying, renewing, transferring, amending, suspending, revoking, or annulling of a:

(A) license or certificate of registration;

(B) accreditation of a mammography facility; or

(C) industrial radiographer certification;

(2) determining compliance with or granting of exemptions from the requirements of this chapter, order, or condition of the license or certificate of registration;

(3) assessing administrative penalties; and

(4) determining propriety of other agency orders.

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

(1) Administrative penalty--A monetary penalty assessed by the agency in accordance with the Act, §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(2) Administrative Law Judge (ALJ)--Administrative law judge from the State Office of Administrative Hearings.

(3) Applicant--A person seeking a license, certificate of registration, accreditation of mammography facility, or industrial radiographer certification, issued under the provisions of the Act and the requirements in this chapter.

(4) Board--The Texas Board of Health.

(5) Certified industrial radiographer--An individual who meets the definition of radiographer as stated in §289.255(c) of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(6) Commissioner--The Texas commissioner of health.

(7) Contested case--A proceeding in which the agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing.

(8) Director--The director of the radiation control program under the agency's jurisdiction.

(9) Enforcement conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory, license condition, or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(10) Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(11) Interested person--A person who participates in a hearing concerning a contested case but who is not admitted as a party by the ALJ.

(12) Major amendment--An amendment to a license issued in accordance with the requirements of §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities) that:

(A) reflects a transfer of ownership of the licensed facility;

(B) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(C) authorizes a change of the method specified in the license for disposal of byproduct material as defined in the Act, §401.003(3)(B); or

(D) grants an exemption from any provision of §289.260 of this title.

(13) Notice of violation--A written statement of one or more alleged infringements of a legally binding requirement. The notice requires the person receiving the notice to provide a written statement describing the following:

(A) corrective steps taken by the person and the results achieved;

(B) corrective steps to be taken to prevent recurrence; and

(C) the projected date for achieving full compliance. The agency may require responses to notices of violation to be under oath.

(14) Order--A specific directive contained in a legal document issued by the agency.

(15) Party--A person designated as such by the ALJ. A party may consist of the following:

(A) the agency;

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer; and

(C) any person affected.

(16) Person affected--A person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is:

(A) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located; or

(B) doing business or has a legal interest in land in the county or adjacent county.

(17) Preliminary report--A document prepared by the agency containing the following:

(A) a statement of facts on which the agency bases the conclusion that a violation has occurred;

(B) recommendations that an administrative penalty be imposed on the person charged;

(C) recommendations for the amount of that proposed penalty; and

(D) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(18) Radiation and Perpetual Care Account--An account established for the purposes described in the Act, §401.305.

(19) Requestor--A person claiming party status as a person affected.

(20) Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety or the environment.

(21) Violation--An infringement of any rule, license or registration condition, order of the agency, or any provision of the Act.

(c) Procedures for licensing actions under the Act, §401.054.

(1) Except as provided in subsections (d)-(f) of this section, when the agency grants, renews, denies, transfers, or amends any specific license for the possession of radioactive materials, or grants exemptions from requirements of this chapter, orders, or licenses in accordance with the Act, the agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) Any person who considers himself/herself a person affected by an agency action described in paragraph (1) of this subsection or any applicant/licensee may request a hearing by submitting a written request to the director within 30 days after the notice is published in the *Texas Register*.

(A) The request for a hearing must contain the following:

(i) name and address of the person/applicant/licensee who considers himself/herself affected by agency action;

(ii) identification of the subject license;

(iii) reasons why the person/applicant/licensee considers himself/herself affected;

(iv) relief sought; and

(v) name and address of the attorney if the applicant/licensee or requestor is represented by an attorney.

(B) Failure to submit a written request for a hearing within 30 days could result in denial of party status and render the agency action final.

(3) Either the applicant/licensee or the agency may contest the standing of a requestor as a person affected by motion filed with the ALJ no later than ten days prior to the hearing. The requestor has the burden of proof in a hearing to determine whether the requestor is a person affected.

(4) The ALJ may designate parties at the commencement of the hearing on the merits.

(5) A hearing may be scheduled by the agency regardless of whether a request for a hearing has been received.

(d) Special procedures for issuing, renewing, or amending byproduct material licenses in accordance with §289.260 of this title.

(1) When the agency determines that the issuance or renewal, in accordance with §289.260 of this title, of a license to process materials resulting in byproduct material or to dispose of byproduct materials as defined in the Act, §401.003(3)(B), will have a significant impact on the human environment, the agency shall prepare or secure a written analysis of the impact and make it available to the public for written comment at least 30 days before a public hearing, if any, on the issuance or renewal of the license.

(2) At least 30 days prior to the issuance of a new license, renewal, or major amendment, a notice of such action will be published in the following:

(A) *Texas Register*; and

(B) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located. The applicant/licensee shall do the following:

(i) cause notice of the proposed action to be published and pay for the publication of the newspaper notice(s); and

(ii) file proof of publication required in this subparagraph with the agency within 30 days of publication. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(3) The notice referenced in paragraph (2) of this subsection shall contain at least the following:

(A) statement identifying the location of the proposed facility and a summary of the proposed actions;

(B) availability of an environmental analysis for the proposed facility; and

(C) offer of an opportunity for a hearing to any person affected.

(4) When a hearing is requested in writing within 30 days after publication of the notice described in paragraph (2) of this subsection, the procedures described in subsection (c)(3) and (4) of this section and Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title apply. Failure to submit a written request for a hearing in the form specified by subsection (c)(2) of this section within 30 days may result in no hearing being held and the proposed agency action being taken.

(5) A hearing may be scheduled by the agency regardless of whether a request for a hearing has been received.

(e) Special procedures for issuing or renewing licenses to process or store radioactive waste from other persons in accordance with §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities).

(1) At least 30 days prior to issuance or renewal of a license to process or store radioactive waste from other persons, in accordance with §289.254 of this title, a notice of such action will be published in the following:

(A) *Texas Register*; and

(B) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located. The applicant/licensee shall do the following:

(i) cause notice to be published and pay for the publication of the newspaper notice(s); and

(ii) file proof of publication of the notice required in paragraph (1)(B) of this subsection with the agency within 30 days of publication. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(2) The notice specified in paragraph (1) of this subsection shall contain at least the following:

(A) the agency's intent to issue or renew a license in accordance with §289.254 of this title;

(B) location of the proposed facility;

(C) in the case of a Category III storage or processing facility, the availability of an environmental analysis for each proposed activity the agency determines has a significant impact on the human environment; and

(D) opportunity for a person affected to request a hearing.

(3) A hearing will be held only when requested, unless scheduled by the agency on its own motion. When a hearing is requested in writing by the date stated in the notice described in paragraph (1) of this subsection, the procedures described in subsection (c)(3) and (4) of this section and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title apply. Failure to submit a written request for a hearing in the form prescribed in subsection (c)(2) of this section on or before the stated date could result in denial of party status and in issuance or renewal of the license by the commissioner.

(A) Notice of the hearing shall be published in the following:

(i) *Texas Register*; and

(ii) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located.

(B) Notice of the hearing shall contain the subject, time, date, and location of the hearing.

(C) The applicant/licensee shall cause notice to be published and pay for the publication of the newspaper notice(s).

(D) The applicant/licensee shall file proof of publication of the notice required in subparagraph (A)(ii) of this paragraph with the agency at least ten days before the hearing. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(E) If no newspaper is published in the county or counties in which the proposed facility is to be located, a written copy of the notice of hearing shall be posted at the courthouse door and five other public places in the immediate locality to be affected for at least 30 days prior to the beginning of the hearing.

(F) The return of service by the sheriff or constable, or the affidavit of any credible person made on a written copy of the notice so posted showing the fact of the posting and filed with the agency at least ten days prior to the hearing date shall be conclusive evidence of posting.

(G) The applicant/licensee shall give written notice of the hearing by certified mail, addressed to the last known address, to persons shown on the current county tax records as owning property adjacent to the proposed site. The written notice shall contain the same information described in subparagraph (B) of this paragraph.

(i) The applicant/licensee shall furnish the agency with a list of names and addresses of the adjacent property owners no later than ten days before the hearing.

(ii) The list of names and addresses will be deemed accurate and valid if obtained from the current county tax records of the county where the adjacent property is located as of the mailing date of the notice of hearing. The information shall be certified by an appropriate county official.

(iii) The applicant/licensee shall certify to the mailing of the notice of hearing by certified mail, and proof of mailing to the proper address or the receipt shall be accepted at the hearing as conclusive evidence of the fact of the mailing.

(H) Failure to comply with the provisions of subparagraphs (A)(ii), (E), and (G) of this paragraph may result in denial of the license.

(f) Special procedures for amending waste licenses in accordance with §289.254 of this title.

(1) If the agency amends a license to process or store radioactive waste, in accordance with §289.254 of this title, the amendment will take effect immediately.

(2) Notice of amendment shall be published one time in the following:

(A) *Texas Register*;

(B) a newspaper of general circulation in the county or counties in which the licensed activity is located. The licensee shall file with the agency, within 30 days of publication, proof of publication of the notice.

(3) The licensee shall cause notice to be published and pay for publication of the newspaper notice(s).

(4) An affidavit from the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(5) The notice shall contain the following:

(A) identity of the licensee and the license amended;

(B) a concise statement of the substance of the amendment; and

(C) opportunity for a person affected to request a hearing.

(6) The agency shall notify any person who has submitted an advance, written request to be notified of any proposed amendment to the license. Proof of mailing to the proper address shall be conclusive evidence of the agency's compliance.

(7) A person who considers himself/herself a person affected may request the agency to hold a hearing by writing the director, in the manner provided by subsection (c)(2) of this section, no later than 30 days after the notice is published. Failure to submit a written request for a hearing within 30 days could result in denial of party status and render the agency action final.

(8) Upon receipt of a request for hearing, the agency or the licensee may follow the procedures set out in subsection (c)(3) and (4) of this section to contest standing.

(9) Notice of a hearing on the merits shall be given in accordance with appropriate provisions of subsection (e)(3) of this section.

(g) Revocation of accreditation of mammography facilities.

(1) An accreditation of a mammography facility may be revoked, for any of the following:

(A) any material false statement in the application or any statement of fact required under provision of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency to refuse to grant an accreditation of mammography facility on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(2) Before the agency revokes an accreditation of mammography facility, the agency shall give notice by personal service or by certified mail, addressed to the last known address, of the facts or conduct alleged to warrant the revocation by complaint, and order the accredited mammography facility to show cause why the mammography facility accreditation should not be revoked. The accredited mammography facility shall be given an opportunity to request a hearing on the matter no later than 30 days after service of the notice.

(3) Any accredited mammography facility against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing;

(ii) name, address, and identification number of the accredited mammography facility against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(h) Denial of an application for a license, certificate of registration, accreditation of a mammography facility, or industrial radiographer certification.

(1) When the agency contemplates denial of an application for a license, certificate of registration, accreditation of a mammography facility, or industrial radiographer certification, the licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered by personal service or certified mail, addressed to the last known address, to the licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer.

(2) Any applicant, licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing; and

(ii) name and address of the applicant, licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer;

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(i) Compliance procedures for licensees, registrants, certified industrial radiographers, and other persons.

(1) A licensee, registrant, certified industrial radiographer, or other person who commits a violation(s) will be issued a notice of violation.

(2) The terms and conditions of all licenses and certificates of registration shall be subject to amendment or modification. A license, certificate of registration, or industrial radiographer certification may be modified, suspended, or revoked by reason of amendments to the Act, or for violation of the Act, the requirements of this chapter, a condition of the license, certificate of registration, or an order of the agency.

(3) Any license, certificate of registration, or industrial radiographer certification may be modified, suspended, or revoked in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required in accordance with provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license, certificate of registration, or industrial radiographer certification on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or of the license, certificate of registration, or industrial radiographer certification or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(4) If another state or federal entity takes an action such as modification, revocation, or suspension of the license, certificate of registration, or industrial radiographer certification, the agency may take a similar action against the licensee, registrant, or certified industrial radiographer.

(5) When the agency determines that the action provided for in paragraph (8) of this subsection or subsection (j) of this section is not to be taken immediately, the agency may offer the licensee, registrant, or certified industrial radiographer an opportunity to attend an enforcement conference to discuss the following with the agency:

(A) methods and schedules for correcting the violation(s); or

(B) methods and schedules for showing compliance with applicable provisions of the Act, the rules, license or registration conditions, or any orders of the agency.

(6) Notice of any enforcement conference shall be delivered by personal service, or certified mail, addressed to the last known address. An enforcement conference is not a prerequisite for the action to be taken under paragraph (8) of this subsection or subsection (j) of this section.

(7) Except in cases in which the occupational and public health, interest, or safety requires otherwise, no license, certificate of registration, or industrial radiographer certification shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee, registrant, or certified industrial radiographer in writing, and the licensee, registrant, or certified industrial radiographer shall have been accorded an opportunity to demonstrate compliance with all lawful requirements.

(8) When the agency contemplates modification, suspension, or revocation of the license, certificate of registration, or industrial radiographer certification, the licensee, registrant, or certified industrial radiographer shall be afforded the opportunity for a hearing. Notice of the contemplated action, along with a complaint, shall be given to the licensee, registrant, or certified industrial radiographer by personal service or certified mail, addressed to the last known address.

(9) Any applicant, licensee, registrant, or certified industrial radiographer against whom the agency contemplates an action described in paragraph (8) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing;

(ii) name, address, and identification number of the licensee, registrant, or certified industrial radiographer against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(j) Assessment of administrative penalties.

(1) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Act, §401.384, and applicable sections of the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(2) Assessment of administrative penalties shall be based on the following criteria:

(A) the seriousness of the violation(s);

(B) previous compliance history;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other mitigating or enhancing factors.

(3) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(A) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations.

(B) The following Tables IA and IB show the base administrative penalties.
Figure: 25 TAC §289.205(j)(3)(B) (No change.)

(C) Adjustments to the severity levels and percentages in Table IB may be made for the presence or absence of the following factors:

(i) prompt identification and reporting;

(ii) corrective action to prevent recurrence;

(iii) compliance history;

(iv) prior notice of similar event;

(v) multiple occurrences; and

(vi) negligence that resulted in or increased adverse effects.

(D) The penalty may be in an amount not to exceed $10,000 a day for a person who violates the Act or a rule, order, license or registration issued under the Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(4) The Office of General Counsel may conduct settlement negotiations.

(k) Severity levels of violations for licensees, registrants, certified industrial radiographers, or other persons.

(1) Violations for licensees, registrants, certified industrial radiographers, or other persons shall be categorized by one of the following severity levels.

(A) Severity level I are violations that are most significant and may have a significant negative impact on occupational and/or public health and safety or on the environment.

(B) Severity level II are violations that are very significant and may have a negative impact on occupational and/or public health and safety or on the environment.

(C) Severity level III are violations that are significant and which, if not corrected, could threaten occupational and/or public health and safety or the environment.

(D) Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

(E) Severity level V are violations that are of minor safety or environmental significance.

(2) Additional violations for mammography registrants. Violations for mammography registrants shall be categorized by one of the following severity levels.

(A) Severity level I violations indicate a serious noncompliance that may adversely affect image quality or that may compromise the quality of mammography services.

(B) Severity level II violations indicate key quality system requirements are being met, but there is a failure to meet one or more quality standards that may lead to a compromise of the quality of mammography services.

(C) Severity level III violations indicate that the quality system requirements are being met, but minor corrective actions are required for compliance with the quality standards.

(D) Severity level IV violations indicate that the quality system requirements and standards are being met, but minor corrective actions are required for compliance.

(3) Criteria to elevate or reduce severity levels.

(A) Violations may be elevated to a higher severity level for the following reasons:

(i) more than one violation resulted from the same underlying cause;

(ii) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of licensed or registered activities;

(iii) a violation occurred multiple times between inspections;

(iv) a violation was willful. This means the violation was the result of careless regard for requirements, deception, or other indications of willfulness by the licensee/registrant or employees of the licensee/registrant, or certified industrial radiographer; or

(v) compliance history.

(B) Violations may be reduced to a lower level for the following reasons:

(i) the licensee/registrant identified and corrected the violation prior to the agency inspection; or

(ii) the licensee/registrant's actions corrected the violation and prevented recurrence.

(4) Examples of severity levels. Examples of severity levels are available upon request to the agency.

(l) Impoundment of sources of radiation.

(1) In the event of an emergency, the agency shall have the authority to impound or order the impounding of sources of radiation possessed by any person not equipped to observe or failing to observe the provisions of the Act, or any rules, license or registration conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the Texas Register no later than 30 days following the end of the month in which the action was taken.

(2) At the agency's discretion, the impounded sources of radiation may be disposed of by:

(A) returning the source of radiation to a properly licensed or registered owner, upon proof of ownership, who did not cause the emergency;

(B) releasing the source of radiation as evidence to police or courts;

(C) returning the source of radiation to a licensee or registrant after the emergency is over and settlement of any compliance action; or

(D) sale, destruction or other disposition within the agency's discretion.

(3) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the impounded source of radiation of the intention to dispose of the source of radiation. Notice shall be the same as provided in subsection (i)(8) of this section. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing under the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subsection (i)(9) of this section, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(4) Upon agency disposition of a source of radiation, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested.

(5) If the agency determines from the facts available to the agency that an impounded source of radiation is abandoned, with no

reasonable evidence showing its owner or possessor, the agency may make such disposition of the source of radiation as it sees fit.

(m) Emergency orders.

(1) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) In addition to the requirements of paragraph (1) of this subsection, the agency shall issue an order directing any action and corrective measure needed to remedy or neutralize the following emergency situations:

(A) when the agency determines that byproduct material as defined in the Act, §401.003(3)(B), or the operation generating the byproduct material, or that radioactive waste threatens the public health or safety or the environment; and

(B) if the person managing the byproduct material, or the operation generating the byproduct material or the radioactive waste, is unable to correct or neutralize the threat.

(3) An emergency order takes effect immediately upon service.

(4) Any person receiving an emergency order shall comply immediately.

(5) The agency shall use any security provided by a licensee under the Act to pay toward the costs of such actions and corrective measures taken. If the cost of actions and corrective measures require more funds than the security has provided, the agency shall request the Attorney General to seek reimbursement from the licensee or person causing the threat.

(A) The agency may send a copy of its order specified in this subsection to the Comptroller of Public Accounts together with necessary documents authorizing the Comptroller of Public Accounts to enforce security supplied by the licensee, convert the necessary amount of security into cash, and disburse from this security in the fund the amount necessary to pay costs of the agency actions and corrective measures. The agency shall direct the comptroller as to the amounts and recipients of the funds.

(B) The agency may request the Attorney General to file suit for reimbursement if the agency uses security from the Radiation and Perpetual Care Account to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Act or requirements of this chapter, license, or order of the agency.

(6) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(A) The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

(B) At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(i) determine that no further action is warranted;

(ii) amend the license or certificate of registration;

(iii) revoke or suspend the license, certificate of registration, or industrial radiographer certification;

(iv) rescind the emergency order; or

(v) issue such other order as is appropriate.

(C) The application and hearing shall not delay compliance with the emergency order.

(n) Miscellaneous provisions.

(1) Computation of time. A time period established by the requirements of this chapter shall begin on the first day after the event that invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall end on the next day that is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5:00 p.m. of the last day of the computed period.

(2) Interested person.

(A) An interested person may:

(i) make sworn or unsworn statements;

(ii) attend a hearing and may present evidence after the presentation of evidence by the parties; or

(iii) be represented by an attorney.

(B) An interested person may not:

(i) cross-examine the witnesses of the parties;

(ii) object to evidence presented by the parties; or

(iii) appeal a decision rendered by the agency.

(C) An interested person is not responsible for sharing the costs of the transcription of the hearing, but may purchase a transcript.

(D) The parties may cross-examine witnesses presented by an interested person.

(E) At the discretion of the ALJ an interested person may make an unsworn statement. Such statement shall not be made a part of the record.

(3) Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the ALJ specifies another location.

(4) Prepared testimony. The following shall apply to written testimony of a witness:

(A) the testimony of a witness may be reduced to writing and offered into evidence as an exhibit, provided:

(i) the witness is present and has been sworn;

(ii) the witness identifies and adopts the written testimony as his/her own; and

(iii) all parties receive a copy of the testimony at least ten days before its submission at the hearing.

(B) written testimony shall be subject to objection and may be stricken by the ALJ. The witness shall be subject to cross-examination.

(5) Prior testimony. Testimony and evidence presented in the hearing to determine standing have the same weight at the hearing on the merits if a tape recording or written transcript of the standing hearing is available.

(6) Non-party witness and mileage fees.

(A) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation and other costs at rates established by the current Appropriations Act for state employees.

(B) The person requesting the attendance of the witness or deponent must deposit with the agency the funds estimated to accrue in accordance with subparagraph (A) of this paragraph when filing a motion for the issuance of a subpoena or a commission to take a deposition.

(7) Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.

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 December 8, 2003.

TRD-200308403
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: December 28, 2003
Proposal publication date: August 22, 2003
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 401. SYSTEM ADMINISTRATION

SUBCHAPTER J. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

25 TAC §§401.581 - 401.583, 401.587 - 401.593

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§401.581 - 401.583, and 401.587 - 401.593 of Chapter 401, Subchapter J governing standards of care and treatment in psychiatric hospitals without changes as published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5732). New §§411.451-411.555, 411.459, 411.461-411.465, 411.468, 411.471-411.477, 411.482-411.485, 411.488, 411.490, 411.493 - 411.496, and 411.499-411.500 of Chapter 411, Subchapter J, governing standards of care and treatment in psychiatric hospitals, which replace the repealed sections are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new and more current rules governing the same matters.

No comments on the proposed repeals were received.

These sections are adopted for repeal under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

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 December 5, 2003.

TRD-200308309
Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
Proposal publication date: July 25, 2003
For further information, please call: (512) 206-4516

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SUBCHAPTER K. LICENSURE OF CRISIS STABILIZATION UNITS

25 TAC §§401.641 - 401.647, 401.649 - 401.652

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§401.641-401.647, and 401.649-401.652 of Chapter 401, Subchapter K governing licensure of crisis stabilization units without changes as published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5734). New §§411.601-411.604, 411.608-411.613, 411.617, 411.621-411.624, 411.628-411.633, 411.637, 411.641, 411.645-411.646, and 411.649-411.650 of Chapter 411, Subchapter M, governing standards of care and treatment in crisis stabilization units, which, replace the repealed sections are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new and more current rules governing the same matters.

No comments on the proposed repeals were received.

These sections are adopted for repeal under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and

treatment of patients in a mental health facility required to obtain a license under THSC, Chapter, 577.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
Proposal publication date: July 25, 2003
For further information, please call: (512) 206-4516

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CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER J. STANDARDS OF CARE AND TREATMENT IN PSYCHIATRIC HOSPITALS

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§411.451-411.555, 411.459, 411.461-411.465, 411.468, 411.471-411.477, 411.482-411.485, 411.488, 411.490, 411.493 - 411.496, and 411.499-411.500 of Chapter 411, Subchapter J, governing Standards of Care and Treatment in Psychiatric Hospitals. Sections 411.453, 411.454, 411.459, 411.461, 411.463, 411,468, 411.471-411.477, 411.482-411.485, 411.488, 411.490, 411.493, 411.495, 411.496, and 411.499 are adopted with changes to the text as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5735). Sections 411.451, 411.452, 411.455, 411.462, 411.464. 411.465, 411.494, and 411.500 are adopted without changes. The repeal of existing §§401.581 - 401.583 and 401.587 - 401.593 of Chapter 401, Subchapter J, governing standards of care and treatment in psychiatric hospitals, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new sections ensure the proper care and treatment of prospective patients and patients in private psychiatric hospitals licensed under Texas Health and Safety Code (THSC), Chapter 577, and Texas Department of Health (TDH) rules at 25 TAC Chapter 134, governing private psychiatric hospitals and crisis stabilization units licensing rules, and in identifiable mental health services units in hospitals licensed under THSC Chapter 241, and 25 TAC Chapter 133, governing hospital licensing rules. The new sections address requirements related to admission, emergency treatment, treatment planning and the services to be provided, discharge, documentation, staff training, and performance improvement.

A substantial portion of the new sections, namely those concerning admission and discharge, are based on state law, primarily the THSC. Other sections, such as those concerning emergency treatment, service requirements and performance improvement are derived from requirements in the Code of Federal Regulations (CFR) and the most recent edition of the Comprehensive Accreditation Manual for Hospitals promulgated by The Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

The new sections reflect the decision rendered in Texas Attorney General Opinion GA-0066 that a physician must personally conduct the admission examination of a patient required by THSC, §572.0025(f)(1), and may not delegate this duty to a non-physician. In addition, the new sections address relevant portions of House Bills 21, 2679, and 2292 (78th Legislature, R.S.). House Bill 21 amended THSC, §572.001(a), and permits the parent, managing conservator, or guardian of a person younger than 18 years of age who is not and has not been married to request the admission of the person to a hospital. Also, for a person who has been voluntarily admitted by his or her parent, managing conservator, or guardian, House Bill 21 amends THSC, §572.003, to include subsection (e) which requires TDMHMR to establish the intervals at which a physician must evaluate the person to determine the person's need for continued inpatient treatment. In addition, for such a person, House Bill 21 amends THSC, §572.004, to include subsection (i) which requires a hospital to, on receipt of a written request for discharge from the person, notify the person's parent, managing conservator, or guardian of the request. House Bill 2679 amends THSC, Chapter 573, to add §573.003, which permits a guardian of the person of an adult to transport the adult to a hospital, without the assistance of a peace officer, for preliminary examination under emergency detention. House Bill 2292 amends THSC, §572.0025(f), to permit a physician to use audiovisual or other telecommunications technology to conduct the admission examination for a voluntary patient.

The new sections contain general provisions that describe a hospital's responsibility in developing written policies and procedures and enforcing staff members' compliance with those policies and procedures. In addition, the new sections set parameters for the admission criteria for hospitals to follow in determining who can be admitted for inpatient mental health treatment. Further, the new sections describe those processes and procedures required by the THSC for admission on a voluntary basis, by emergency detention, a protective custody order, a court order for inpatient mental health services, and certain orders issued under the Texas Code of Criminal Procedure and the Texas Family Code. The new sections also require a hospital to assign and implement a level of monitoring to a patient upon admission of that patient to ensure any need for protection of the patient is addressed immediately.

To promote an efficient and coordinated system of ensuring proper responses to emergency medical conditions, the new sections require a hospital to develop and implement a written plan describing the actions a hospital will take to evaluate and stabilize potential emergency medical conditions of patients, prospective patients and, based on 42 CFR §489.24(b), individuals who may arrive on a hospital's property requesting examination or treatment. Further, the new sections set forth a hospital's responsibility to maintain a written record of evaluations for emergency medical conditions. This requirement is derived from 42 CFR §489.20. To enhance a hospital's effective response to individuals suffering cardiac arrest, the new sections also require a hospital to have an automated external defibrillator as well as other emergency supplies and equipment.

In order to ensure the expedient treatment of patients, the new sections set forth time frames for developing a written treatment plan and its content, and the frequency of treatment plan reviews. The new sections also require a hospital to develop the treatment plan in collaboration with the patient.

To ensure accountability for the provision of medical services, the new sections require the assignment of a treating physician at the time a patient is admitted, timely availability of physicians, that a physical and psychiatric examination be conducted, and that the director of psychiatric services meet specified qualifications. To implement new THSC, §572.003(e), the new sections require a physician to re-evaluate a patient once a day for five of the first seven days after the initial psychiatric evaluation and once a week thereafter and as clinically indicated to insure a patient's current clinical status is adequately assessed and the course of treatment is appropriately monitored and modified.

The new sections address nursing services, including the minimum qualifications for the director of psychiatric nursing (DPN). These qualifications are derived, in part, from TDH's rules at 25 TAC, §133.41, concerning hospital functions and services, and serve to ensure that the DPN has the requisite education and experience to oversee the nursing services provided at a hospital. The new sections also set forth the requirements regarding time frames for conducting the initial comprehensive nursing assessment and the reassessments thereafter. TDMHMR believes that the timeframes ensure that a patient's initial and changing needs are identified and addressed.

The new sections also require the development and implementation of a nurse staffing plan, the establishment of an advisory committee for nurse staffing, implementation of a process to report concerns regarding the staffing plan to such a committee, orientation of nursing staff, and the development and implementation of a policy regarding the use of mandatory overtime. These requirements are based on requirements included in TDH's rules at 25 TAC, §133.41, concerning hospital functions and services, and serve to ensure that there are adequate numbers of qualified and informed nurses and unlicensed assistive personnel to provide care to patients. In addition, these requirements ensure that hospitals do not compromise the quality of nursing care provided to patients by requiring an excessive amount of overtime. The new sections also describe requirements regarding verification of nursing staff licensure.

The new sections set forth qualifications for the director of social services to ensure that the director has the requisite education and experience to oversee the social services provided at a hospital. Further, the new sections set forth requirements for a staff member conducting a social services assessment and a therapeutic activities assessment, if ordered by the patient's treating physician, in order to ensure that an appropriate determination of a patient's need for those services is made. The new sections also contain provisions for protecting a patient through environmental modifications and for decision-making based on a patient's needs and vulnerabilities.

The new sections describe the discharge planning activities for hospitals to follow when discharging a patient and describe the content of the discharge summary. Further, the new sections describe those processes and procedures required by the THSC for discharge notices, discharge of a voluntary patient, and discharge of an involuntary patient. The new sections also set forth requirements for the content of the medical record and progress notes based on JCAHO requirements and 42 CFR §482.61.

The new sections describe the training for staff members required by THSC, §572.0025, and other applicable federal and state laws, rules, and regulations. Further, the new sections require training on responding to cardiac emergencies, including the use of an automated external defibrillator. The new sections set forth requirements for age-specific training for staff routinely providing treatment to or working with patients under the age of 18 years, geriatric patients, and patients diagnosed with COPSD. In addition, the new sections describe training requirements for nursing staff regarding patient safety, infection control, reporting complaints about the nurse staffing plan, and the hospital's mandatory overtime policy. These training requirements serve to ensure staff members will be knowledgeable about relevant issues that affect the adequacy of patient care and will master the competencies necessary to provide quality services.

The rule describes the processes and procedures for a hospital to follow in developing and maintaining an on-going quality assessment and performance improvement program, which are based on JCAHO requirements and 42 CFR §482.21. In order to improve patient care and safety and implement improvements, the new sections describe how a hospital will identify, report, and investigate sentinel events. Additionally, the new subchapter contains provisions for a hospital to develop and implement a written plan to evaluate the effectiveness of plans of correction the hospital submits to external review entities.

Minor changes have been made throughout the proposed text for clarification, to correct grammatical errors, to reorganize text, and to update internal and external references. Reference to "Chapter 46B" replaces all references to "Article 46.02" of the Texas Code of Criminal Procedure because Chapter 46B will replace Article 46.02 on January 1, 2004, which is the effective date of this subchapter.

In §411.453, definitions of "day" and "TDMHMR" have been added and the definition of "psychiatrist" has been deleted. The definition of "IDT or interdisciplinary treatment team" has been modified to include *all* staff members identified in the treatment plan as being responsible for providing or ensuring the provision of treatment, the patient's legally authorized representative (LAR), and any individual identified by the patient or the patient's LAR unless clinically contraindicated. The definition of "inpatient mental health treatment" has been modified to more accurately define the term. The definition of "mandatory overtime" has been changed to be consistent with TDH's hospital licensing rules. The definition of "sentinel event" has been revised to limit the scope of death or serious injury to that of a patient.

In §411.454 subsections (d) and (e) have been modified for clarification and two subsections have been added. A new subsection (f) specifies the circumstances under which a physician may delegate medical services and new subsection (i) requires a hospital to be in substantial compliance with JCAHO standards.

Reference to additional criteria for minors has been deleted from §411.459(2). Additionally, §411.460, which contains additional admission criteria for children and adolescents, has not been adopted because TDMHMR believes that the parameters for the admission criteria established for adults should be the same for minors, thereby permitting hospitals to develop specific admission criteria based upon its mission, scope, level of care, and resources.

The language in §411.468 has been clarified to reflect that a physician must be physically present at the hospital to respond to an emergency medical condition of a patient or be available by telephone or radio or audiovisual telecommunication to provide medical consultation. Additionally, the requirement for a hospital to have a suction machine has been eliminated.

Section 411.471 has been extensively revised to clarify and simplify the development and implementation of treatment plans. Language has been modified in §411.472(f) and (g)

to identify a physician (rather than a psychiatrist or any other specialist) as being responsible for evaluating patients. In §411.472(g) the timeframes for a physician to re-evaluate a patient has been revised. The qualifications for the DPN have been modified in §411.473(d). The LMSW supervisory requirement in §411.474(d)(2)(A) has been deleted.

Section 411.483(a)(1) and (2) has been revised to require hospitals to notify a minor's patient's LAR about the patient's anticipated discharge as permitted by state and federal confidentiality laws. A new subsection (b) reflects a statutory exception to such notification.

Requisite training in §411.490 has been made less burdensome for hospitals and revised for clarification. Section 411.493 has been modified for clarification and to reduce the number of performance indicators for which a hospital is required to aggregate data.

A public hearing was held in the TDMHMR Central Office, Austin, on August 15, 2003. Public testimony concerning the new subchapter was provided by Advocacy, Inc., Austin; Cypress Creek Hospital; Houston; East Texas Medical Center, Tyler; Kingwood Health Center, Kingwood; Millwood Hospital, Arlington; Pampa Regional Medical Center, Pampa; Presbyterian Hospital of Dallas, Dallas; Texas Hospital Association, Austin; Texas NeuroRehab Center, Austin; West Oaks Hospital, Houston; and Texas Society of Psychiatric Physicians, Austin.

Written comments were received from Advocacy, Inc., Austin; Commission on Collegiate Nursing Education, Washington, D.C.; Covenant Hospital, Plainview; Crisis Prevention Institute, Austin; Cypress Creek Hospital, Houston; Devereux Texas Treatment Center, League City; East Texas Medical Center, Tyler; Intracare North Hospital, Houston; Kingwood Health Center, Kingwood; Metroplex Hospital Behavioral Health Services, Killeen; Millwood Hospital, Arlington; Padre Behavioral Hospital, Corpus Christi; Presbyterian Hospital of Dallas, Dallas; Texas Academy of Physician Assistants, Austin; Texas Association of Marriage and Family Therapists, Austin; Texas Hospital Association, Austin; Texas NeuroRehab Center, Austin; Texas Nurses Association, Austin; Shannon Behavioral Health, San Angelo; and one private citizen.

One commenter expressed appreciation and commended TDMHMR's effort to consolidate and clarify the standards relating to inpatient psychiatric care. The commenter stated that the new rules are a significant improvement over the rules they replace and will make staff training and compliance easier. TDMHMR responds that it appreciates the commenter's commendation.

Three commenters objected to the proposed new rules as overly prescriptive, burdensome, and likely to adversely affect quality of care. One commenter stated that the proposed new rules will be costly for programs that treat children, adolescents, and adults from across the country with brain injuries (acquired or congenital) that are complicated by behavioral problems and mental disorders. The commenter noted that, although the rules do not require a private mental hospital to operate an acute psychiatric program, neither do they address the complexity of psychiatric hospitals in which the average length of stay is 221 days in child and adolescent programs and 65 days in adult programs. The second commenter expressed concern that the new rules "will have a severe adverse economic effect on rural hospitals with small psychiatric units" and "will also affect the holistic approach to care that is now being provided to patients in such units." The commenter noted that the proposed standards emphasize a staffing plan for nursing while overlooking the benefits of having staff trained in the area of behavioral health. The third commenter stated that the rules "could have the effect of harming rather than improving patient care by diverting scarce treatment resources to non-clinical functions, especially the unduly obsessive documentation requirements." The commenter also noted an absence of adequate justification for the new rules.

TDMHMR disagrees with the commenters that the rules are overly prescriptive, burdensome, and likely to adversely affect quality of care. In carrying out its statutory responsibility to establish standards of care and treatment in psychiatric hospitals, TDMHMR believes these rules set forth requirements that promote quality care for patients. Regarding an adverse economic effect, TDMHMR responds that the commenters do not explain how the new rules will be costly for rural hospitals and hospitals with certain long-term programs. TDMHMR notes that the proposed rules acknowledged possible fiscal implications for hospitals. Additionally, the commenter does not explain how the rules fail to address the "complexity of psychiatric hospitals in which the average length of stay is 221 days in child and adolescent programs and 65 days in adult programs." TDMHMR notes that it has made revisions to the rules which will result in sub-acute hospitals having more flexibility in reviewing treatment plans and conducting re-evaluations. Also, TDMHMR responds that the commenter has not explained how the new rules will affect the holistic approach to care. Regarding the proposed standards emphasizing a staffing plan for nursing while overlooking the benefits of having staff trained in the area of behavioral health, TDMHMR responds that, although the commenter isn't specific about the type of training being overlooked, the rules do require staff involved in pre-admission screening and intake to receive training in mental health issues and requires all staff to receive training in issues pertinent to patient care. Regarding the commenter's claim that the rules divert scarce treatment resources to non-clinical functions, such as documentation, TDMHMR responds that, except for documentation, the commenter does not specify what is meant by "non-clinical functions." In any event, TDMHMR believes that documentation is essential to proper clinical practice and ensures accountability by hospitals. Additionally, TDMHMR notes that the proposed rules articulated specific justification for the new rules, including statutory and regulatory bases as well as sound clinical practice.

Regarding the subchapter's application in §411.454, one commenter recommended that the subchapter apply to "persons contracting with psychiatric hospitals or otherwise providing services to inpatients in a psychiatric hospital." TDMHMR responds that contract personnel are included in the definition of "staff member," which makes the subchapter applicable to them.

Five commenters recommended adding a definition for "addiction medicine specialist" because these physician specialists are qualified to evaluate patients. TDMHMR responds that adding a definition for a particular physician specialist is unnecessary because language has been modified in §411.472(f) and (g) to identify a physician (rather than a psychiatrist or any other specialist) as being responsible for evaluating and re-evaluating patients.

One commenter recommended including definitions of "general medical services" and "psychiatric services" to differentiate between the two types of services. TDMHMR declines to differentiate between the two types of services because psychiatric services are medical services.

Regarding the definition of "IDT or interdisciplinary treatment team" in §411.453, three commenters expressed concern that a licensed marriage and family therapist and a psychological associate are included in the group of professionals that qualify as pre-admissions screening professionals (PASP), but are not specifically included in the IDT. The commenters recommended broadening the definition of "IDT" to include similarly trained and prepared master's level professionals such as the licensed marriage and family therapist and psychological associate. Another commenter stated that the first part of the definition of "IDT" is sufficient and that hospitals do not require detailed rules to determine who should be on a patient's multidisciplinary treatment team. The commenter continued that specifically requiring a COPSD staff in subparagraph (D) may duplicate the required social worker or licensed professional counselor in subparagraph (C) or the registered nurse in subparagraph (B), each or both of whom may be qualified to treat persons with dual diagnoses. TDMHMR responds that, instead of identifying various professionals, it has modified the definition of the "IDT" to require those staff members identified in the treatment plan as responsible for providing or ensuring the provision of each treatment be included on the IDT.

Regarding the definition of "inpatient mental health treatment" in §411.453, one commenter stated that the almost exclusive emphasis on "least restrictive" philosophy misses the point of what hospitals do. The commenter suggested specific definitional language, including "hospital care designed to treat and stabilize patients with serious psychiatric or substance use disorders in a protective environment." TDMHMR responds by modifying the definition to address the commenter's concern.

Regarding the definition of "LVN or licensed vocational nurse" in §411.453, five commenters noted that reference to the Texas Board of Vocational Nurse Examiners does not reflect the fact that there will be a single board of nursing and a single practice act (Occupations Code, Chapter 301) for both RNs and LVNs after February 1, 2004. TDMHMR responds by modifying the definition to address the commenters' concern.

Regarding the definition of "mandatory overtime" in §411.453, four commenters stated that the definition should be consistent with the definition in TDH's hospital licensing rules (25 TAC §133.41(o)(2)(I)(i)(V)(-d-)) and that mental health units in general hospitals should not have different overtime standards and policies from the rest of the hospital. TDMHMR responds by modifying the language to reflect the commenters' concern.

Regarding the definition of "nursing services" in §411.453, one commenter stated that the definition does not reflect services by an LVN and recommended adding language to state, "Services provided by, assigned to an LVN by, or delegated to a UAP by a registered nurse acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301." TDMHMR responds that the definition has been modified to address the commenter's concern.

Regarding the definition of "nursing staff" in §411.453, one commenter expressed concern that the definition does not reflect the provision in Senate Bill 718 (78th Legislature, R.S.) requiring any unlicensed person identified as a nurse aide or similar term to function under the delegated authority of a RN. The commenter recommended adding language to the definition stating that, if an unlicensed assistive personnel is identified as a nurse aide, nurse assistant, or similar title, then he or she must function under the delegated authority of an RN. TDMHMR responds that it believes it is unnecessary to incorporate the statutory requirement in these rules.

Regarding the definition of "PASP or pre-admission screening professional" in §411.453, one commenter expressed concern that the definition does not include the use of a licensed chemical dependency counselor (LCDC) for those individuals presenting with primary substance abuse issues. The commenter noted that licensing regulations for LCDCs permit them to make level of care assessments. TDMHMR responds that, while an LCDC is qualified to make level of care assessments, an LCDC does not have the same level of training and expertise as the PASP or pre-admission screening professional, who is qualified to determine whether a prospective voluntary patient requires an admission examination by a physician.

Regarding the definition of "PASP or pre-admission screening professional" in §411.453, one commenter asked if an individual with a master's degree in counseling who is working toward becoming a licensed professional counselor could be considered a PASP. TDMHMR responds that it believes a staff member who performs a pre-admission screening should be a licensed professional and declines to add as a PASP an individual with a master's degree in counseling who is working toward becoming a licensed professional counselor.

Regarding the definition of "sentinel event" in §411.453, four commenters expressed concern that the definition does not restrict the scope to the death or serious injury of a *patient*. The commenters stated that to require the reporting of death or serious injury of any person other than a patient would impose an undue and unrealistic burden on facilities and could inappropriately imply wrongdoing by the facility. The commenters recommended all references to "individual" be changed to "patient." TDMHMR responds by changing all references to "individual" in the definition of "sentinel event" to "patient."

Regarding the definition of "UAP or unlicensed assistive personnel" in §411.453, four commenters suggested the definition clarify that a certified nurse assistant is an unlicensed assistive personnel and noted that "they must take an 80-hour course load and must pass an examination to become certified." TDMHMR responds that clarification is unnecessary because the definition of "UAP or unlicensed assistive personnel" addresses all unlicensed personnel, which would include a certified nurse assistant.

Regarding general provisions in §411.454, one commenter recommended that language in §401.587(c) and (d) of the current rules be included in the new rules (i.e., "Each psychiatric hospital must provide services in conformance with standards of care and treatment that are not less restrictive than those required for state hospitals." "For purposes of licensure, psychiatric hospitals must be in substantial compliance with inpatient standards set forth by the JCAHO.") TDMHMR declines to incorporate the language from §401.587(c) because the requirements of the proposed rule substantially conform to the standards of care and treatment in state mental health facilities. Regarding the provision in §401.587(d), TDMHMR responds by adding language as new subsection (i) in §411.454 to reflect the commenter's recommendation.

Regarding a hospital being responsible for taking appropriate measures, which may include disciplinary action, to ensure a staff member's compliance with the hospital's policies and procedures in §411.454(d), one commenter noted that the provision's scope not only included regulations governing health care delivery and patients rights and safety, but human resource laws as well. The commenter stated that the requirement implies licensing representatives can become involved in administrative decision-making and asked whether the licensing representative could incur civil liability for the hospital, but without the accompanying accountability. TDMHMR responds that it believes ensuring a staff member's compliance is essential to providing quality patient care. The rule is not intended to involve the licensing representative in a hospital's administrative decision-making, but rather puts the hospital on notice that it will be held responsible for addressing non-compliance by staff. TDMHMR notes that it has deleted the phrase "which may include disciplinary action" to eliminate confusion that disciplinary action is the only measure to ensure staff compliance.

Regarding the requirement to implement all orders issued by a physician for a patient in §411.454(e), one commenter expressed concern that the categorical requirement is inconsistent with an RN's duty to get clarification of any order that the RN has reason to believe is inaccurate, non-efficacious or contraindicated as mandated in rules of the Board of Nurse Examiners, 22 TAC §217.11(19) (relating to Standards of Professional Nursing Practice). The commenter requested that language be added reflecting an RN's duty to seek clarification of physician orders under certain circumstances. TDMHMR responds by adding language to address the commenter's concern.

Regarding the requirement that a hospital comply with 40 TAC Chapter 148 (relating to Facility Licensure) in admitting, treating, and discharging an individual with a sole diagnosis of a substance use disorder in §411.455, one commenter expressed confusion about the intent of the rule and stated that Chapter 148 does not require TCADA licensure of facilities licensed as a hospital by TDH. TDMHMR responds that §411.455 does not require TCADA licensure of facilities, but rather that hospitals comply with those provisions in Chapter 148 (relating to Facility Licensure) *related to* admitting, treating, and discharging an individual with a sole diagnosis of a substance use disorder.

Regarding admission criteria in §411.459 and §411.460, one commenter stated that the establishment of admission criteria has been, and should continue to be, determined by members of the hospital's medical staff whose responsibility is to provide appropriate treatment at the appropriate level of care. TDMHMR responds that the admission criteria in adopted §411.459 sets reasonable parameters within which the medical staff and hospital leadership may establish more specific admission criteria for adults, children, and adolescents based upon the hospital's mission, vision, scope and level of care, and resources. TDMHMR notes that the additional admission criteria in proposed §411.460 for children and adolescents will not be adopted.

Regarding the development and implementation of written admission criteria in §411.459, one commenter asked if there is a process by which some entity (TDH) reviews and approves this criteria when developed and upon revision. The commenter strongly suggested that this proactive step be incorporated into the system. TDMHMR responds that the rule sets the parameters within which the hospital establishes its admission criteria based upon the hospital's mission, vision, scope and level of care, and resources. TDH may review a hospital's written admission criteria during an investigation to ensure it is consistent with the rule's parameters and may cite the hospital for a deficiency if it is not.

Regarding admission criteria in §411.459, the same commenter requested that language in §401.587(e)(6)(A)(iii) of the current rules be included in the new rules (i.e., "The reasons for admission must be clearly documented as stated by the patient and/or others significantly involved."). TDMHMR responds that adding language from the current rule is unnecessary because the content of the medical record in §411.488(a)(2) requires documentation of the reasons the patient, LAR, family members, or other caregivers state that the patient was admitted to the hospital.

Regarding admission criteria in §411.459(2) and §411.460, one commenter strongly objected to the detailed admission criteria for minors and stated that it is inappropriate to superimpose such an oppressive structure on a hospital's own admission criteria. The commenter also stated the criteria "are very demeaning to hospital professionals, imply they lack basic clinical judgement, and would, in effect, make them in to automatons whose decisions about clinical and highly individualized treatment services would be made by rote according to this state-imposed scheme." The commenter stated that the criteria should be the same for all ages and recommended modifying §411.459(2) to state, "permit the admission of a prospective patient only if he or she has a mental illness or sufficient severity to require inpatient mental health treatment." TDMHMR responds that the admission criteria in §411.459(2) has been revised to reflect the commenter's suggested language. Further, the additional admission criteria in §411.460 for children and adolescents will not be adopted. TDMHMR notes that the admission criteria in revised §411.459 sets reasonable parameters within which the medical staff and hospital leadership may establish more specific admission criteria for adults, children, and adolescents based upon the hospital's mission, scope, level of care, and resources.

Regarding admission criteria in §411.460, one commenter asked if services to individuals under 18 years of age will be provided by or supervised by a child psychiatrist or child psychologist. The commenter stated the belief that "it is clinically appropriate and in the best interest of the child to be evaluated by a child psychiatrist or child psychologist." The commenter stated that "we are sensitive to the shortage of qualified psychiatrists and psychologists specializing with this population" and strongly recommended that the language from the current rule in Exhibit A, titled "Criteria for Admission of Minors to Psychiatric Hospitals" be retained, (i.e., "Minors must have been seen and evaluated by a physician, preferably by a child and adolescent psychiatrist."). TDMHMR responds that, because proposed §411.460 will not be adopted, it is unnecessary to retain the language from the current rule as requested by the commenter.

Regarding §411.460(2)(A), four commenters stated that "the need for the minor's admission may in fact be based on reports and referrals from police, teachers, ministers, probation officers, agency case managers, and other social service agency representatives." The commenters requested that language be modified to state "... have been ineffective or are inappropriate, and such is documented in the intake report." TDMHMR responds that, because proposed §411.460 will not be adopted, it is unnecessary to revise language as suggested by the commenters.

Regarding the determination that services in a setting less restrictive than a hospital have been ineffective or are inappropriate

in §411.460(2)(A), one commenter asked what measurements are used to determine what is ineffective or inappropriate. The commenter recommended adding some type of measurements if it is strictly subjective and up to the clinicians to determine. TDMHMR responds that, because proposed §411.460 will not be adopted, it is unnecessary to add the measurements as recommended by the commenter.

Regarding the determination that services in a setting less restrictive than a hospital have been ineffective or are inappropriate in §411.460(2)(A), one commenter requested that physician assistants be permitted to make such a determination. The commenter stated that "in Texas, the physician assistant is recognized as a professional member of the healthcare team and is involved in health care delivery at all levels, including conducting comprehensive patient assessments including mental status examinations and making appropriate referrals for specialized care." TDMHMR responds that, because proposed §411.460 will not be adopted, it is unnecessary to revise language as suggested by the commenter.

Regarding the determination that services in a less restrictive setting are unavailable in the individual's community in §411.460(2)(B), one commenter asked how the determination is made. The commenter stated if the child could be maintained in the community with respite but that respite is not available, then a protocol for documenting the determination should be developed. TDMHMR responds that, because proposed §411.460 will not be adopted it is unnecessary to add a protocol as recommended by the commenter.

Regarding the individual being a danger to self as demonstrated by a recent suicide attempt or active suicidal threats with a plan to carry out harm to self, and an absence of appropriate supervision or structure to prevent self-harm in §411.460(3)(A)(i), one commenter asked "what is meant by absence of appropriate supervision or structure" and "what measure is used to determine that a youth is lacking appropriate supervision or structure." The commenter strongly recommended either adding measures to determine this or eliminating the language completely. TDMHMR responds that, because proposed §411.460 will not be adopted it is unnecessary to add measures as recommended by the commenter.

Regarding agreement from the individual requesting voluntary admission that the prospective patient will remain in the hospital in §411.461(a)(2)(B)(i), one commenter stated that the intent of the language is unclear and noted that if this voluntary admission is being facilitated by a parent or guardian, then the parent or guardian cannot ensure that the minor will remain in the hospital. The commenter surmised that, although such is the rule's intent, it might also be intimidating to the patient without time frames, and, the commenter noted, that it would be difficult to assign meaningful time frames at this stage of the process. The commenter questioned the value of having the language in the rule. TDMHMR responds that the requirement is based on §572.001(e) of THSC, and to reflect the statutory intent that admission is time-limited, it has added the phrase "until discharged."

Regarding the determination that the prospective patient does not need an admission examination in §411.461(c)(2), one commenter stated that, at a minimum, a referral should be provided. The commenter related being "notified about circumstances where individuals seeking treatment due to suicidal ideations have been refused admission or have been discharged after 24 hours without any referral to another entity." The commenter stated that "this should not occur." TDMHMR agrees and notes that the language states that the hospital "*shall* refer the prospective patient to alternative services."

Regarding admission examination in §411.461(f), one commenter stated that the purpose of the required physical examination is unclear and asked if "it is to assure medical stability and not to be confused with the H & P [history and physical] required within the first 24 hours of admission." TDMHMR responds that the purpose of the admission physical is to assess the medical stability of the prospective patient. The physical conducted within 24 hours of admission is a comprehensive examination (i.e., "history and physical") to determine the general health of the patient.

Regarding the prohibition of a physician from delegating the conducting of the admission examination to a non-physician in §411.461(f)(3), two commenters recommended deleting the provision and stated that "despite the attorney general's ruling, we [the members of the Texas Academy of Physician Assistants] feel this rule creates an unnecessary barrier in terms of access to mental health care and serves to obstruct the ability of a physician (in some cases, the psychiatrist) to delegate these acts to a licensed health care professional who is credentialed to provide these services." TDMHMR responds that, in light of the Texas Attorney General Opinion GA-0066 that a physician must personally conduct the admission examination of a patient required by THSC, §572.0025(f)(1), it declines to delete the provision.

Regarding the preliminary examination of a patient within 24 hours of emergency detention in §411.462(b)(1), one commenter stated that considering the very brief length of stay in facilities and the 24-hour availability of a physician the individual should be examined within eight hours of admission. TDMHMR responds that rule language is consistent with THSC, §573.021(c).

Regarding the explanation of the patient's rights and the hospital's services and treatment as they relate to the patient in §411.462(e)(1)(B)(i), one commenter expressed concern that the provision does not reflect meaningful participation on the part of the patient. The commenter stated that "perhaps what should be communicated to the patient should be what can be offered to that individual by that facility." TDMHMR responds that the commenter's issue is addressed in rule language, which requires information about the hospital's services and treatment *as they relate to the patient* to be explained to the patient, orally and in writing.

Regarding maintaining the written records of evaluations of individuals who arrive on hospital property requesting examination or treatment in §411.468(b), one commenter stated that it is not clear how long hospitals must retain these records. TDMHMR responds that the requirements for retention of records are set forth in TDH's rules at 25 TAC §133.41(j)(6) and §134.41(g)(6).

Regarding availability of physicians to respond to emergencies in §411.468(c), two commenters stated that "requiring a physician to be physically present to respond to an emergency might cause unnecessary delay in transferring the patient to an appropriate service [provider]." One of the commenters requested "in the case of transfers to other hospitals for medical emergencies that physician presence within a specified time at the transferring hospital not be required." TDMHMR agrees and responds by modifying the language in §411.468(c)(2) to allow a hospital

to have a physician available to staff by telephone, radio, or audiovisual telecommunication to provide medical consultation.

Regarding emergency supplies in §411.468(f)(1)-(2), four commenters stated that psychiatric hospitals and psychiatric units already have mechanisms in place for responding to an emergency. The commenters recommended deleting (f)(2) and revising (f)(1) to state, "The hospital shall have an adequate amount of supplies and equipment deemed clinically necessary by the facility." TDMHMR responds that it declines to revise (f)(1) because the language ensures that the type and amount of supplies and equipment correspond with the hospital's plan that is required by §411.486(a)(2). Additionally, TDMHMR believes the requirement that the supplies and equipment be immediately available and fully operational is reasonable. TDMHMR declines to delete (f)(2), but notes that the requirement for a suction machine has been eliminated because the training for proper use of a suction machine requires skills beyond those taught in recognizing and caring for breathing and cardiac emergencies.

Regarding immediate access to a defibrillator located in another part of the hospital in §411.468(f)(3), one commenter stated that the requirement is a contradiction since the defibrillator is in another part of the hospital. The commenter noted that such a contradiction defeats the purpose and value of having a defibrillator. TDMHMR disagrees that a contradiction exists and notes that (f)(3) requires the psychiatric unit to have *immediate* access to a defibrillator. TDMHMR believes that it is possible that a defibrillator located in another unit of a general hospital could be immediately accessible to the psychiatric unit.

Regarding the provision of treatment in §411.471(a), one commenter recommended retaining the language from the current rule §401.587(e)(5)(F)(i), (i.e., "The program must be appropriate to the needs and interests of patients and be directed toward restoring and maintaining optimal levels of physical and psychological functioning.") Additionally, the commenter stated that the section does not reflect meaningful participation or involvement in the treatment planning process on the part of the patient, noting that "it sounds as though the staff members of the IDT will perform assessments, share information, draft a treatment plan which will then be presented to the patient for signature." The commenter assumed that surely "this is not the intent as there is consensus in the psychiatric community regarding the value of involving the patient in the treatment planning process." TDMHMR responds that language has been added to subsection (a) which requires the treatment plan to be appropriate to the needs and interests of the patient and be directed toward restoring and maintaining optimal levels of physical and psychological functioning. Additionally, language has been added to subsection (b) requiring a hospital to collaborate with the patient in developing and implementing a treatment plan.

Regarding the content of the treatment plan developed within 24 hours of admission in §411.471(b)(1)(A)(i), one commenter stated that use of "substantiated diagnoses" suggests definitiveness in psychiatric diagnosis which does not exist especially in a treatment plan completed within 24 hours of the patient's admission. TDMHMR agrees with the commenter's concern and has deleted the term "substantiated."

Regarding the phrase "any physical medical conditions" in §411.471(b)(i)(A)(iii), the same commenter suggested replacing the phrase with "any significant general medical conditions" to more appropriately reflect the fact that patients admitted to psychiatric hospitals may have a variety of medical conditions that do not require attention or active treatment. TDMHMR declines to revise the language as suggested because use of the term "significant" when describing a medical condition qualifies the condition. Any qualification of a medical condition should be made by a physician. TDMHMR notes that it has changed the phrase to "any non-psychiatric conditions" to differentiate between physical and psychiatric conditions.

Regarding the content of the treatment plan developed within 24 hours of admission in §411.471(b), four commenters recommended that the rule "reverse the requirement that the treatment plan [in subsection (c)] require developing a problem list, list of goals, and description of treatment prior to including a list of all intended interventions [in subsection (b)]" because "a problem list should be done first, followed by the treatment interventions." The commenters also suggested the rule "add 'initial' before 'treatment interventions'" because "treatment interventions may change and may not be known at the time the master treatment plan is developed." TDMHMR responds by reorganizing the proposed text to require the initial content of the treatment plan to contain identification of "problems and needs" and "treatment interventions." TDMHMR believes that it is more appropriate to identify the patient's goals after the patient's IDT has been established. Regarding the commenter's suggestion to add the term "initial," TDMHMR responds that it does not believe it is necessary to add the term because the plan must be revised in accordance with subsection (e), which encompasses the situation in which treatment interventions change.

Regarding classes of medications and target symptoms in proposed §411.471(b)(1)(B)(i), one commenter recommended replacing the phrase with "the classes of medications prescribed and the symptoms or behaviors they are intended to address." TDMHMR responds to the commenter's concern by revising the language to state "medication(s) prescribed and the symptoms each medication is intended to address."

Regarding establishment of an IDT and content of the treatment plan within 72 hours after admission in §411.471(c), four commenters stated that some patients have more acute and chronic needs, with no reasonable expectation of recovery, and noted that "it takes longer than 72 hours to establish the treatment plan in these contexts." The commenters recommended replacing all references to "within 72 hours of the patient's admission" in subsection (c) with "within a time appropriate to the length of stay and patient acuity, not to exceed 10 days following the patient's admission." TDMHMR declines to revise the language as suggested because it believes it is in the best interest of the patient to establish the IDT, conduct the social assessment, initiate referrals for any additional assessments and evaluations, and review and modify the treatment plan, as needed, within 72 hours of the patient's admission to the hospital. TDMHMR notes that §411.471(e) contemplates that a treatment plan may need to be revised based on additional findings.

Regarding the treatment plan including a description of how the interrelationship of the patient's mental illness and substance use disorder affects the patient's recovery in §411.471(c)(1)(B)(iv), one commenter recommended that the provision be deleted because it "requires treatment plans to incorporate vague theoretical speculation about the poorly understood interactions between comorbid conditions." TDMHMR responds by deleting the provision, but notes that adopted §411.471(b)(2)(C) requires the treatment plan content to include treatment interventions to address the patient's problems and needs, which may include a substance use disorder.

Regarding treatment plan review and revisions in §411.471(d), one commenter requested adding "upon request by the patient or the patient's LAR" as a reason for review. TDMHMR responds by adding language as requested by the commenter.

Regarding treatment plan reviews and revisions in §411.471(d), six commenters stated that patients in long-term care settings often have more acute and chronic needs, with no reasonable expectation of recovery and noted that "it takes longer than 72 hours to evaluate the treatment plan in these contexts." The commenters suggested changing the phrase "at least every 72 hours" to "within a time appropriate to the length of stay and patient acuity, not to exceed 28 days." Another commenter noted that every 72 hours is appropriate for patients whose anticipated length of stay is less than 30 days, but that "for patients whose lengths of stay extend beyond 30 days, ongoing treatment plan reviews should continue to occur a minimum of every 30 days." Two commenters objected to the "frequent reviews" as inappropriate, excessively burdensome, and valueless. One of the commenters stated that "treatment teams typically meet weekly to monitor changes in patient's clinical status and requisite changes in treatment plans" and recommended that reviews be on a weekly basis. TDMHMR responds by deleting the specific time frame of "every 72 hours" and requiring reviews 1) when there is a significant change in the patient's condition or diagnosis or as otherwise clinically indicated; 2) in accordance with the time frames and measures described in the treatment plan; and 3) upon request by the patient or the patient's LAR.

Regarding the physical examination in §411.472(e), one commenter stated that the requirement that the physical examination be done by a physician limits the use of advanced nurse practitioners or physicians assistants licensed by the State of Texas and working under the supervision of a licensed physician. The commenter noted that the Attorney General's Opinion dated October 28, 2003, addresses a physician completing an assessment for appropriateness of admission, but does not allow delegation of this task. The commenter also noted that a routine history and physical examination is standard practice within 24 hours of admission and one that can be delegated by Texas law. The commenter expressed concern that "as medical physician practices have become more demanding, they have expanded their practices to include the use of Nurse Practitioners and Physician Assistants under their supervision." The commenter stated that the proposed rule language "would increase the difficulty for a free-standing facility to acquire the services of a medical physician to evaluate patients by limiting the physician's ability to utilize their full practice." TDMHMR responds that, for clarification, a provision has been added as new §411.454(f) reiterating a physician's ability to delegate medical services under the Texas Occupations Code.

Regarding the physical examination in §411.472(e), one commenter noted that the examination does not reference lab work and stated that "there is value in lab work being performed to rule out any physical causes for the symptoms being manifested." The commenter stated the assumption that "this is something that is routinely performed and the fact that the language does not reflect this practice was simply an oversight." TDMHMR declines to specifically require lab work because it is the responsibility of the individual physician to determine if lab work is necessary.

Regarding the psychiatric evaluation and re-evaluation in §411.472(f) and (g), six commenters objected to the requirement that the psychiatric evaluation be conducted by a psychiatrist and noted that any physician is qualified to conduct the examination. The commenters recommended changing "psychiatrist" to "physician" and stated that such a change would allow a physician who is an addiction medicine specialist to perform the evaluation in the case of a substance abuse patient. Another commenter in a rural area in which psychiatric services are limited asked if any allowance would be made for such limitation. TDMHMR responds by changing "psychiatrist" to "physician" in §411.472(f) and (g).

Regarding the psychiatric evaluation in §411.472(f), one commenter stated that her organization "strongly agrees that a psychiatrist or child psychiatrist should conduct initial psychiatric evaluations." TDMHMR responds that, although a psychiatrist is preferable, it has changed "psychiatrist" to "physician." THMHMR notes that it may be difficult for a hospital to procure the services of a psychiatrist in some areas of the state. Further, a hospital's credentialing and privileging processes will help ensure that qualified physicians perform evaluations and re-evaluations.

Regarding re-evaluation in §411.472(g), four commenters stated that, because patients have different needs based on their acuity, the phrase "but at least five times a week" should be replaced with "no less than once a week, or at a frequency appropriate to the intensity, acuity, and needs of the patient, whichever is more frequent." Another commenter stated the requirement for a physician to re-evaluate a patient at least five times a week is appropriate in the first 30 days of hospitalization, but does not address the needs of patients requiring longer-term hospitalization. The commenter noted that such patients most often experience change in acuity over time, and the requirement for such frequent reassessment by the attending physician may not be clinically indicated. The commenter stated that re-evaluation at least three times a week would be more appropriate with the stipulation that the attending physician is, of course, expected to re-evaluate the patient anytime there is a significant change in symptomatology. A sixth commenter stated that prescription of psychiatric visits at this frequency for a sub-acute program is excessive, unnecessary, and nonproductive and ignores the contribution of non-psychiatric physicians to the care of chronic, complex patients. The commenter suggested the provision state, "A physician shall re-evaluate a patient based on the patient's needs, length of stay, and medical and psychiatric acuity, or no less than once a week."

TDMHMR responds by modifying language to address the needs of patients in acute and sub-acute units. TDMHMR notes that, since the average length of stay in a hospital for a patient with acute needs is seven days, the rule requires re-evaluation once a day for five of the first seven days and as clinically indicated. For patients with longer stays for whom frequent re-evaluations may not be as necessary, the rule requires re-evaluation once a week thereafter and as clinically indicated. Regarding the commenter's claim that requiring a psychiatrist to conduct the re-evaluation ignores the contribution of non-psychiatric physicians, TDMHMR responds by changing "psychiatrist" to "physician" in §411.472(f) and (g).

Regarding nursing services in §411.473(c)(1), four commenters recommended language be added to clarify that the DPN has authority only over the nursing staff that provide care under these rules. The commenters noted that the DPN does not have authority over the nursing staffs in non-psychiatric units of a medical-surgical hospital. TDMHMR responds that the definition of "nursing staff" in §411.473 means staff members of a hospital,

and "hospital," as defined in §411.453, means a free-standing psychiatric hospital or the psychiatric unit of a general hospital. Therefore, further clarification is unnecessary.

Regarding §411.473(c)(3), two commenters objected to the rule prescribing to whom the DPN reports. The commenters stated that the requirement is "unnecessarily intrusive" and does not take into consideration that "hospitals have a multitude of organizational structures." TDMHMR responds that because of the importance of nursing services in providing care to patients and the integral role of the DPN at the hospital, TDMHMR believes it is reasonable to require the DPN to be directly accountable to the hospital administrator.

Regarding the qualification requirement options for a DPN in §411.473(d), one commenter expressed concern that the educational requirements for the DPN exceeded the requirements for the chief nursing officer as described in 25 TAC §133.41(o). The commenter stated the requirements will create an unnecessary burden not only for individuals currently serving in this capacity but also for hospitals that, historically, have had difficulty finding qualified nurses. TDMHMR responds that the qualifications of a DPN exceed those for a chief nursing officer because a DPN for a psychiatric hospital or unit requires psychiatric specialty.

Regarding the qualification requirement options for a DPN in §411.473(d), another commenter stated that the three options partially reflect the qualifications for the chief nursing officer under TDH rules, specifically 22 TAC §133.41(o)(1)(A). Regarding the first option in (d)(1), the commenter noted the additional requirement that the master's in nursing be in psychiatric-mental health can be specifically justified. Regarding the second option in (d)(2), the commenter noted that the second portion of (d)(2)(B) is not consistent with §133.41(o)(1)(A)(iv) of TDH's rule. The commenter stated that TDH's rule requires an RN with a bachelor's degree in nursing to be progressing toward obtaining the nursing administration qualifications associated with a master's degree in nursing under a written plan for acquiring administrative and management skills and experience, while TDMHMR's proposed rule only requires that the RN be progressing under a written plan to obtain a master's degree in a health-related field. The commenter pointed out that TDH's rule specifies that a master's in a health-related field must have been "obtained through a curriculum that included courses in administration and management." The commenter stated that the curriculum requirement is an important qualification and recommended either adding it to the second portion of (d)(2)(B) or eliminating the second portion of (d)(2)(B) regarding a master's degree in a health-related field. TDMHMR responds by revising the second option to delete the requirement in proposed (d)(2)(B) and to require the consulting RN who has a master's degree in a health-related field to also have a bachelor's degree in nursing. Additionally, the number of clinical consulting hours has been reduced from eight hours per month to four hours per month. The revision eliminates the requirement to be progressing under a written plan to obtain a master's degree because TDMHMR believes that the experience and consultation requirements are adequate. THMHMR acknowledges that it may be difficult for a hospital to hire or contract for a DPN in some areas of the state because of the requirement in proposed (d)(2)(B).

Regarding the third option in (d)(3), the same commenter noted that it is partially consistent with §133.41(o)(1)(A)(iii) of TDH's rule, because TDH's rule requires the master's in a health-related field to be "obtained through a curriculum that included courses in administration and management." The commenter expressed concern that the third option in (d)(3) does not require the master's degree to have psychiatric-mental health content (like the first option) nor does it require consultation with an RN with a master's degree in psychiatric-mental heath nursing. The commenter recommended that (d)(3) state that the master's degree in a health-related field from an accredited college or university be obtained through a curriculum that included courses in administration and management and that the RN either 1) have three years experience in psychiatric-mental health nursing or 2) consult with an RN with a master's degree in psychiatric-mental health nursing for a period of three years. TDMHMR responds by revising the third option to require the RN to have a bachelor's degree in nursing (BSN) in addition to the master's degree in a health-related field. TDMHMR notes that the BSN curriculum includes courses in administration and management and therefore addresses the commenter's concern. TDMHMR also notes that, because the definition of "hospital" in §411.453 means a free-standing psychiatric hospital or the psychiatric unit of a general hospital, the experience requirement *is* in psychiatric-mental health nursing.

Regarding the qualification requirement options for a DPN in §411.473(d), one commenter stated that "the range of qualifications permitted is too broad to make the requisite qualifications meaningful, realistic, or even reasonable" and that "some of the provisions threaten to reverse the advances the (nursing) profession has made over the last half century." TDMHMR disagrees with the commenter that the range of qualifications are too broad to be meaningful, but notes that it has revised the proposed third option to require a bachelor's degree in nursing in addition to the master's degree in a health-related field.

Regarding the qualification requirement options for a DPN in §411.473(d), one commenter suggested including several other options as follows: "1) 'grandfathering' nurses in DPN positions who do not totally fulfill the proposed requirements; 2) waiving the regulations for the DPN of hospitals with fewer than 100 beds or hospitals in communities of less than 50,000; 3) recognizing the experience in psychiatric care and management for the DPN position; and 4) delineating training that a non-master's- or non-bachelor's-trained-DPN could obtain without enrolling in a master's program that would enhance his/her skills and allow the DPN to be in compliance with the rule's intent." TDMHMR responds that the purpose of these rules is to establish for all psychiatric hospitals a minimum standard of care. "Grandfathering" or waiving requirements for smaller hospitals may have the undesirable result of patients in some hospitals receiving a lower quality of care than patients in other hospitals. TDMHMR notes that the commenter's suggested third option is unclear because the proposed rules do recognize experience in psychiatric care in meeting the qualifications for a DPN. Regarding the commenter's suggested fourth option, TDMHMR responds that such an option for a non-master's RN is reflected in adopted §411.473(d)(3)(B) regarding clinical consultation. However, TDMHMR does not believe a "non-bachelor's trained" RN is qualified to be a DPN. Additionally, TDMHMR believes that requiring a DPN to have a BSN is a reasonable minimum qualification and will not create impediments to a hospital's recruiting a DPN, regardless of the hospital's size.

Regarding the qualification requirement options for a DPN in §411.473(d), one commenter questioned whether, given the problems with staffing issues and the lack of readily available programs for a master in psychiatric nursing, TDMHMR would consider allowing BSN nurses with extensive experience to

occupy the DPN position. TDMHMR responds by revising the second option to delete the requirement in proposed (d)(2)(B). The revision eliminates the requirement to be progressing under a written plan to obtain a master's degree because TDMHMR believes that the experience and consultation requirements are adequate. Additionally, the number of clinical consulting hours has been reduced from eight hours per month to four hours per month. THMHMR acknowledges that it may be difficult for a hospital to hire or contract for a DPN in some areas of the state because of the requirement in proposed (d)(2)(B).

Regarding the qualification requirement options for a DPN in §411.473(d), one commenter stated that four hours, rather than the proposed eight hours, of consultation is sufficient and would allow for one hour of supervision and consultation per week. TDMHMR agrees that four hours is sufficient and has changed the requirement to four hours per month.

Regarding the qualification requirement options for a DPN in §411.473(d), one commenter noted that there are currently two agencies recognized by the U.S. Department of Education and Council for Higher Education Accreditation that accredit nursing programs in the United States. The National League for Nursing Accrediting Commission (the current name of the accrediting arm of the National League for Nursing) accredits practical and vocational nursing programs and associate degree programs in nursing, as well as baccalaureate and master's degree programs. The Commission on Collegiate Nursing Education (CCNE) is a relatively new agency which accredits baccalaureate and graduate degree programs only. The commenter requested that the Commission on Collegiate Nursing Education be included. The commenter noted that failure to make this change may limit opportunities for graduates of CCNE accredited programs. TDMHMR responds by adding language to address the commenter's concern.

Regarding the third qualification requirement option for a DPN in §411.473(d)(3), a faculty member from a state university stated: "Nurses with associate degrees move into what we call RN transition programs embedded in our baccalaureate programs in colleges and universities. These students get their bachelors degrees and move on to get masters degrees in nursing once they get a start with an associate degree in nursing. An associate degree is just a start. It is not a qualification for a leadership position. We have graduate programs in nursing specialties for that. Proposed §411.473(d)(3) is a sell out of nursing, and will work toward reversing the progress nursing has made over the last century to establish itself as a learned profession." TDMHMR responds by revising the language to require a bachelor's degree in nursing in addition to the master's degree in a health-related field and three years experience.

Regarding the nursing assessment in §411.473(e), one commenter stated that the RN should not only consider the condition of the patient, but also the condition of the potential roommate to ensure that particularly vulnerable patients are not placed in an inappropriate roommate situation. TDMHMR responds that, although §411.473(e) doesn't identify any specific element to be included in the nursing assessment, it notes that §411.477(a)(3) requires the hospital to protect a patient by "making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on the patient's needs and vulnerabilities."

Regarding the nursing reassessment in §411.473(f), four commenters recommended that patients be reassessed *every shift*, rather than every 12 hours. TDMHMR responds that the proposed provision, which requires reassessment based on the patient's needs *but at least* every 12 hours, ensures reassessments are conducted as often as necessary, which could be several times during the RN's shift. TDMHMR notes that, although the 12-hour requirement is the minimum standard, a hospital may chose to increase the frequency of its nursing reassessment.

Regarding the physical presence of an RN on-duty at all times on each unit when a patient is present on the unit in §411.473(g)(1)(B), four commenters objected to the requirement as unnecessary, noting that it would unduly increase the administrative burdens of providing nursing staff. The commenters stated that "house supervision systems provide for RN availability for care when a patient is on the unit - which is sufficient" and noted that they "knew of no evidence of unwarranted patient outcomes under the present system." The commenters recommended that subsection (g)(1)(B) instead state "provides for at least one RN to be available for care at all time when a patient is present on the unit." TDMHMR responds that having an RN merely "available" doesn't ensure the RN will be able to respond to a patient's immediate needs as quickly as an RN who is physically present and on-duty on the unit. Immediate accessibility of an RN is vital to the provision of quality patient care.

Regarding the nursing staffing plan in §411.473(g), one commenter expressed numerous concerns. The commenter stated that the requirement for at least one RN to be physically present and on-duty at all times on each unit when a patient is present on the unit in (g)(1)(B) "will prove devastating to small psychiatric units in hospitals in small rural communities due to the fact that, 1) there are proven barriers to recruiting nursing staff; 2) the fiscal aspect of paying an RN to stay on the unit at all times when smaller units are not equipped to provide services to the same volume of patients that larger hospitals are and the changes in reimbursement rates; and 3) the stringency of this rule implies that if the RN leaves the unit for just a few minutes (e.g., goes to the hospital cafeteria to pick up a meal or takes a 15-minute break), an RN would need to be "on-call" to fill in or the hospital's house supervisor would need to physically go to the unit until the assigned RN returned." The commenter also stated that "the rule does not stipulate any specific requirements for the RN, nor does it require any kind of psychiatric education or experience for the DPN." The commenter stated that "a licensed vocational nurse (LVN) with behavioral health experience has more knowledge and displays more competencies in the treatment of behavioral health patients than an RN who has had little or no behavioral health experience or training." Additionally, the commenter stated that "being able to utilize a behavioral-health-experienced-LVN with an RN available (house supervisor, DPN, or other RN who is on duty, but not on the unit) would assure that staffing ratios are sufficient for patient acuity and would be more fiscally feasible for smaller units."

Regarding the staffing plan requirements in (g)(1)(C)-(D), the same commenter stated that "the rule does not consider any of the qualified mental health professionals (QMHPs) in this staffing plan" and noted that "this rule will devastate small psychiatric units in rural hospitals unless it is revised to include a comprehensive staffing plan that includes social workers, licensed professional counselors, therapeutic recreation specialists or other qualified mental health professionals in the staffing ratio."

TDMHMR acknowledges that hospitals in small rural communities may have difficulty recruiting and retaining nursing staff, but

believes immediate accessibility of an RN is vital to the provision of quality patient care and is a reasonable standard. Regarding hospitals being allowed to utilize LVNs who are more knowledgeable about behavioral health issues, TDMHMR declines to change the rule because the requisite education and training of an RN is essential to the provision of quality care to patients. Additionally, TDMHMR notes that §411.473(d) contains the qualification requirements for the DPN. Regarding QMHPs in this staffing plan, TDMHMR responds by modifying language in subsection (g)(1)(C) to include non-nursing staff members who provide direct patient care.

Regarding the nursing staffing plan in §411.473(g)(3), four commenters noted that, as proposed, the DPN is required to document and analyze the staffing plan on a continuous basis. The commenters stated that the requirement is cumbersome and unnecessary and recommend adding the phrase, "At a minimum, annually," at the beginning of (g)(3). TDMHMR responds by adding language in (g)(3) to clarify that the determinations of the factors are made at the time the staffing plan is developed and when the staffing plan is revised based on a change in such factors. Additionally, language has been revised in (g)(5) to clarify that the staffing plan may not necessarily need to be revised when the factors in (g)(2) change.

Regarding the activities described in §411.473(h)-(k), one commenter expressed concern that "a hospital," rather than a specific employee, is the entity identified as being responsible for these activities. The commenter acknowledged the need for flexibility, but stated that "the public should have some idea where to start to search to determine the responsibility for these activities." TDMHMR responds that it would be excessively prescriptive and unnecessary for the rule to specify who at a hospital is responsible for the activities described in subsections (h)-(k). Regarding the public's need to identify the responsible employee, TDMHMR responds that the hospital administrator is ultimately responsible for ensuring the activities are accomplished.

Regarding a hospital's mandatory overtime policy in §411.473(k), four commenters requested that the rule require the hospital to inform its nursing staff of the hospital's mandatory overtime policy. TDMHMR responds that proposed §411.490(a)(3)(C) (adopted as (a)(2)(C)) requires each nursing staff to receive training in the hospital's mandatory overtime policy.

Regarding social services in §411.474, one commenter stated it is sufficient to require a hospital to provide social services as specified in subsection (a), but that the rule should not require the presence or dictate the qualifications of a director of social services. The commenter recommended deleting subsections (b) and (c) because they will result in a mandatory social services functions similar to that of §411.475, which requires a therapeutic activities function. TDMHMR responds that the requirement to have a director of social work is consistent with Medicare regulations in 42 CFR §482.62(f). Additionally, the rule's qualifications for the director ensure that the director has the requisite education and experience to oversee the social services provided at a hospital.

Regarding the three types of professionals who may conduct a social services assessment in §411.474(d)(1), one commenter stated that the limited types of professionals "would negatively impact our hospital's ability to provide social services and disrupt the continuity of services by our clinical staff." The commenter recommended that all masters-level professionals listed in the definition of "pre-screening assessment professional (PASP)" be allowed to conduct a social services assessment. The commenter also asked that the commenter's hospital "be allowed to continue to document the social work assessments under the supervision of an LMSW" and noted that "additional training requirements for these staff or additional social work licensure (e.g., SWA) might be considered to comply with the intent of the revisions." TDMHMR responds by adding language to allow a licensed psychologist, a psychological associate, and a licensed marriage and family therapist to conduct a social services assessment. TDMHMR notes that, for all the professionals who may conduct a social services assessment, no additional training is necessary.

Regarding professional qualification for conducting a social services assessment in §411.474(d)(1), two commenters stated that the training of licensed marriage and family therapists (LMFT) is equivalent to LMSWs and since LMFTs are to be experts in "systems theories techniques," the commenters believes that LMFTs are equally qualified to be included in §411.474(d)(1). The commenters stated that throughout the state rules and statutes LMFTs are included with psychologist, LPCs, and LMSWs as eligible mental health providers. One of the commenters recommended adding licensed psychologists as well. TDMHMR agrees that LMFTs and licensed psychologists are qualified and has added the professions to §411.474(d) as suggested by the commenters.

Regarding a social services assessment conducted by a licensed professional counselor (LPC) in §411.474(d)(2)(A), one commenter objected to the requirement that the LPC be supervised by a licensed master social worker (LMSW). The commenter noted that an LPC "has appropriate education (Masters Degree), training, and background necessary to provide adequate interpretation of data gathered in order to provide therapeutic care." The commenter also noted that Texas Occupations Code, §503.003 and §503.302, clearly indicates that an LPC is qualified to conduct a social services assessment without supervision by an LMSW. TDMHMR responds by deleting the LMSW supervisory requirement in subsection (d)(2)(A).

Regarding social services in §411.474, one commenter noted that the responsibilities of the social worker are absent with the exception of the performance of an assessment, while the activities of the RN are very clearly delineated. The commenter also noted the absence of the *elements* of the social services assessment and stated that many of the activities required of the RN are generally activities for which social workers are responsible. The commenter also stated that "if there are specific activities for the social worker, it would be helpful if they were delineated." TDMHMR declines to specify activities in the rule because it believes it is more appropriate for the hospital to delineate the activities for social services and nursing services within the parameters established by those practices, these rules, and the hospital's policies and procedures.

Regarding protection of a patient in §411.477, one commenter stated that the most effective way of protecting a patient from harming themselves or others is to anticipate when the patient may be losing control and to intervene early using de-escalation or substitute behaviors. The commenter recommended adding language to §411.477 about involving the patient in activities, talking with the patients, and emphasizing de-escalation and substitute behaviors. TDMHMR declines to add language about specific therapeutic interventions in this rule. TDMHMR notes that the treatment plan, developed in collaboration with the patient, describes all treatment interventions intended

to address the patient's problems and needs. Additionally, new rules governing interventions in mental health programs (Chapter 415, Subchapter F), which apply to the same entities as this subchapter, addresses identifying the underlying causes of threatening behaviors exhibited by the individuals receiving mental health services; identifying aggressive or threatening behavior; and using de-escalation techniques.

Regarding protection of a patient in §411.477(a), one commenter understood the need to protect the patient, but noted that almost any object can become hazardous if used inappropriately by a patient. The commenter stated that the requirement to modify the hospital's environment could lead hospitals to further limit patient rights by restricting items that normally would be considered reasonable. TDMHMR responds that the rule doesn't require a hospital to restrict objects indiscriminately, but rather, more appropriately, determine for each patient, which objects are hazardous to that patient and whether those objects should be secured or removed.

Regarding separation of patients under 18 years of age in §411.477(c), one commenter stated that there are some patients between 18 and 21 years who do not have the experiences of adult life and whose developmental needs are more similar to younger adolescents. The commenter recommended that the rule allow a waiver for patients 18 years and older who are determined to be medically appropriate for an adolescent program. TDMHMR responds that while it may be in the best interest of some patients who are 18 and older to be allowed to remain on an adolescent unit, state statute prohibits it. TDMHMR notes that hospitals are not prohibited from further separating these younger adult patients from older adult patients.

Regarding discharge planning in §411.482, one commenter expressed concern that, although the section references the IDT, it is not clear who ultimately is responsible for which pieces of the discharge plan. Additionally, the commenter stated that the section does not reflect meaningful participation or involvement of the patient and noted that it reads "as though the staff members of the IDT will draft a discharge plan which will then be presented to the patient for signature." The commenter assumed that surely "this is not the intent as there is consensus in the psychiatric community regarding the value of involving the patient in the discharge planning process." TDMHMR responds that the opportunity for the patient's participation in discharge planning is reflected in §411.482(a). As set forth in subsection (a)(2), the IDT is required to be involved in discharge planning and, as defined in §411.453, "IDT" includes the patient. In particular, subsection (a)(3)(A) requires the IDT to recommend services and supports needed by the patient after discharge. Additionally, TDMHMR declines to identify by rule the particular staff member responsible for each discharge planning activity because it is more appropriate for the hospital to assign such responsibilities to qualified staff members based on the hospital's policies and organizational makeup.

Regarding naming the individual or entity responsible for providing and paying for a patient's medications following discharge in §411.482(b)(7), four commenters stated that the proposed language is misleading and broader than the underlying statute and noted that the requirement is statutorily limited to patients *who are discharged from court-ordered mental health* treatment. The commenters recommended adding language to reflect such limitation. TDMHMR agrees with the commenters and has limited the requirement in §411.482(b)(7) to involuntary patients admitted under an order described in §411.463(a)(2).

Regarding §411.488, one commenter stated that while his organization "does not disagree with the content of this section or the documentation required, it does believe that the relationship between what belongs in the medical record and what belongs in the progress notes is confusing and may not reflect actual practice." The commenter requested that the "rule be reviewed to see if could be better organized." TDMHMR responds that it has revised the section to better reflect actual practice.

Regarding content of the medical record in §411.488(a)(9), one commenter noted that the requirement for a "summary" of revisions made to the treatment plan would be redundant if the actual changes are reflected in revised treatment plans maintained in the medical record. TDMHMR agrees and has deleted the redundant requirement.

Regarding progress notes in §411.488(b), seven commenters objected to the prescriptive requirements for progress notes calling them cumbersome, unnecessary, inappropriate, and impractical. Five of the commenters stated the requirement will take clinicians away from other, more patient-centered activities. One of the commenters noted that a literal reading of this subsection suggests that these highly detailed requirements are to be included in every progress note made by every person involved in a patient's treatment. Another commenter stated that the requirement to document the "eight individual points in every physician note and in a nursing note every 12 hours is exceedingly prescriptive," and noted that "compliance with this rule would produce incredible meaningless volumes of paperwork." All of the commenters recommended that the subsection be deleted entirely. One of the commenters suggested modifying the language in (b)(1) to state that "The appropriate members of the IDT shall make written progress notes of any change in the following:". TDMHMR responds by revising language in subsection (b) to state that "*appropriate members of the patient's IDT* shall make written notes of the patient's progress" to clarify that not all members of the IDT are required to document all elements described in subsection (b)(1). Additionally, the documentation requirements described in subsection (b)(1)(A) and (E) have been moved to subsection (a) and the documentation requirement described in subsection (b)(1)(B) has been moved to §411.471 regarding the treatment plan. Also, language has been revised in subsection (b)(2)(B) to clarify the frequency requirement for documenting the nursing reassessment.

Regarding progress notes in §411.488(b), one commenter expressed strong agreement with the section, noting that progress notes are the key to accountability for stakeholders and good accountability measures assist in protecting the client. TDMHMR responds that it appreciates the commenters agreement, but notes that the section has been revised to clarify which elements of documentation belong in the progress notes and which belong in other parts of the medical record.

Regarding staff member training in §411.490, four commenters objected to the extensive training requirements. The commenters stated that the requirements create significant financial implications as well as access-to-care issues and should be revised so that they are based on competencies and outcomes rather than on prescriptiveness. The commenters also stated that the training for breathing and cardiac emergencies in §411.490(a)(2) should be limited to those staff members with clinical responsibilities, and noted that, as written, the rule requires even the hospital financial counselor to receive training for breathing and cardiac emergencies. The commenters also noted that the rule seems to require a hospital to conduct staff

training, which is not currently required by state law or rule. The commenters recommended replacing the proposed provisions in §411.490 with a requirement that all staff members receive training in 1) preventing and reporting abuse, neglect and exploitation, CPR, and emergency response; and 2) age-specific procedures as appropriate. TDMHMR responds that a portion of the training required in §411.490 is based on federal and state laws and other rules. Although the training requirements in this rule are not specifically "outcome-based," such requirements provide for a basis by which a staff member's knowledge and skills can be consistently measured. Further, a staff member's "competency" is, in essence, required by subsection (f) which states that "a staff member shall perform his or her responsibilities in accordance with the training and certification required by this section." Regarding who must receive training for breathing and cardiac emergencies, TDMHMR responds by modifying language to require only those staff members who provide direct patient care to receive training for breathing and cardiac emergencies. Regarding the commenters' statement that the rule seems to require a hospital to conduct staff training which is not currently required by state law or rule, TDMHMR responds that the rule does require some training that is not currently required by state law or rule. TDMHMR declines to limit the areas of training requirements as suggested by the commenters because the training requirements in the rule are either required by law or other rule or fulfill TDMHMR's statutory responsibility to adopt standards ensuring the proper care and treatment of patients in psychiatric hospitals.

Regarding training for breathing and cardiac emergencies in §411.490(a)(2)(B) and (D), one commenter expressed concern that the rule requires all staff members to receive training in rescue breathing using bag-mask ventilation with oxygen and the use of an automated external defibrillator and noted that the skill is beyond the competency of an unlicensed assistive personnel. The commenter stated that, since there are competent professional nurses present on every unit, it seems more appropriate to require all nurses to receive this training. The commenter noted that this is a competency and liability issue for hospitals. TDMHMR responds that it has revised the provision to require only staff members providing direct patient care to maintain certification in a course, developed by the American Heart Association or the American Red Cross, in recognizing and caring for breathing and cardiac emergencies. Additionally, the course must teach the following skills appropriate to the age of the hospital's patients 1) rescue breathing with and without devices (which would include using a bag-mask ventilation); 2) airway obstruction; 3) cardiopulmonary resuscitation; and 4) use of an automated external defibrillator. TDMHMR believes that such skills are within the ability of a UAP.

Regarding age specific training for staff working with children and adolescents in §411.490(a)(5). One commenter expressed appreciation in addressing the specific needs of children and adolescents. TDMHMR responds that it appreciates the commenter's support.

Regarding the requirement for a PASP to receive at least eight hours of training in conducting a pre-admission screening in §411.490(a)(8), four commenters stated that the training is not required by statute and is burdensome. The commenters also stated that the state statute cited (THSC, §572.0025(e)) requires only eight hours of training on intake and assessment, not PASP. The commenters recommended deleting the provision in (a)(8). Another commenter suggested reducing the training requirement from eight hours to four if pertinent issues are covered during the training. TDMHMR responds that the training is required by state statute and notes that the "assessment" referred to in state statute (i.e., THSC, §572.0025(e) and (h)(2)) is the same activity as the "pre-admission screening" defined in proposed §411.453(41) and referred to in proposed §411.490(a)(8). TDMHMR notes that it has modified language to allow for the pre-admission screening and intake training to be combined.

Regarding the requirement for a staff member to receive training and demonstrate competency in performing voluntary or involuntary interventions in §411.490(a)(10), one commenter stated that whomever is responsible for supervising and evaluating the staff member must also receive training and demonstrate competency in performing these interventions because the supervisor must be able to provide feedback and evaluate the staff member's performance. TDMHMR responds that it is unnecessary to add the requirement because the supervisor of a staff member who "may initiate" an involuntary intervention would, in all likelihood, be a staff member who "may initiate" an involuntary intervention as well, and therefore would be required to receive training under subsection (a)(9).

Regarding training being received before assuming responsibilities at the hospital in §411.490(d)(4)(A), four commenters stated that "in the current manpower shortage, it is unrealistic to require this training prior to the professional's assuming duties." The commenters recommended modifying language to state "within 30 days of hiring, unless the staff member has already completed a training course." TDMHMR responds by modifying language to require certification before assuming responsibilities at the hospital or not later than 30 days after the staff member is hired by the hospital if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

Regarding the requirement for a staff member to perform his or her responsibilities in accordance with the training required by §411.490(f), one commenter stated that the requirement is ambiguous and could be interpreted several different ways. It could mean the hospital is prohibited from assigning staff members responsibilities for which they have not received training. It could mean that staff members are prohibited from accepting responsibilities for which they have not received training. It could mean a hospital may assign responsibilities to staff members only after the hospital itself has trained them (i.e., it could not rely on training provided by another facility). The commenter recommended modifying the language to more clearly state the intent. TDMHMR responds that it believes the rule is clear and notes that subsection (a) lists the training the hospital is required to provide, subsection (d) identifies the point in time when the staff member shall receive the training (e.g., "before assuming responsibilities at the hospital") and the frequency thereafter, and subsection (f) requires the staff member to perform his or her responsibilities in accordance with the training and certification required by the section. It may be prudent for a hospital to conclude that a staff member should not perform activities described in the section until he or she has received training on such activities from the hospital.

Regarding the collection of performance indicators in §411.493(d)(2), four commenters stated that the requirement to collect and aggregate 18 separate performance indicators is excessive and unduly burdensome and noted that neither JCAHO nor the Centers for Medicare and Medicaid Services requires such extensive data collection. The commenters

stated that "it is critical that this provision be narrowed in scope" and recommended modifying language to state, "The hospital shall collect and aggregate data, which may include any of the following performance indicators:" TDMHMR responds by narrowing the scope of the provision to require collection and aggregation of 11 of the proposed 18 performance indicators. TDMHMR believes that collecting and aggregating data on these 11 indicators is necessary for a hospital to implement and maintain an effective performance improvement program.

Regarding response to external reviews in §411.495, one commenter stated that "it is unclear why the licensing representative would monitor corrective action plans related to JCAHO when JCAHO does their own monitoring and follow up." The commenter noted that this is a burden and cost already borne by JCAHO. TDMHMR responds by eliminating the last sentence in §411.495 related to a hospital modifying and evaluating its corrective action plan for external entities.

Regarding confidentiality of advisory committee records in §411.496(c), four commenters recommended modifying the language in the last part of subsection (c) to be consistent with TDH's licensure rule 25 TAC §133.41 (relating to Hospital Functions and Services), which states, "...are confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release." TDMHMR responds by revising the language as recommended by the commenters.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §§411.451 - 411.455

These sections are adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.453. Definitions.

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

(1) Administrator--The individual, appointed by a governing body, who has authority to represent the hospital and, as delegated by the governing body, has responsibility for operating the hospital in accordance with the hospital's written policies and procedures.

(2) Administrator's designee--An individual designated in a hospital's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual to a hospital's custody and care for inpatient mental health treatment based on:

(A) a physician's order issued in accordance with §411.461(d)(2)(B) of this title (relating to Voluntary Admission);

(B) a physician's order issued in accordance with §411.462(c)(3) of this title (relating to Emergency Detention);

(C) a protective custody order issued in accordance with Texas Health and Safety Code, §574.022;

(D) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code, §574.034;

(E) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code, §574.035;

(F) an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46B.073(d); or

(G) an order for placement in accordance with Texas Family Code, §55.33(a)(1)(B) or §55.52(a)(1)(B).

(4) Adult--An individual 18 years of age and older or an individual who is under 18 years of age and is or has been married or who has had the disabilities of minority removed for general purposes.

(5) APN or advanced practice nurse--A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse, in accordance with Texas Occupations Code, Chapter 301. The term is synonymous with "advanced nurse practitioner."

(6) Business day--Any day except a Saturday, Sunday, or legal holiday.

(7) CFR--The Code of Federal Regulations.

(8) COPSD or co-occurring psychiatric and substance use disorders--A diagnosis of both a mental illness and a substance use disorder.

(9) Council on Social Work Education--The national organization that is primarily responsible for the accreditation of schools of social work in the United States.

(10) Day--Calendar day.

(11) Discharge--The release by a hospital of a patient from the custody and care of the hospital.

(12) DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(13) 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:

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

(B) serious impairment to bodily functions;

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

(D) in the case of 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.

(14) Governing body--The governing authority of a hospital that is responsible for the hospital's organization, management, control and operation, including appointment of the administrator.

(15) Hospital--

(A) A private psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules); or

(B) an identifiable inpatient mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules).

(16) IDT or interdisciplinary treatment team--A group of individuals who possess the knowledge, skills and expertise to develop and implement a patient's treatment plan and includes:

(A) the patient's treating physician;

(B) the patient and the patient's LAR, if any;

(C) the staff members identified in the treatment plan as responsible for providing or ensuring the provision of each treatment in accordance with §411.471(c)(1)(E)(iii) of this title (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any individual identified by the patient or the patient's LAR, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(17) Inpatient mental health treatment--Residential care provided in a hospital for a patient with a mental illness and a substance use disorder, if any, which includes:

(A) medical services;

(B) nursing services;

(C) social services;

(D) therapeutic activities, if ordered by the treating physician; and

(E) psychological services, if ordered by the treating physician.

(18) Involuntary patient--A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §411.462 of this title (relating to Emergency Detention); or

(B) §411.463 of this title (relating to Admission of an Individual Under Protective Custody Order for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement).

(19) LAR or legally authorized representative--An individual authorized by law to act on behalf of a individual with regard to a matter described in this subchapter, and may be a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(20) Legal holiday--A holiday listed in Texas Government Code, §662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.

(21) Licensed marriage and family therapist--An individual who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(22) Licensed master social worker--An individual who is licensed as a licensed master social worker by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505.

(23) Licensed professional counselor--An individual who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(24) Licensed psychologist--An individual who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(25) Licensed social worker--An individual who is licensed as a licensed social worker by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505.

(26) LVN or licensed vocational nurse--An individual who is licensed as a licensed vocational nurse by the Texas Board of Vocational Nurse Examiners in accordance with Texas Occupations Code, Chapter 302. Effective February 1, 2004, an LVN is an individual who is licensed as a vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(27) Mandatory overtime--The time, other than on-call time, a nursing staff member is required to work at a hospital beyond the hours or days that were scheduled for the staff member. Neither the length of the shift (whether 4, 8, 12, or 16 hours) nor the number of shifts scheduled to work per week (whether 4, 5, or 6 per week) is the determinative factor in deciding whether time is mandatory overtime.

(28) Medical services--Services provided or delegated by a physician acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 155.

(29) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder, mental retardation, autism, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(30) Minor--An individual under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(31) Monitoring--One or more staff members observing a patient on a continual basis or at pre-determined intervals and intervening when necessary to protect the patient from harming self or others.

(32) National League for Nursing--The national organization that is primarily responsible for the accreditation of nursing education programs in the United States.

(33) Neurological screening--A screening to assess an individual's neurological functioning.

(34) Nosocomial infection--A hospital-acquired infection of a patient.

(35) Nursing services--Services provided, assigned to an LVN, or delegated to a UAP by a registered nurse acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301.

(36) Nursing staff--Staff members of a hospital who are registered nurses, licensed vocational nurses or unlicensed assistive personnel.

(37) Occupational therapist--An individual who is licensed as an occupational therapist by the Texas Board of Occupational Therapy Examiners in accordance with Texas Occupations Code, Chapter 454.

(38) PASP or pre-admission screening professional--A staff member whose responsibilities include conducting a pre-admission screening and who is:

(A) a physician;

(B) a physician assistant;

(C) a registered nurse;

(D) a licensed psychologist;

(E) a psychological associate;

(F) a licensed social worker;

(G) a licensed professional counselor; or

(H) a licensed marriage and family therapist.

(39) Patient--An individual who has been admitted to a hospital and has not been discharged.

(40) Physician--An individual who is:

(A) licensed as a physician by the Texas State Board of Medical Examiners in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(41) Physician assistant--An individual who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(42) Pre-admission screening--The clinical process used to gather information from a prospective patient, including a medical history, any history of substance use, and the problem for which the prospective patient is seeking treatment, to determine if a physician should conduct an admission examination.

(43) Prospective patient--An individual:

(A) for whom a request for voluntary admission has been made, in accordance with §411.461(a) of this title (relating to Voluntary Admission); or

(B) who has been accepted by a hospital for a preliminary examination, in accordance with §411.462(a) of this title (relating to Emergency Detention).

(44) Psychological associate--An individual who is licensed as a psychological associate by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(45) Psychological services--Services provided by a psychologist or psychological associate acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 501.

(46) Psychologist--An individual who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(47) RN or registered nurse--An individual who is licensed as a registered nurse by the Texas State Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(48) Sentinel event--Any of the following occurrences that is unexpected:

(A) the death of a patient;

(B) the serious physical injury of a patient;

(C) the serious psychological injury of a patient; or

(D) circumstances that present the imminent risk of death, serious physical injury, or serious psychological injury of a patient.

(49) Social services--Services provided by:

(A) a licensed master social worker or licensed social worker acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 505; or

(B) a licensed professional counselor acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 503.

(50) Stabilize--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 hospital or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(51) Staff members--Any and all personnel of a hospital including full-time and part-time employees, contractors, students, volunteers, and professionals granted privileges by the hospital.

(52) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets the criteria for substance abuse or substance dependence as described in the DSM.

(53) TAC--The Texas Administrative Code.

(54) TDMHMR--The Texas Department of Mental Health and Mental Retardation.

(55) Therapeutic activities--Structured activities designed to develop, restore or maintain a patient's optimal level of physical and psychosocial functioning limited to:

(A) recreational therapy provided by a therapeutic recreation specialist;

(B) physical therapy, speech therapy, or occupational therapy, provided by a licensed staff member acting within the scope of the staff member's practice;

(C) art therapy provided by a staff member certified as an ATR-BC by the American Art Therapy Association;

(D) music therapy provided by a staff member who is certified as an MT-BC by the Certification Board for Music Therapists; or

(E) psychosocial or leisure activities provided by qualified staff members.

(56) Therapeutic recreation specialist--An individual who is certified as a therapeutic recreation specialist by the Texas Consortium for Therapeutic Recreation/Activities Certification or a certified therapeutic recreation specialist by the National Council for Therapeutic Recreation Certification.

(57) Treating physician--A physician who coordinates and oversees the implementation of a patient's treatment plan.

(58) Unit--A discrete and identifiable area of a hospital that includes patients' rooms or other patient living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(59) UAP or unlicensed assistive personnel--An individual, not licensed as a health care provider, who provides certain health related tasks or functions in a complementary or assistive role to a registered nurse in providing direct patient care or carrying out common nursing functions.

(60) Voluntary patient--A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §411.461 of this title (relating to Voluntary Admission); or

(B) §411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission).

§411.454. General Provisions.

(a) Written policies and procedures. A hospital shall develop written policies and procedures that ensure compliance with this subchapter.

(b) Compliance by staff. All staff members shall comply with this subchapter and the policies and procedures of the hospital required by subsection (a) of this section.

(c) Responsibility of hospital. A hospital shall be responsible for a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(d) Enforcement of polices and procedures. A hospital shall take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(e) Implementation of physician orders. A hospital shall implement all orders issued by a physician for a patient or provide adequate written justification for failing to implement the orders.

(f) Physician delegation. Except as provided by §411.461(f)(3) of this title (relating to Voluntary Admission), or other state law as applicable, a physician may delegate any medical service described in this subchapter in accordance with Texas Occupations Code, §157.001.

(g) Compliance with rules. A hospital shall comply with the following TDMHMR rules:

(1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(2) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(3) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(4) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

(h) Compliance with Treatment Facilities Marketing Practices Act. A hospital shall comply with Texas Health and Safety Code, Chapter 164, unless the hospital is an exemption described in Texas Health and Safety Code, §164.004.

(i) Compliance with JCAHO standards. A hospital shall be in substantial compliance with inpatient standards set forth by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); that is, the standards for inpatient care in the current edition of the Comprehensive Accreditation Manual for Hospitals. In any case in which federal or state law, rule, or regulation is in conflict with such inpatient standards, the federal or state law, rule or regulation prevails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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DIVISION 2. ADMISSION

25 TAC §§411.459, 411.461 - 411.465

These sections are adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.459. Admission Criteria.

A hospital shall develop and implement written admission criteria that:

(1) are uniformly applied to all prospective patients;

(2) permit the admission of a prospective patient only if he or she has a mental illness of sufficient severity to require inpatient mental health treatment; and

(3) prevent the admission of a prospective patient who:

(A) requires specialized care not available at the hospital; or

(B) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

§411.461. Voluntary Admission.

(a) Request for voluntary admission.

(1) In accordance with Texas Health and Safety Code, §572.001(a) and (c), a request for voluntary admission of a prospective patient may only be made by:

(A) the prospective patient, if:

(i) he or she is 16 years of age or older; or

(ii) he or she is younger than 16 years of age and is or has been married; or

(B) the parent, managing conservator, or guardian of the prospective patient, if the prospective patient is younger than 18 years of age and is not and has not been married, except that a guardian or

managing conservator acting as an employee or agent of the state or a political subdivision of the state may request admission of the prospective patient only with the prospective patient's consent.

(2) In accordance with Texas Health and Safety Code, §572.001(b) and (e), a request for admission shall:

(A) be in writing and signed by the individual making the request; and

(B) include a statement that the individual making the request:

(i) agrees that the prospective patient will remain in the hospital until discharged; and

(ii) consents to diagnosis, observation, care and treatment of the prospective patient until the earlier of one of the following occurrences:

(I) the discharge of the prospective patient; or

(II) the prospective patient is entitled to leave the hospital, in accordance with Texas Health and Safety Code, §572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive a patient's rights described in the rules listed under §411.454(g) of this title (relating to General Provisions).

(b) Capacity to consent. If a prospective patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code, Chapter 574.

(c) Pre-admission screening.

(1) Prior to voluntary admission of a prospective patient, a PASP shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the hospital may not admit the prospective patient and shall refer the prospective patient to alternative services. If the PASP determines that the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (d)(2)(A) of this section.

(d) Requirements for voluntary admission. A hospital may voluntarily admit a prospective patient only if:

(1) a request for admission is made is accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with Texas Health and Safety Code, §572.0025(f)(1), conducted, within 72 hours prior to admission, or has consulted with a physician who has conducted, within 72 hours prior to admission, an admission examination in accordance with subsection (f) of this section; and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the hospital's admission criteria; and

(4) in accordance with Texas Health and Safety Code, §572.0025(f)(2), the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient.

(e) Intake. In accordance with Texas Health and Safety Code §572.0025(b), a hospital shall, prior to voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining, orally and in writing, the prospective patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the hospital's services and treatment as they relate to the prospective patient; and

(B) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, §576.008.

(f) Admission examination.

(1) The admission examination referenced in subsection (d)(2)(A) of this section shall be conducted by a physician and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non-physician.

(g) Documentation of admission order. In accordance with Texas Health and Safety Code §572.0025(f)(1), the order described in subsection (d)(2)(B) of this section shall be:

(1) issued in writing and signed by the issuing physician; or

(2) issued orally or electronically if, within 24 hours after its issuance, the hospital has a written order signed by the issuing physician.

§411.463. Admission of an Individual under Protective Custody Order, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement.

(a) Requirements for admission under court order. A hospital may admit an individual:

(1) under a protective custody order only if a court has issued a protective custody order in accordance with Texas Health and Safety Code, §574.022;

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services in accordance with Texas Health and Safety Code, §574.034; or

(B) an order for extended inpatient mental health services in accordance with Texas Health and Safety Code, §574.035;

(3) under an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46B.073(d); or

(4) under an order for placement issued in accordance with Texas Family Code, §55.33(a)(1)(B) or §55.52(a)(1)(B).

(b) Intake. A hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted under one of the orders described in subsection (a) of this section.

(1) The intake process shall include but is not limited to:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, §576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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DIVISION 3. EMERGENCY TREATMENT

25 TAC §411.468

This section is adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.468. Responding to an Emergency Medical Condition of a Patient, Prospective Patient, or Individual Who Arrives on Hospital Property Requesting Examination or Treatment.

(a) Planning responses to emergency medical conditions. A hospital shall:

(1) identify potential emergency medical conditions of:

(A) a patient;

(B) a prospective patient; and

(C) an individual who arrives on hospital property, as defined in 42 CFR §489.24(b), requesting examination or treatment for a medical condition; and

(2) develop a written plan describing the specific and appropriate action to be taken by the hospital to evaluate for and stabilize each identified potential emergency medical condition, which shall include:

(A) the administration of first aid and basic life support when clinically indicated; and

(B) the use of the supplies and equipment described in subsection (f)(2) of this section.

(b) Written record of evaluations. The hospital shall keep a written record of all evaluations of individuals who arrive on hospital property, as defined in 42 CFR §489.24(b), requesting examination or treatment for a medical condition. The written record shall include the following information:

(1) demographic data regarding the individual evaluated, including the name, age and sex of the individual;

(2) a description of the individual's complaint or symptoms;

(3) whether the hospital determined that the individual had an emergency medical condition and, if so, a description of the condition;

(4) whether the hospital treated or refused to treat the individual;

(5) whether the individual refused or consented to treatment or transfer;

(6) whether the hospital stabilized the emergency medical condition;

(7) whether the hospital admitted or released the individual; and

(8) whether the hospital transferred the individual and, if so, the individual's destination, time of transfer and mode of transportation.

(c) Availability of physicians. At least one physician shall, at all times:

(1) be physically present at the hospital to respond to an emergency medical condition of a patient; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication to provide medical consultation.

(d) Response to emergency medical conditions. If a hospital determines that a patient, prospective patient, or an individual who arrives on hospital property requesting examination or treatment for a

medical condition has an emergency medical condition, the hospital shall:

(1) take action to stabilize the emergency medical condition in accordance with the plan required by subsection (a)(2) of this section; and

(2) if appropriate, transfer the individual in accordance with the following, as applicable:

(A) §134.43 of this title (relating to Patient Transfer Policy), or a transfer agreement made in accordance with §134.61 of this title (relating to Patient Transfer Agreements); or

(B) §133.44 of this title (relating to Hospital Patient Transfer Policy), or a transfer agreement made in accordance with §133.61 of this title (relating to Hospital Patient Transfer Agreements).

(e) Qualified staff members. The hospital shall have an adequate number of staff members who are qualified and available to evaluate for and respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(f) Supplies and equipment.

(1) The hospital shall have an adequate amount of appropriate supplies and equipment immediately available and fully operational at the hospital to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(2) The emergency supplies and equipment required by paragraph (1) of this subsection shall include, at a minimum:

(A) oxygen;

(B) airways, manual breathing bags, and masks; and

(C) an automated external defibrillator.

(3) If an identifiable inpatient mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules) has immediate access to a automated external defibrillator located in another area, the identifiable inpatient mental health services unit is not required to comply with paragraph (2)(C) of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. SERVICE REQUIREMENTS

25 TAC §§411.471 - 411.477

These sections are adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.471. Inpatient Mental Health Treatment and Treatment Planning.

(a) Inpatient mental health treatment. A hospital shall provide inpatient mental health treatment to a patient under the direction of a physician and in accordance with the patient's treatment plan and this division. The treatment plan shall be appropriate to the needs and interests of the patient and be directed toward restoring and maintaining optimal levels of physical and psychological functioning.

(b) Treatment plan content within 24 hours. A hospital, in collaboration with the patient, shall develop and implement a written treatment plan within 24 hours after the patient's admission. If the patient is unable or unwilling to collaborate with the hospital, the circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(1) The treatment plan shall be based on the findings of:

(A) the physical examination described in §411.472(e)(1)(A) or (B) of this title (relating to Medical Services);

(B) the psychiatric evaluation described in §411.472(f) of this title (relating to Medical Services); and

(C) the initial comprehensive nursing assessment described in §411.473(e) of this title (relating to Nursing Services).

(2) The treatment plan shall contain:

(A) a list of all diagnoses for the patient with notation as to which diagnoses will be treated at the hospital including:

(i) at least one mental illness diagnosis;

(ii) any substance use disorder diagnoses; and

(iii) any non-psychiatric conditions;

(B) a list of problems and needs that are to be addressed during the patient's hospitalization;

(C) a description of all treatment interventions intended to address the patient's problems and needs, including the medication(s) prescribed and the symptoms each medication is intended to address;

(D) identification of any additional assessments and evaluations to be conducted, which shall include the social assessment described in §411.474(d) of this title (relating to Social Services);

(E) identification of the level of monitoring assigned to the patient; and

(F) a description of the rationale for the treatment interventions described in accordance with subparagraph (C) of this paragraph.

(c) Treatment plan content within 72 hours.

(1) Within 72 hours of the patient's admission the hospital shall:

(A) establish an IDT for a patient;

(B) conduct the social assessment described in subsection (b)(2)(D) of this section;

(C) initiate referrals for any additional assessments and evaluations identified in accordance with subsection (b)(2)(D) of this section;

(D) review the content of the treatment plan required by subsection (b)(2) of this section, and revise the plan, if necessary, based on the findings of the social assessment or as otherwise clinically indicated; and

(E) add to the treatment plan:

(i) a description of the goals of the patient relating to the problems and needs listed in accordance with subsection (b)(2)(B) of this section;

(ii) the specific treatment modalities for each treatment intervention by type and frequency;

(iii) the IDT member responsible for providing or ensuring the provision of each treatment intervention;

(iv) the time frames and measures to evaluate progress of the treatment plan toward meeting the goals of the patient;

(v) a description of the clinical criteria for the patient to be discharged; and

(vi) a description of the recommended services and supports needed by the patient after discharge as required by §411.482(a)(3)(A) of this title (relating to Discharge Planning).

(2) The treatment plan shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the treatment plan, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medial record.

(d) Treatment plan review. In addition to the review required by subsection (c)(1)(D) of this section, the treatment plan shall be reviewed and its effectiveness evaluated:

(1) when there is a significant change in the patient's condition or diagnosis or as otherwise clinically indicated:

(2) in accordance with the time frames and measures described in the treatment plan; and

(3) upon request by the patient or the patient's LAR.

(e) Treatment plan revision. In addition to a revision required by subsection (c)(1)(D) of this section, the treatment plan shall be revised, if necessary, based on the findings of any assessment, reassessment, evaluation, or re-evaluation, or as otherwise clinically indicated.

(f) Documentation of treatment plan review and revisions. A treatment plan review and revision shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the review or revision, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

§411.472. Medical Services.

(a) Medical services in treatment plan. A hospital shall provide medical services to a patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Director of psychiatric services. A hospital shall have a director of psychiatric services who directs, monitors, and evaluates the psychiatric services provided.

(c) Qualifications of director of psychiatric services. In accordance with Texas Health and Safety Code, §577.008, the director of psychiatric services shall be a physician who:

(1) is certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology; or

(2) has three years of experience as a physician in psychiatry in a "mental hospital" as defined in Texas Health and Safety Code, §571.003.

(d) Treating physician. A hospital shall assign a treating physician to a patient and document such assignment in the patient's medical record at the time the patient is admitted.

(e) Physical examination.

(1) A physician shall:

(A) review written findings of a physical examination of the patient conducted by another physician no more than seven days prior to the patient's admission; or

(B) conduct a physical examination of the patient.

(2) The physical examinations described in paragraph (1) of this subsection shall include a neurological screening and, if indicated, a comprehensive neurological examination.

(f) Psychiatric evaluation. A physician shall conduct an initial psychiatric evaluation of a patient. The results of the initial evaluation shall include:

(1) a description of the patient's medical history;

(2) a determination of the patient's mental status;

(3) a description of the onset of the patient's mental illness and any substance use disorder and the circumstances leading to admission;

(4) an estimation of the patient's intellectual functioning, memory functioning and orientation;

(5) a description of the patient's strengths and disabilities; and

(6) the diagnoses of the patient's mental illness and if applicable, any substance use disorders.

(g) Re-evaluation. A physician shall re-evaluate a patient:

(1) once a day for five of the first seven days after the initial psychiatric evaluation described in subsection (f) of this section is conducted and once a week thereafter; and

(2) as clinically indicated.

(h) Provision of medical services. A hospital shall provide:

(1) medical services to a patient in response to an emergency medical condition in accordance with the plan required by §411.468 of this title (relating to Responding to an Emergency Medical Condition of a Patient, Prospective Patient or Individual Who Arrives on Hospital Property Requesting Examination or Treatment); and

(2) other medical services, as needed by the patient, or transfer the patient to a health care entity that can provide the medical services in accordance with the following, as applicable:

(A) §134.43 of this title (relating to Patient Transfer Policy), or a transfer agreement made in accordance with §134.61 of this title (relating to Patient Transfer Agreements); or

(B) §133.44 of this title (relating to Hospital Patient Transfer Policy), or a transfer agreement made in accordance with §133.61 of this title (relating to Hospital Patient Transfer Agreements).

(i) Availability of physicians. At least one physician shall, at all times:

(1) be physically present at the hospital to provide medical services to a patient; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication to provide medical consultation.

§411.473. Nursing Services.

(a) Nursing services in treatment plan. A hospital shall provide nursing services to a patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Organization of nursing staff. The hospital shall have a written description of the organizational hierarchy and responsibilities of the nursing staff.

(c) Director of psychiatric nursing (DPN). A hospital shall have a DPN who:

(1) has administrative authority over the nursing staff;

(2) directs, monitors, and evaluates the nursing services provided;

(3) for a hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules), reports directly to the administrator; and

(4) for an identifiable mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules), reports directly to the chief nursing officer as described in §133.41 of this title (relating to Hospital Functions and Services) or reports directly to an RN who reports directly to the chief nursing officer.

(d) Qualifications of DPN. The DPN shall be:

(1) an RN with a master's degree in psychiatric-mental health from a nursing education program accredited by an organization recognized by the U.S. Department of Education and Council for Higher Education Accreditation as an accreditation agency, such as the National League for Nursing or the Commission on Collegiate Nursing Education;

(2) an RN with a bachelor's degree in nursing and a master's degree in a health-related field from an accredited college or university and have three years experience as a full-time employee or contractor (or its equivalent as a part-time employee or contractor) as an RN in a hospital; or

(3) an RN with a bachelor's degree in nursing and:

(A) have three years experience as a full-time employee or contractor (or its equivalent as a part-time employee or contractor) as an RN in a hospital; and

(B) receive four hours per month of clinical consultation from an RN with:

(i) a master's degree in psychiatric-mental health from a nursing education program accredited by an organization recognized by the U.S. Department of Education and Council for Higher Education Accreditation as an accreditation agency, such as the National League for Nursing or the Commission on Collegiate Nursing Education; or

(ii) a bachelor's degree in nursing and a master's degree in a health-related field from an accredited college or university.

(e) Assessment. An RN shall conduct and complete an initial comprehensive nursing assessment of a patient within eight hours of the patient's admission.

(f) Reassessment. An RN shall reassess a patient, based on the patient's needs, but at least every 12 hours after the initial comprehensive nursing assessment, required by subsection (e) of this section, is conducted.

(g) Staffing plan.

(1) The DPN shall develop and implement a written staffing plan that:

(A) describes the number of RNs, LVNs, and UAPs on each unit for each shift;

(B) provides for at least one RN to be physically present and on-duty at all times on each unit when a patient is present on the unit;

(C) if the hospital has only one unit, in addition to the RN required by subparagraph (B) of this paragraph, provides for at least two staff members who provide direct patient care to be physically present and on-duty at all times on the unit when a patient is present on the unit; and

(D) provides for an adequate number of registered nurses on each unit to supervise all UAPs.

(2) The staffing plan described in paragraph (1) of this subsection shall be based on the following factors:

(A) the number of patients;

(B) the characteristics of the patients, including the intensity of the patient's emotional, mental, and medical needs;

(C) the anticipated admissions, discharges and transfers;

(D) the architecture of the unit, including geographic dispersion of patients, arrangement of the unit and surveillance and communication technology;

(E) the expertise of the nursing staff;

(F) the nursing staff's familiarity with the patients;

(G) nursing staff continuity and cohesion;

(H) the amount of time required by the nursing staff to perform administrative activities; and

(I) recommendations of the advisory committee regarding the adequacy of the staffing plan made in accordance with §411.496(b)(3) of this title (relating to Advisory Committee for Nurse Staffing).

(3) The DPN shall document his or her determinations made about each factor described in paragraph (2) of this subsection, at the time the staffing plan is developed and when the staffing plan is revised based on a change in such factors.

(4) A hospital shall retain the staffing plan and the documentation required by paragraph (3) of this subsection for two years after such documentation is created.

(5) The DPN shall revise the staffing plan, as necessary.

(6) The DPN shall report to the advisory committee established in accordance with §411.496 of this title (relating to Advisory Committee for Nurse Staffing) any variance between the number of staff members specified in the staffing plan and the actual number of staff members on duty.

(h) Process for reporting concerns regarding staffing plan.

(1) A hospital shall develop and implement a process for RNs and LVNs to report concerns regarding the adequacy of the staffing plan to the advisory committee established in accordance with §411.496 of this title (relating to Advisory Committee for Nurse Staffing).

(2) A hospital shall not retaliate against a nurse for reporting a concern to the advisory committee.

(i) Orientation of nursing staff.

(1) A hospital shall provide orientation to a nursing staff member when the staff member is initially assigned to a unit on either a temporary or long-term basis. The orientation shall include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about patients on the unit;

(D) relevant schedules of staff members and patients; and

(E) procedures for contacting the staff member's supervisor.

(2) A hospital shall document the provision of orientation to nursing staff.

(j) Verification of licensure. A hospital shall verify that a member of the nursing staff, for whom a license is required, has a valid license at the time the staff member assumes responsibilities at the hospital and maintains the license throughout the staff member's employment or association with the hospital.

(k) Mandatory overtime. A hospital shall develop and implement a policy regarding the use of mandatory overtime by the nursing staff. The policy shall require:

(1) documentation of the justification for the use of mandatory overtime;

(2) monitoring and evaluation of the use of mandatory overtime; and

(3) development of a plan to reduce or eliminate the use of mandatory overtime.

§411.474. Social Services.

(a) Social services in treatment plan. A hospital shall provide social services to a patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Director of social services. A hospital shall have a director of social services who directs, monitors, and evaluates the social services provided.

(c) Qualifications of director of social services. The director of social services shall:

(1) be a licensed master social worker; or

(2) be a licensed social worker who is enrolled in a graduate program accredited by the Council on Social Work Education, receiving eight hours per month of clinical consultation from a licensed master social worker with three years of experience in the provision of psychiatric social work, and summarizing, in writing, the content of each consultation with the licensed master social worker including clinical issues discussed and recommendations made by the licensed master social worker regarding such issues.

(d) Assessment.

(1) A licensed master social worker, a licensed social worker, a licensed professional counselor, a licensed psychologist, a psychological associate, or a licensed marriage and family therapist shall conduct a social services assessment of a patient.

(2) If a licensed social worker, a licensed professional counselor, a licensed psychologist, a psychological associate, or a licensed marriage and family therapist conducts the social services assessment, the results of the assessment shall be signed by the licensed master social worker evidencing approval of such results.

§411.475. Therapeutic Activities.

(a) Therapeutic activities in treatment plan. If ordered by the patient's treating physician, a hospital shall provide therapeutic activities to the patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Assessment.

(1) If ordered by the patient's treating physician, an occupational therapist, a therapeutic recreation specialist, or a staff member under the supervision of an occupational therapist or a therapeutic recreation specialist shall conduct a therapeutic activities assessment of the patient.

(2) The assessment shall include an evaluation of the patient in the following domains:

(A) sensory;

(B) cognitive;

(C) social;

(D) physical;

(E) emotional; and

(F) leisure.

(3) If a staff member under the supervision of an occupational therapist or a therapeutic recreation conducts the therapeutic activities assessment, the results of the assessment shall be signed by the occupational therapist or a therapeutic recreation evidencing approval of such results.

(c) Qualified staff members. A hospital shall have qualified staff members who are available to provide the therapeutic activities necessary to address the problems identified by a patient's therapeutic activities assessment.

§411.476. Psychological Services.

(a) Psychological services in treatment plan. If ordered by a patient's treating physician, a hospital shall provide psychological services to the patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Assessment. If ordered by a patient's treating physician, a licensed psychologist shall conduct a psychological assessment of the patient.

§411.477. Protection of a Patient.

(a) Modifying the environment and monitoring the patient. A hospital shall protect a patient by taking the following measures:

(1) modifying the hospital environment based on the patient's needs including:

(A) providing furnishings that do not present safety hazards to the patient;

(B) securing or removing objects that are hazardous to the patient; and

(C) installing any necessary safety devices;

(2) monitoring the patient at the level of monitoring most recently specified in the patient's medical record; and

(3) making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on patient needs and vulnerabilities.

(b) Levels of monitoring. A hospital shall:

(1) identify, in writing, the levels of monitoring of patients; and

(2) define each of the levels of monitoring, in writing, including a description of the responsibilities of staff members for each level of monitoring identified.

(c) Separation of patients under 18 years of age. In accordance with Texas Health and Safety Code, §321.002, a hospital shall keep patients who are under the age of 18 years separate from patients who are over the age of 18 years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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DIVISION 5. DISCHARGE

25 TAC §§411.482 - 411.485

These sections are adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.482. Discharge Planning.

(a) Involvement of staff, patient, and LAR in planning activities.

(1) Following the admission of a patient to a hospital, the hospital shall conduct discharge planning for the patient.

(2) Discharge planning shall involve the IDT, which includes the patient.

(3) Discharge planning shall include, at a minimum, the following activities:

(A) the patient's IDT recommending services and supports needed by the patient after discharge, including the placement after discharge;

(B) qualified staff members arranging for the services and supports recommended by the patient's IDT; and

(C) qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care.

(b) Discharge summary. The patient's treating physician shall prepare a written discharge summary that includes:

(1) a description of the patient's treatment at the hospital and the response to that treatment;

(2) a description of the patient's condition at discharge;

(3) a description of the patient's placement after discharge;

(4) a description of the services and supports the patient will receive after discharge;

(5) a final diagnosis based on all five axes of the DSM;

(6) a description of the amount of medication the patient will need until the patient is evaluated by a physician; and

(7) in accordance with Texas Health and Safety Code, §574.081(c) and (h), for involuntary patients admitted under an order described in §411.463(a)(2) of this title (related to Admission of an Individual Under Protective Custody Order, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement), the name of the individual or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the hospital.

(c) Documentation of refusal. If it is not feasible for any of the activities listed in subsection (a)(3) of this section to be performed because the patient, the patient's LAR, or the patient's caregivers refuse to participate in the discharge planning, the circumstances of the refusal shall be documented in the patient's medical record.

§411.483. Discharge Notices and Release of Minors.

(a) Discharge notice to family or LAR.

(1) In accordance with Texas Health and Safety Code, §576.007, before discharging a patient who is an adult, a hospital shall make a reasonable effort to notify the patient's family of the discharge if the patient grants permission for the notification.

(2) Except as provided by 42 CFR Part 2 and subsection (b) of this section, before discharging a patient who is 16 or 17 years of age and who is not or has not been married, a hospital shall make a reasonable effort to notify the patient's LAR of the discharge.

(3) Except as provided by subsection (b) of this section, before discharging a patient who is younger than 16 years of age and who is not or has not been married, a hospital shall notify the patient's LAR of the discharge.

(b) Disclosure harmful to patient. As permitted by Texas Health and Safety Code, §611.0045(b), a hospital may deny a patient's LAR access to any portion of the patient's record if the hospital determines that the disclosure of such portion would be harmful to the patient's physical, mental, or emotional health.

(c) Release of minors. Except as required by §411.485(e) of this title, (relating to Discharge of an Involuntary Patient), upon discharge, the hospital may release a minor younger than 16 years of age only to the minor's LAR or the LAR's designee.

(d) Notice of protection and advocacy system. Upon discharge, the hospital shall provide the patient with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, §576.008.

§411.484. Discharge of a Voluntary Patient Requesting Discharge.

(a) Request for discharge. If a hospital is informed that a voluntary patient desires to leave the hospital or a voluntary patient or the patient's LAR requests that the patient be discharged, the hospital shall, in accordance with Texas Health and Safety Code, §572.004:

(1) inform the patient or the patient's LAR that the request must be in writing and signed, timed, and dated by the requestor; and

(2) if necessary and as soon as possible, assist the patient in creating a written request for discharge and present it to the patient for the patient's signature.

(b) Responding to a written request for discharge. If a written request for discharge from a voluntary patient or the patient's LAR is made known to a hospital, the hospital shall:

(1) within four hours after the request is made known to the hospital, notify the treating physician or, if the treating physician is not available during that time period, notify another physician who is a hospital staff member of the request;

(2) file the request in the patient's medical record; and

(3) if the request is from a patient admitted under §411.461(a)(1)(B) of this title (relating to Voluntary Admission), notify the patient's LAR of the request, except as provided by 42 CFR Part 2.

(c) Discharge or examination. In accordance with Texas Health and Safety Code, §572.004(c) and (d), if the physician who is notified in accordance with subsection (b)(1) of this section:

(1) does not have reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, a hospital shall discharge the patient within the four-hour time period described in subsection (b)(1) of this section; or

(2) has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the hospital.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient, who a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services, is not examined within 24 hours after the request for discharge is made known to the hospital, the hospital shall discharge the patient.

(2) In accordance with Texas Health and Safety Code, §572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with Texas Health and Safety Code, §572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with Texas Health and Safety Code, §572.004(d), if the hospital intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document the reasons for the decision to detain the patient in the patient's medical record.

(g) Withdrawal of request for discharge. In accordance with Texas Health and Safety Code, §572.004(f), a hospital is not required to complete the discharge process described in this section if the patient makes a written statement to withdraw the request for discharge.

§411.485. Discharge of an Involuntary Patient.

(a) Discharge from emergency detention.

(1) Except as provided by §411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, §573.023(b) and §573.021(b), a hospital shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the administrator or the administrator's designee determines, based on a physician's determination, that the patient no longer meets the criteria described in subsection §411.462(c)(1) of this title (relating to Emergency Detention); or

(B) except as provided in paragraphs (2) and (3) of this subsection, 24 hours elapse from the time the patient was presented to the hospital and the hospital has not obtained a court order for further detention of the patient.

(2) In accordance with Texas Health and Safety Code, §573.021(b), if the 24-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the hospital, the patient may be detained until 4:00 p.m. on such business day.

(3) In accordance with Texas Health and Safety Code, §573.021(b), the 24-hour period described in paragraph (1)(B) of this subsection does not include any time during which the patient is receiving necessary non-psychiatric medical care in the hospital's emergency room or non-psychiatric emergency care in another area of the hospital.

(b) Discharge under protective custody order. Except as provided by §411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, §574.028, a hospital shall immediately discharge a patient under a protective custody order if any of the following occurs:

(1) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria described in Texas Health and Safety Code, §574.022(a);

(2) the administrator or the administrator's designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time period prescribed by Texas Health and Safety Code, §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by Texas Health and Safety Code, §574.005; or

(4) an order to release the patient is issued in accordance with Texas Health and Safety Code, §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission), and in accordance with Texas Health and Safety Code, §574.085 and §574.086(a), a hospital shall immediately discharge a patient under a temporary or extended order for inpatient mental health services if either of the following occurs:

(A) the order for inpatient mental health services expires; or

(B) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code, §574.086(b), before discharging a patient in accordance with paragraph (1) of this subsection, the administrator or administrator's designee shall consider whether the patient should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code, §574.061.

(d) Discharge under Texas Code of Criminal Procedure order for commitment. A patient admitted under an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46B.073(d) shall be discharged in accordance with the Texas Code of Criminal Procedure, Chapter 46B, Subchapter D.

(e) Discharge under Texas Family Code order for placement. A patient admitted under an order for placement issued in accordance with Texas Family Code, §55.33(a)(1)(B) or §55.52(a)(1)(B) shall be discharged in accordance with the Texas Family Code, Chapter 55.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rodolfo Arredondo
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Texas Department of Mental Health and Mental Retardation
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DIVISION 6. DOCUMENTATION

25 TAC §411.488

This section is adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.488. Content of Medical Record.

(a) Medical record. A hospital shall maintain a medical record for a patient. The medical record shall include, at a minimum:

(1) documentation of whether the patient is a voluntary patient, on emergency detention, or under a court order, including the physician or court order, as appropriate;

(2) documentation of the reasons the patient, LAR, family members, or other caregivers state that the patient was admitted to the hospital;

(3) justification for each mental illness diagnosis and any substance use disorder diagnosis;

(4) the level of monitoring assigned and implemented in accordance with §411.464 of this title (relating to Monitoring Upon Admission) and any changes to such level prior to the implementation of the patient's treatment plan;

(5) the patient's treatment plan;

(6) the name of the patient's treating physician;

(7) the names of the members of the patient's IDT, if required by the patient's length of stay;

(8) written findings of the physical examination described in §411.472(e)(1)(A) or (B) of this title (relating to Medical Services);

(9) written findings of:

(A) the psychiatric evaluation described in §411.472(f) of this title (relating to Medical Services); and

(B) the assessments described in §411.473(e) of this title (relating to Nursing Services), §411.474(d) of this title (relating to Social Services), §411.475(b) of this title (relating to Therapeutic Activities), and §411.476(b) of this title (relating to Psychological Services); and

(C) any other assessment of the patient conducted by a staff member;

(10) the progress notes for the patient as described in subsection (b) of this section;

(11) documentation of the monitoring of the patient by the staff members responsible for such monitoring, including observations of the patient at pre-determined intervals;

(12) documentation of the discharge planning activities required by §411.482(a)(3) of this title (relating to Discharge Planning); and

(13) the discharge summary as required by §411.482(b) of this title (relating to Discharge Planning).

(b) Progress notes. The progress notes referenced in subsection (a)(10) of this section must be documented in accordance with this subsection.

(1) The appropriate members of the patient's IDT shall make written notes of the patient's progress to include, at a minimum:

(A) documentation of the patient's response to treatment provided under the treatment plan;

(B) documentation of the patient's progress toward meeting the goals listed in the patient's treatment plan; and

(C) documentation of the findings of any re-evaluation or reassessment conducted by a staff member.

(2) Requirements regarding the frequency of making progress notes are as follows:

(A) a physician shall document the findings of a re-evaluation described in §411.472(g) of this title (relating to Medical Services) at the time each re-evaluation is conducted; and

(B) an RN shall document the findings of a reassessment described in §411.473(f) of this title (relating to Nursing Services) at the time each reassessment is conducted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 7. STAFF DEVELOPMENT

25 TAC §411.490

This section is adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.490. Staff Member Training.

(a) Training of staff members. A hospital shall provide training to a staff member in accordance with the following:

(1) All staff members shall receive training in:

(A) identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct in the hospital in accordance with the memorandum of understanding set forth in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct);

(B) dignity and rights of a patient in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); and

(C) confidentiality of a patient's information in accordance with Texas Health and Safety Code, Chapter 611 or Chapter 241, Subchapter G, as applicable, 42 CFR Part 2, and 45 CFR Parts 160 and 164.

(2) An RN, LVN, and UAP shall receive training in:

(A) monitoring for patient safety in accordance with §411.477 of this title (relating to Protection of a Patient);

(B) infection control in accordance with §134.41(d) of this title (relating to Facility Functions and Services); and

(C) the hospital's mandatory overtime policy required by §411.473(k) of this title (relating to Nursing Services).

(3) An RN and an LVN shall receive training in the process for reporting concerns regarding the adequacy of the staffing plan as described in §411.473(h) of this title (relating to Nursing Services).

(4) A staff member routinely providing treatment to, working with, or providing consultation about a patient who is younger than 18 years of age shall receive training in the aspects of growth and development (including physical, emotional, cognitive, educational and social) and the treatment needs of patients in the following age groups:

(A) early childhood (1-5 years of age);

(B) late childhood (6-13 years of age); and

(C) adolescent (14-17 years of age).

(5) A staff member routinely providing treatment to, working with, or providing consultation about a patient diagnosed with COPSD shall receive training in substance use disorders.

(6) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric patient shall receive training in the social, psychological and physiological changes associated with aging.

(7) In accordance with Texas Health and Safety Code, §572.0025(e), a PASP shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(8) In accordance with Texas Health and Safety Code, §572.0025(e), a staff member whose responsibilities include conducting the hospital's intake process for a patient shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(9) A staff member who may initiate an involuntary intervention shall receive training in and demonstrate competency in performing such interventions in accordance with Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(b) A staff member providing direct patient care shall maintain certification in a course, developed by the American Heart Association or the American Red Cross, in recognizing and caring for breathing and cardiac emergencies. The course shall teach the following skills appropriate to the age of the hospital's patients:

(1) rescue breathing with and without devices;

(2) airway obstruction;

(3) cardiopulmonary resuscitation; and

(4) use of an automated external defibrillator.

(c) Pre-admission screening and intake training. The pre-admission screening and intake training required by subsections (a)(7) and (8) of this section shall provide instruction to staff members regarding:

(1) assessing, interviewing, and diagnosing an individual with a mental illness and an individual diagnosed with COPSD;

(2) obtaining relevant information about the patient, including information about finances, insurance benefits and advance directives;

(3) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(4) explaining, orally and in writing, the hospital's services and treatment as they relate to the patient;

(5) informing the patient in writing of the existence, telephone number and address of the protection and advocacy system established in Texas, which is Advocacy, Inc.; and

(6) determining whether the patient comprehends the information provided in accordance with paragraphs (3)-(5) of this subsection.

(d) Frequency of training. A hospital shall provide the training described in subsection (a) of this section, periodically, as follows:

(1) A staff member shall receive the training required by subsection (a)(1)(A) of this section at the intervals described in the memorandum of understanding set forth in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct).

(2) A staff member shall receive the training required by subsection (a)(1)(B) of this section:

(A) before assuming responsibilities at the hospital; and

(B) annually throughout the staff member's employment or association with the hospital;

(3) A staff member shall receive the training required by subsections (a)(1)(C) and (a)(2)-(6) of this section:

(A) before assuming responsibilities at the hospital; and

(B) at reasonable intervals throughout the staff member's employment or association with the hospital.

(4) A staff member shall have the certification required by subsection (b) of this section:

(A) before assuming responsibilities at the hospital; or

(B) not later than 30 days after the staff member is hired by the hospital if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

(5) A PASP shall receive the training required by subsection (a)(7) of this section:

(A) prior to the PASP conducting a pre-admission screening; and

(B) annually throughout the PASP's employment or association with the hospital.

(6) A staff member shall receive the training required by subsection (a)(8) of this section:

(A) prior to conducting the intake process; and

(B) annually throughout the staff member's employment or association with the hospital.

(7) A staff member shall receive the training required by subsection (a)(9) of this section at the intervals described in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(e) Documentation of training.

(1) A hospital shall document that a staff member has successfully completed the training described in subsection (a) of this section including:

(A) the date of the training;

(B) the length of the training session; and

(C) the name of the instructor.

(2) A hospital shall maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training described in subsection (b) of this section.

(f) Performance in accordance with training. A staff member shall perform his or her responsibilities in accordance with the training and certification required by this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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DIVISION 8. PERFORMANCE IMPROVEMENT

25 TAC §§411.493 - 411.496

These sections are adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.493. Quality Assessment and Performance Improvement Program.

(a) Scope and content of program. A hospital shall develop, implement, and maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program. The program shall:

(1) reflect the complexity of the hospital's organization and services;

(2) involve all of the hospital's departments and services;

(3) specify the frequency and detail of data collected; and

(4) focus on high-risk, high-volume, and problem-prone areas in the hospital.

(b) Approval by governing body. The hospital's quality assessment and performance improvement program shall be approved by the governing body.

(c) Staff member participation. The DPN, the director of psychiatric services, and other appropriate staff members shall participate in the development and implementation of the quality assessment and performance improvement program.

(d) Quality assessment and performance improvement program activities.

(1) As part of its quality assessment and performance improvement activities a hospital shall collect and aggregate data to:

(A) monitor the effectiveness and safety of services and the quality of care; and

(B) identify opportunities for improvement and changes that will lead to improvement.

(2) The hospital shall collect and aggregate all data, on an ongoing basis, for each of the following performance indicators at a minimum:

(A) sentinel events;

(B) allegations of abuse and neglect as defined in §134.46 of this title (relating to Abuse and Neglect Issues);

(C) findings of abuse and neglect made by the Texas Department of Health in accordance with §134.46 of this title (relating to Abuse and Neglect Issues);

(D) violations of patient rights described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(E) nosocomial infections;

(F) injuries of patients;

(G) medication errors;

(H) unauthorized departures of patients;

(I) deaths of patients;

(J) surveys of patients, patient's families, and LARs regarding satisfaction with hospital services; and

(K) complaints and grievances made by patients, and patient's families, and LARs.

(3) The hospital shall analyze the aggregated data, at least quarterly, to assess the need for performance improvement.

(4) When a need for performance improvement is identified, the hospital shall develop and implement an action plan to address the identified need.

(5) The hospital shall evaluate the success of the action plan to determine if the positive outcomes are achieved and sustained.

(6) If the hospital determines that the positive outcomes have not been achieved or sustained, the hospital shall modify the action plan and re-evaluate its implementation until the outcomes are achieved and sustained.

(e) Evidence of program. The hospital shall maintain and demonstrate evidence of the quality assessment and performance improvement program for review by an external review entity, including the Texas Department of Health, the Centers for Medicare and Medicaid Services, and the Joint Commission on Accreditation of Healthcare Organizations.

§411.495. Response to External Reviews.

A hospital shall develop and implement a written plan to evaluate the effectiveness of any plan of correction the hospital submits to an external review entity, including the Texas Department of Health, the Centers for Medicare and Medicaid Services, and the Joint Commission on Accreditation of Healthcare Organizations.

§411.496. Advisory Committee for Nurse Staffing.

(a) Advisory committee members.

(1) A hospital shall establish an advisory committee that meets the requirements of Texas Health and Safety Code, §§161.031-161.033.

(2) At least one-third of the advisory committee shall be RNs who provide direct patient care at least 50% of their work time and at least one of the RNs shall be from either infection control, quality assurance, or risk management.

(3) For an identifiable mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules), the advisory committee may be the advisory committee required by §133.41 of this title (relating to Hospital Function and Services).

(b) Advisory committee responsibilities. The advisory committee shall:

(1) consider input from RNs and LVNs regarding the adequacy of the staffing plan required by §411.473(g) of this title (relating to Nursing Services), including any concerns reported in accordance with the process required by §411.473(h) of this title (relating to Nursing Services);

(2) consider variances between planned and actual numbers of staff members, as indicated by a report to the advisory committee by the DPN made in accordance with §411.473(g)(6) of this title (relating to Nursing Services);

(3) make recommendations regarding the adequacy of the staffing plan required by §411.473(g) of this title (relating to Nursing Services);

(4) evaluate, at least annually, the staffing plan required by §411.473(g) of this title (relating to Nursing Services) including, in part, evaluating the aggregated data required by §411.493(d)(2) of this title (relating to Quality Assessment and Performance Improvement Program) to determine if such data has a relationship to the adequacy of the staffing plan; and

(5) document in the minutes of its meetings the actions required in paragraphs (1)-(4) of this subsection.

(c) Confidentiality of advisory committee records. As provided by Texas Health and Safety Code, §161.032, the records and proceedings of the advisory committee are confidential and not subject to disclosure under Texas Government Code, Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release.

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 December 5, 2003.

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Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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DIVISION 9. REFERENCES AND DISTRIBUTION

25 TAC §411.499, §411.500

These sections are adopted under the THSC, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private psychiatric hospital required to obtain a license under THSC, Chapter 577.

§411.499. References.

The following federal and state statutes and rules are referenced in this subchapter:

(1) Texas Health and Safety Code:

(A) Chapters 164, 241, 572, 573, 574, 576, 577, and 611; and

(B) §§161.031-161.033, §321.002, and §571.003;

(2) Texas Family Code, Chapter 55;

(3) Texas Government Code:

(A) Chapter 552, and

(B) §662.021;

(4) Texas Occupations Code, Chapters 155, 204, 301, 302, 454, 501, 502, 503, and 505, and §157.001;

(5) Texas Code of Criminal Procedure, Chapter 46B;

(6) Code of Federal Regulations:

(A) Title 42 Part 2 and Title 45 Parts 160 and 164; and

(B) Title 42, §489.24;

(7) 40 TAC Chapter 148;

(8) 25 TAC Chapters 133 and 134;

(9) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(10) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(11) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. STANDARDS OF CARE AND TREATMENT IN CRISIS STABILIZATION UNITS

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new 411.601-411.604, 411.608-411.613, 411.617, 411.621-411.624, 411.628-411.633, 411.637, 411.641, 411.645-411.646, and 411.649-411.650 of Chapter 411, Subchapter M, governing Standards of Care and Treatment in Crisis Stabilization Units. Sections 411.603-411.604, 411.609, 411.610, 411.617, 411.621-411.624, 411.628, 411.637, 411.641, 411.646, and 411.649-411.650 are adopted with changes to the text as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5756-5772). Sections 411.601, 411.602, 411.608, 411.611-411.613, 411.629-411.633, and 411.645 are adopted without changes. The repeal of §§401.641 - 401.652 of Chapter 401, Subchapter K, governing licensure of crisis stabilization units, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new sections ensure the proper care and treatment of prospective patients and patients in a crisis stabilization unit (CSU) licensed under Chapter 577, of the Texas Health and Safety Code (THSC), and Texas Department of Health (TDH) rules at 25 TAC Chapter 134, governing private psychiatric hospitals and CSU licensing rules. The new sections address requirements related to admission, emergency treatment, treatment planning and services provided, discharge, transfer, documentation, staff training, reporting and investigating sentinel events, and response to external reviews.

A substantial portion of the new sections, namely those concerning admission and discharge, are based on state law, primarily the THSC. Other sections, such as those concerning service requirements, reporting and investigating sentinel events, and response to external reviews are derived from requirements in new rules governing private psychiatric hospitals, but as required by THSC, §577.010(c), these new sections are less stringent than rules governing private psychiatric hospitals.

The new sections reflect the decision rendered in Texas Attorney General Opinion GA-0066 that a physician must personally conduct the admission examination of a patient required by THSC, §572.0025(f)(1), and may not delegate this duty to a non-physician. In addition the new sections address relevant portions of House Bills 2679, and 2292 (78th Legislature, R.S.). House Bill 2679, amends THSC, Chapter 573, to add §573.003, which permits a guardian of the person of an adult to transport the adult to a CSU, without the assistance of a peace officer, for preliminary examination under emergency detention. House Bill 2292

amends THSC, §572.0025(f), to permit a physician to use audiovisual or other telecommunications technology to conduct the admission examination for a voluntary patient.

The new sections contain general provisions that describe a CSU's responsibility in developing written policies and procedures and enforcing staff members' compliance with those policies and procedures. In addition, the new sections set forth the admission criteria for CSUs to follow in determining who may be admitted for crisis stabilization services. Included as part of the admission criteria is a prohibition against the admission of persons who are under the age of 18 who aren't or haven't been married and persons who are under an order for temporary or extended inpatient mental health services. The department believes that minors and persons under a court commitment are more appropriately served in a setting such as a psychiatric hospital, where there are more specialized service options and additional staff resources available than required for a CSU. Further, the new sections describe those processes and procedures required by the THSC for admission on a voluntary basis, by emergency detention, or a protective custody order for inpatient mental health services. The new sections also require a CSU to assign and implement a level of monitoring to a patient upon admission of that patient which ensures any need for protection of the patient is addressed immediately.

To promote an efficient and coordinated system of ensuring proper responses to emergency medical conditions, the new sections require a CSU to develop and implement a written plan describing the actions a CSU will take to stabilize common emergency medical conditions of patients and prospective patients. In addition, the new sections require CSUs to have a physician available to respond to an emergency medical condition of a patient. Also, in order to ensure a continuity of treatment for a person transferred from the CSU to a general hospital because of an emergency medical condition, the new sections require a CSU to provide certain information about the transferred person to the hospital. Further, the new sections require a CSU to have a written agreement with a general hospital that ensures the hospital will accept persons transferred from the CSU because of an emergency medical condition. To enhance a CSU's effective response to individuals suffering cardiac arrest, the new sections also require a CSU to have an automated external defibrillator as well as other emergency supplies and equipment.

In order to ensure the expedient treatment of patients, the new sections set forth time frames for developing a written treatment plan and its content, and the frequency of treatment plan reviews. The new sections also require a CSU to develop the treatment plan in collaboration with the patient.

To ensure accountability for the provision of medical services, the new sections require the assignment of a treating physician at the time a patient is admitted, timely availability of physicians, that a physical and psychiatric examination be conducted, and that the director of psychiatric services meet specified qualifications. To ensure a patient's current clinical status is adequately assessed and the course of treatment is appropriately monitored and modified, the new sections require a physician to re-evaluate a patient at least two times a week and as clinically indicated.

The new sections address nursing services, including the minimum qualification for the chief nursing supervisor which serves to ensure that the chief nursing supervisor has the requisite education to oversee the nursing services provided at a CSU. The new sections also set forth the requirements regarding time frames for conducting the initial comprehensive nursing assessment and evaluations or reassessments conducted thereafter. TDMHMR believes that the timeframe establish an adequate standard for ensuring that a patient's initial and changing needs are identified and addressed.

The new sections also require the development and implementation of a nurse staffing plan. This requirement serves to ensure there are adequate numbers of qualified nurses and unlicensed assistive personnel to provide care to patients. The new sections also describe requirements regarding verification of nursing staff licensure.

The new subchapter sets forth a process for protecting a patient through environmental modifications, identifying and implementing levels of monitoring for each patient, and decision-making based on a patient's needs and vulnerabilities.

The new sections describe the discharge planning activities for CSUs to follow when discharging a patient. In addition the new sections set forth who is involved in the discharge planning and content of the discharge summary. Further, the new sections describe those processes and procedures required by the THSC for discharge notices, discharge of a voluntary patient and discharge of an involuntary patient.

The new sections also describe procedures for transferring a patient to a psychiatric hospital or other health care facility. Specifically, the new sections require that a CSU facilitate transfer of a patient to a psychiatric hospital if the patient is a serious danger to self or others, if during a 24-hour period the patient is placed in excessive restraint or seclusion, or if the patient becomes subject to an order for inpatient mental health services. The reason for these requirements is that patients presenting these high levels of need are more appropriately served in a psychiatric hospital where there are more specialized service options and additional staff resources available than required for a CSU.

The new subchapter prohibits a voluntary patient from remaining in the CSU longer than 14 days in keeping with a CSU's design to provide short-term residential treatment to reduce acute symptoms of mental illness of a patient.

The new sections also set forth requirements for the content of the medical record and progress notes that are derived from requirements in new rules governing private psychiatric hospitals.

The new sections describe the training for staff members required by THSC, §572.0025, and other applicable federal and state laws, rules, and regulations. Further, the new sections require training on responding to cardiac emergencies, including the use of an automated external defibrillator. The new sections also set forth requirements for staff providing treatment to or working with geriatric patients. In addition, the new sections describe training requirements for nursing staff regarding patient safety and infection control. These training requirements serve to ensure staff members will be knowledgeable about relevant issues that affect the adequacy of patient care and will master the competencies necessary to provide quality services. The new sections also set forth requirements for documentation of staff member training.

The new sections also describe how a CSU will identify, report, and investigate sentinel events in order to improve patient care and safety and implement improvements effective in reducing their reoccurrence. The new subchapter also contains provisions for a CSU to develop and implement a written plan to evaluate the

effectiveness of plans of correction the CSU submits to external review entities.

Minor changes have been made throughout the subchapter for clarification, to correct grammatical errors, and to update internal references.

To be consistent with changes made to new rules governing standards of care and treatment in psychiatric hospitals (Chapter 411, Subchapter J of this title), the following changes have been made to this subchapter: the definition of "sentinel event" has been revised to limit the scope of death or serious injury to that of a patient; language has been modified in §411.622 to identify a physician (rather than a psychiatrist or any other specialist) as being responsible for evaluating patients; the phrase "which may include disciplinary action" has been deleted in §411.604(d); in §411.617(b), language has been clarified to reflect that a physician must be physically present at the CSU to respond to an emergency medical condition of a patient or be available by telephone or radio or audiovisual telecommunication to provide medical consultation; the requirement in proposed §411.617(f)(2) for a CSU to have a suction machine has been eliminated; in §411.621 language has been added to subsection (b) requiring a CSU to collaborate with the patient in developing and implementing a treatment plan; in §411.623(e)(1)(D) language has been modified to include non-nursing staff members who provide direct patient care; and the requirement in §411.646 related to a CSU modifying and evaluating its corrective action plan for external entities has been deleted. Also, for consistency with the new rules for psychiatric hospitals, requisite training in §411.641 has been made less burdensome for CSUs and revised for clarification; allows for the pre-admission screening and intake training to be combined; and requires only those staff members who provide direct patient care to receive training for breathing and cardiac emergencies. Additionally, certification for training for breathing and cardiac emergencies is required before assuming responsibilities at the CSU or not later than 30 days after the staff member is hired by the CSU if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

In §411.603, definitions of "day" and "TDMHMR" have been added and the definition of "psychiatrist" has been deleted. Definitions of "restraint" and "seclusion" have been revised to reference the definitions of the terms in new rules governing interventions in mental health programs (Chapter 415, Subchapter F of this title). In §411.604, the language in subsection (e) has been modified for clarification. A new subsection (f) has been added to specify the circumstances under which a physician may delegate medical services. Section 411.621 has been revised to clarify and simplify the development and implementation of CSU services and treatment planning. The language in §411.637 has been modified to clarify the content of the medical record and progress notes. Additionally, the title of division 8 has been revised to more accurately reflect its content.

A public hearing was held in the TDMHMR Central Office, Austin, on August 15, 2003. No public testimony was given concerning the new subchapter. Written comments were received from Spindletop MHMR Center, Beaumont, and the Texas Nurses Association, Austin.

One commenter stated that the rule is silent on whether a nurse practitioner or a physician assistant can conduct physicals with subsequent reviews by a physician. The commenter also stated that the commenter's organization can hire nurse practitioners and physician assistants at a considerable cost savings. Regarding the chief of nursing supervisor, the commenter stated that the rule does not specify the qualifications for such position. TDMHMR responds by adding a new subsection (f) to §411.604 stating that, except as provided by §411.609(f)(3), or applicable state law, a physician may delegate any of the medical services described in this subchapter in accordance with Texas Occupations Code, §157.001. Concerning the qualifications for the chief nursing supervisor, TDMHMR responds that the qualification is described in §411.623(b) and states that the chief nursing supervisor must be an RN.

Regarding the requirement to implement all orders issued by a physician for a patient in §411.604(e), one commenter expressed concern that the categorical requirement is inconsistent with an RN's duty to get clarification of any order that the RN has reason to believe is inaccurate, non-efficacious or contraindicated as mandated in rules of the Board of Nurse Examiners, 22 TAC §217.11(19) (relating to Standards of Professional Nursing Practice). The commenter requested that language be added reflecting an RN's duty to seek clarification of physician orders under certain circumstances. TDMHMR responds by adding language to address the commenter's concern.

DIVISION 1. GENERAL REQUIREMENTS

25 TAC §§411.601 - 411.604

These sections are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.603. Definitions.

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

(1) Administrator--The individual, appointed by a governing body, who has authority to represent the CSU and, as delegated by the governing body, has responsibility for operating the CSU in accordance with the CSU's written policies and procedures.

(2) Administrator's designee--An individual designated in a CSU's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual to a CSU's custody and care for crisis stabilization services, based on:

(A) a physician's order issued in accordance with §411.609(d)(2)(B) of this title (relating to Voluntary Admission);

(B) a physician's order issued in accordance with §411.610(c)(3) of this title (relating to Emergency Detention); or

(C) a protective custody order issued in accordance with Texas Health and Safety Code, §574.022.

(4) Business day--Any day except a Saturday, Sunday, or legal holiday.

(5) Day--Calendar day.

(6) CSU or crisis stabilization unit--A crisis stabilization unit licensed under Chapter 577, of the Texas Health and Safety Code and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules).

(7) Crisis stabilization services--Short-term residential treatment designed to reduce acute symptoms of mental illness of a patient and prevent admission of the patient to a psychiatric hospital. Such treatment includes but is not limited to medical services and nursing services.

(8) Discharge--The release by a CSU of a patient from the custody and care of the CSU.

(9) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual or others in serious jeopardy;

(B) serious impairment to bodily functions;

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

(D) in the case of a pregnant woman who is having contractions:

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

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

(10) General hospital--A general hospital licensed under Chapter 241, of the Texas Health and Safety Code and Chapter 133 of this title (relating to Hospital Licensing Rules).

(11) Governing body--The governing authority of a CSU that is responsible for the CSU's organization, management, control and operation, including appointment of the administrator.

(12) LAR or legally authorized representative--An individual authorized by law to act on behalf of a individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(13) Legal holiday--A holiday listed in the Texas Government Code, §662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.

(14) LVN or licensed vocational nurse--An individual who is licensed as a licensed vocational nurse by the Texas Board of Vocational Nurse Examiners in accordance with Texas Occupations Code, Chapter 302. Effective February 1, 2004, an LVN is an individual who is licensed as a vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupational Code, Chapter 301.

(15) Medical services--Services provided or delegated by a physician acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 155.

(16) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder, mental retardation, autism, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(17) Monitoring--One or more staff members observing a patient on a continual basis or at pre-determined intervals and intervening when necessary to protect the patient from harming self or others.

(18) Nursing services--Services provided, assigned to an LVN, or delegated to a UAP by a registered nurse acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301.

(19) Nursing staff--Staff members of a CSU who are registered nurses, licensed vocational nurses or unlicensed assistive personnel.

(20) PASP or pre-admission screening professional--A staff member whose responsibilities include conducting a pre-admission screening and who meets the definition of "QMHP-CS or qualified mental health professional-community services" set forth in §412.303 of this title (relating to Definitions).

(21) Patient--An individual who has been admitted to a CSU and has not been discharged.

(22) Physician--An individual who is:

(A) licensed as a physician by the Texas State Board of Medical Examiners in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(23) Pre-admission screening--The clinical process used to gather information from a prospective patient, including a medical history, any history of substance use, and the problem for which the prospective patient is seeking treatment, to determine if a physician should conduct an admission examination.

(24) Prospective patient--An individual:

(A) for whom a request for voluntary admission has been made, in accordance with §411.609(a) of this title (relating to Voluntary Admission); or

(B) who has been accepted by a CSU for a preliminary examination, in accordance with §411.610(a) of this title (relating to Emergency Detention).

(25) Psychiatric hospital--

(A) A state mental health facility;

(B) a private psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules); or

(C) an identifiable mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules).

(26) Psychosocial rehabilitative services--services which assist a patient in regaining and maintaining daily living skills required to function effectively in the community.

(27) RN or registered nurse--An individual who is licensed as a registered nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(28) Restraint--A "restraint" as defined in Chapter 415, Subchapter F of this title (concerning Interventions in Mental Health Programs).

(29) Seclusion--"Seclusion" as defined in Chapter 415, Subchapter F of this title (concerning Interventions in Mental Health Programs).

(30) Sentinel event--Any of the following occurrences that is unexpected:

(A) the death of a patient;

(B) the serious physical injury of a patient;

(C) the serious psychological injury of a patient; or

(D) circumstances that present the imminent risk of death, serious physical injury, or serious psychological injury of a patient.

(31) Stabilize--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 CSU or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(32) Staff members--Any and all personnel of a CSU including full-time and part-time employees, contractors, students, volunteers, and professionals granted privileges by the CSU.

(33) State mental health facility--A state hospital or state center with a mental health residential component that is operated by TDMHMR.

(34) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets the criteria for substance abuse or substance dependence as described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association.

(35) TAC--The Texas Administrative Code.

(36) TDMHMR--The Texas Department of Mental Health and Mental Retardation.

(37) Transfer--The discharge of a patient from the CSU and the simultaneous movement of the patient to:

(A) a psychiatric hospital in accordance with §411.630(a) of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition);

(B) a general hospital in accordance with §411.617(c) of this title (relating to Responding to an Emergency Medical Condition of a Prospective Patient or a Patient) or §411.630(b) of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition);

(C) a health care entity in accordance with §411.630(b) of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition); or

(D) a health care entity in accordance with §411.622(h)(4) of this title (relating to Medical Services).

(38) Treating physician--A physician who coordinates and oversees the implementation of a patient's comprehensive treatment plan.

(39) Unit--A discrete and identifiable area of a CSU that includes patients' rooms or other patient living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(40) UAP or unlicensed assistive personnel--An individual, not licensed as a health care provider, who provides certain health related tasks or functions in a complementary or assistive role to an RN in providing direct patient care or carrying out common nursing functions.

(41) Voluntary patient--A patient who is receiving crisis stabilization services based on an admission in accordance with:

(A) §411.609 of this title (relating to Voluntary Admission); or

(B) who is receiving crisis stabilization services in accordance with §411.613 of this title (relating to Voluntary Treatment Following Involuntary Admission).

§411.604. General Provisions.

(a) Written policies and procedures. A CSU shall develop written policies and procedures that ensure compliance with this subchapter.

(b) Compliance by staff. All staff members shall comply with this subchapter and the policies and procedures of the CSU required by subsection (a) of this section.

(c) Responsibility of CSU. A CSU shall be responsible for a staff member's compliance with this subchapter and the policies and procedures of the CSU required by subsection (a) of this section.

(d) Enforcement of polices and procedures. A CSU shall take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures of the CSU required by subsection (a) of this section.

(e) Implementation of physician orders. A CSU shall implement all orders issued by a physician for a patient or provide adequate written justification for failing to implement the orders.

(f) Physician delegation. Except as provided by §411.609(f)(3) of this title (relating to Voluntary Admission) or applicable state law, a physician may delegate any of the medical services described in this subchapter in accordance with Texas Occupations Code, §157.001.

(g) Compliance with rules. A CSU shall comply with the following TDMHMR rules:

(1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(2) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy);

(3) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(4) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. ADMISSION

25 TAC §§411.608 - 411.613

These sections are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rule-making authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.609. Voluntary Admission.

(a) Request for voluntary admission.

(1) A request for voluntary admission of a prospective patient may only be made by the prospective patient.

(2) In accordance with Texas Health and Safety Code, §572.001(b) and (e), a request for admission shall:

(A) be in writing and signed by the prospective patient; and

(B) include a statement that:

(i) the prospective patient agrees to remain in the CSU; and

(ii) consents to diagnosis, observation, care and treatment until the earlier of one of the following occurrences:

(I) the discharge of the prospective patient; or

(II) the prospective patient is entitled to leave the CSU, in accordance with Texas Health and Safety Code, §572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive a patient's rights described in the rules listed under §411.604(g) of this title (relating to General Provisions).

(b) Capacity to consent. If a prospective patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, the CSU may not admit the prospective patient on a voluntary basis. When appropriate, the CSU may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or file an application for court-ordered Inpatient Mental Health Services in accordance with Texas Health and Safety Code, Chapter 574.

(c) Pre-admission screening.

(1) Prior to voluntary admission of a prospective patient, a PASP shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the CSU may not admit the prospective patient and shall refer the prospective patient to alternative services, if appropriate. If the PASP determines that the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (d)(2)(A) of this section.

(d) Requirements for voluntary admission. A CSU may voluntarily admit a prospective patient only if:

(1) a request for admission is made is accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with Texas Health and Safety Code, §572.0025(f)(1), conducted, within 72 hours prior to admission, or has consulted with a physician who has conducted, within 72 hours prior to admission, an admission examination in accordance with subsection (f); and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the CSU's admission criteria; and

(4) in accordance with Texas Health and Safety Code, §572.0025(f)(2), the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient.

(e) Intake. In accordance with Texas Health and Safety Code §572.0025(b), a CSU shall, prior to voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining, as much as possible, relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining, orally and in writing, the prospective patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the CSU's services and treatment as they relate to the prospective patient; and

(B) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, §576.008.

(f) Admission examination.

(1) The admission examination referenced in subsection (d)(2)(A) of this section shall be conducted by a physician and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non physician.

(g) Documentation of admission order. In accordance with Texas Health and Safety Code, §572.0025(f)(1), the order described in subsection (d)(2)(B) of this section shall be:

(1) issued in writing and signed by the issuing physician; or

(2) issued orally or electronically if, within 24 hours after its issuance, the CSU has a written order signed by the issuing physician.

§411.610. Emergency Detention

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code, §573.022, a CSU may accept for a preliminary examination:

(1) an individual who has been apprehended and transported to the CSU by a peace officer in accordance with Texas Health and Safety Code, §573.001 or §573.012; or

(2) an individual 18 years of age or older who has been transported to the CSU by the individual's guardian of the person in accordance with Texas Health and Safety Code, §573.003.

(b) Preliminary examination.

(1) A physician shall conduct a preliminary examination of the individual as soon as possible but not more than 24 hours after the individual was apprehended by the peace officer or arrived at the CSU after being transported by his or her guardian for emergency detention.

(2) The preliminary examination shall include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. A CSU may admit a prospective patient for emergency detention only if:

(1) in accordance with Texas Health and Safety Code, §573.022(a)(2), a physician determines from the preliminary examination that:

(A) the prospective patient has a mental illness;

(B) the prospective patient evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the prospective patient is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code, §573.022(a)(3), a physician makes a written statement:

(A) documenting the determination described in paragraph (1) of this subsection; and

(B) describing:

(i) the nature of the prospective patient's mental illness;

(ii) the risk of harm the individual evidences, demonstrated either by the prospective patient's behavior or by evidence of severe emotional distress and deterioration in the prospective patient's mental condition to the extent that the prospective patient cannot remain at liberty; and

(iii) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) based on the determination described in paragraph (1) of this subsection, the physician issues an order admitting the prospective patient for emergency detention; and

(4) the prospective patient meets the CSU's admission criteria, as required by §411.608 of this title (relating to Admission Criteria).

(d) Release.

(1) A CSU shall release a prospective patient accepted for a preliminary examination if:

(A) a preliminary examination of the prospective patient has not been conducted within the time frame described in subsection (b)(1) of this section; or

(B) in accordance with Texas Health and Safety Code, §573.023(a), the prospective patient is not admitted for emergency detention in accordance with subsection (c) of this section on completion of the preliminary examination.

(2) In accordance with Texas Health and Safety Code, §576.007, before releasing a prospective patient who is 18 years of age or older, the CSU shall make a reasonable effort to notify the prospective patient's family of the release, if the prospective patient grants permission for the notification.

(e) Intake. A CSU shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted for emergency detention.

(1) The intake process shall include but is not limited to:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the CSU's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, §576.008.

(2) The CSU shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the CSU determines that the patient comprehends the information, the CSU shall document in the patient's medical record the reasons for such determination. If the CSU determines that the patient does not comprehend the information, the CSU shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Mental Health and Mental Retardation
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DIVISION 3. EMERGENCY TREATMENT

25 TAC §411.617

This section is adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.617. Responding to an Emergency Medical Condition of a Prospective Patient or a Patient.

(a) Planning responses to emergency medical conditions. A CSU shall:

(1) identify common emergency medical conditions of patients and prospective patients likely to be encountered by the CSU; and

(2) develop a written plan, approved in writing by the director of psychiatric services required by §411.622(b) of this title (relating to Medical Services), describing the specific and appropriate action to be taken by the CSU to stabilize each identified common emergency medical condition, which shall include:

(A) the administration of first aid and basic life support when clinically indicated;

(B) the use of the supplies and equipment described in subsection (f) of this section; and

(C) when the action to be taken is facilitating transfer of the patient or prospective patient, a description of the method of transportation and the name and location of the hospital to which a patient or prospective patient will be transferred.

(b) Availability of physicians. At least one physician shall, at all times:

(1) be physically present at a CSU to respond to an emergency medical condition of a patient; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication to provide medical consultation.

(c) Response to emergency medical conditions.

(1) If a CSU determines that a patient or a prospective patient has an emergency medical condition, the CSU shall take action to stabilize the emergency medical condition within the capability of the CSU and in accordance with the plan required by subsection (a)(2) of this section, which may include summoning community emergency services for transfer to a general hospital.

(2) If the patient or prospective patient is transferred to a general hospital from the CSU, an RN shall, as soon as possible:

(A) inform the general hospital to which the transfer is made, by telephone, of:

(i) the general condition and medical diagnoses of the patient or prospective patient;

(ii) the medications administered and treatments given to the patient or prospective patient by the CSU; and

(iii) the prognosis of the patient or prospective patient; and

(B) provide a copy of the patient's or prospective patient's medical records to the general hospital to which the transfer is made.

(d) Transfer agreement. A CSU shall have a written agreement with a general hospital that the hospital will accept, for medical treatment and care, a prospective patient or patient transferred from the CSU in accordance with subsection (c) of this section.

(e) Qualified staff members. The CSU shall have an adequate number of staff members who are qualified and available to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(f) Supplies and equipment.

(1) The CSU shall have an adequate amount of appropriate supplies and equipment immediately available and fully operational at the CSU to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(2) The emergency supplies and equipment required by paragraph (1) of this subsection shall include, at a minimum:

(A) oxygen;

(B) manual breathing bags and masks; and

(C) an automated external defibrillator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. SERVICE REQUIREMENTS

25 TAC §§411.621 - 411.624

These sections are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt

rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.621. Crisis Stabilization Services and Treatment Planning.

(a) Crisis stabilization services. A CSU shall provide a patient crisis stabilization services under the direction of a physician and in accordance with the patient's treatment plan, and this division.

(b) Treatment plan. A CSU, in collaboration with the patient, shall develop and implement a written treatment plan within 24 hours after the patient's admission. If the patient is unable or unwilling to collaborate with the CSU, the circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(1) The treatment plan shall be based on the findings of:

(A) the physical examination described in §411.622(e)(1)(A) or (B) of this title (relating to Medical Services);

(B) the psychiatric evaluation described in §411.622(f) of this title (relating to Medical Services); and

(C) the initial comprehensive nursing assessment described in §411.623(c) of this title (relating to Nursing Services).

(2) The treatment plan shall contain:

(A) a list of all diagnoses for the patient with notation as to which diagnoses will be treated at the CSU including:

(i) at least one mental illness diagnosis;

(ii) any substance use disorder diagnoses; and

(iii) any non-psychiatric conditions;

(B) a description of all treatment interventions intended to address the patient's condition, including:

(i) the medications prescribed and the symptoms each medication is intended to address;

(ii) psychosocial rehabilitative services; and

(iii) counseling or psychotherapies;

(C) identification of the level of monitoring assigned to the patient;

(D) identification of any additional assessments and evaluations to be conducted; and

(E) a description of any potential barriers to the patient's discharge.

(c) Treatment plan review and revisions.

(1) The treatment plan shall be:

(A) reviewed and its effectiveness evaluated:

(i) at least every 72 hours after being implemented;

(ii) any time there is a change in the patient's condition based on findings from a re-evaluation described in §411.622(g) of this title (relating to Medical Services), or from an evaluation or a reassessment described in §411.623(d) of this title (relating to Nursing Services); and

(iii) upon request by the patient or the patient's LAR; and

(B) revised, if necessary, based on findings from a re-evaluation described in §411.622(g) of this title (relating to Medical Services) or a reassessment described in §411.623(d) of this title (relating to Nursing Services), or information regarding recommended services and supports needed by the patient after discharge.

(2) A CSU shall, prior to the implementation of revisions to the treatment plan, inform the patient of any revisions to the treatment plan.

§411.622. Medical Services.

(a) Medical services in treatment plan. A CSU shall provide a patient medical services in accordance with a treatment plan developed in accordance with §411.621(b) of this title (relating to Crisis Stabilization Services and Treatment Planning).

(b) Director of psychiatric services. A CSU shall have a director of psychiatric services who directs, monitors, and evaluates the psychiatric services provided.

(c) Qualifications of director of psychiatric services. The director of psychiatric services shall be a physician who:

(1) is certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology; or

(2) has three years of experience as a physician in psychiatry in a "mental hospital" as defined in Texas Health and Safety Code, §571.003.

(d) Treating physician. A CSU shall assign a treating physician to a patient and document such assignment in the patient's medical record at the time the patient is admitted.

(e) Physical examination.

(1) A physician shall:

(A) review written findings of a physical examination of the patient conducted by another physician no more than seven days prior to the patient's admission; or

(B) conduct a physical examination of the patient.

(2) The physical examinations described in paragraph (1) of this subsection must include a neurological screening and, if indicated, a comprehensive neurological examination.

(f) Psychiatric evaluation. A physician shall conduct an initial psychiatric evaluation of a patient to include:

(1) a description of the patient's medical history;

(2) a determination of the patient's mental status;

(3) a description of the onset of the mental illness and any substance use disorder and the circumstances leading to admission;

(4) an estimation of the patient's intellectual functioning, memory functioning and orientation;

(5) a description of the patient's strengths and disabilities in a descriptive, not interpretive fashion; and

(6) the diagnoses of the patient's mental illness, and, if applicable, any substance use disorders.

(g) Re-evaluation. A physician shall re-evaluate a patient:

(1) at least two times a week after the initial psychiatric evaluation described in subsection (f) of this section is conducted; and

(2) as clinically indicated.

(h) Provision of medical services. A CSU shall, as appropriate under the circumstances:

(1) provide medical services to a patient in response to an emergency medical condition in accordance with the plan required by §411.617(a)(2) of this title (relating to Responding to an Emergency Medical Condition of a Prospective Patient or a Patient);

(2) provide other medical services, as needed by the patient;

(3) refer the patient to an appropriate health care provider; or

(4) transfer the patient to a health care entity that can provide the medical services.

(i) Availability of physicians. At least one physician shall, at all times, be available to staff members to provide medical consultation:

(1) by telephone, radio, or audiovisual telecommunication; or

(2) by being physically present at the CSU.

§411.623. Nursing Services.

(a) Nursing services in treatment plan. A CSU shall provide nursing services to a patient in accordance with a treatment plan developed in accordance with §411.621(b) of this title (relating to Crisis Stabilization Services and Treatment Planning).

(b) Chief nursing supervisor. A CSU shall have a chief nursing supervisor who is an RN and who directs, monitors, and evaluates the nursing services provided.

(c) Assessment. An RN shall conduct and complete an initial comprehensive nursing assessment of a patient within eight hours before or after the patient's admission.

(d) Evaluation or reassessment.

(1) An LVN shall evaluate or an RN shall reassess a patient, based on the patient's needs, but at least every eight hours after the initial comprehensive nursing assessment required by subsection (c) of this section is conducted.

(2) If an LVN evaluates the patient every eight hours as permitted by paragraph (1) of this subsection, an RN shall reassess a patient at least every 24 hours after the initial comprehensive nursing assessment required by subsection (c) of this section is conducted.

(e) Staffing plan.

(1) The chief nursing supervisor shall develop and implement a written staffing plan that:

(A) describes the number of RNs, LVNs, and UAPs on each unit for each shift;

(B) provides for at least one LVN or one RN to be physically present and on-duty at all times on each unit when a patient is present on the unit;

(C) if an RN is not physically present and on-duty at all times on each unit when a patient is present on the unit, provides for an RN to be physically present at the CSU within 10 minutes of being contacted by a staff member;

(D) if the CSU has only one unit, in addition to one LVN or one RN required by subparagraph (B) of this paragraph, at least two staff members who provide direct patient care to be physically present and on-duty at all times on the unit when a patient is present on the unit; and

(E) provides for an adequate number of RNs on each unit to supervise all UAPs.

(2) The staffing plan described in paragraph (1) of this subsection shall be based on, at a minimum, the number of patients and the characteristics of the patients, including patient acuity.

(3) The chief nursing supervisor shall document his or her determinations made about the factors described in paragraph (2) of this subsection, at the time the staffing plan is developed and when the staffing plan is revised based on a change in such factors.

(4) A CSU shall retain the staffing plan and the documentation required by paragraph (3) of this subsection for two years after such documentation is created.

(5) The chief nursing supervisor shall revise the staffing plan, as necessary.

(f) Orientation of nursing staff.

(1) A CSU shall provide orientation to a nursing staff member when the staff member is initially assigned to a unit on either a temporary or long-term basis. The orientation shall include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about patients on the unit;

(D) relevant schedules of staff members and patients; and

(E) procedures for contacting the staff member's supervisor.

(2) A CSU shall document the provision of orientation to nursing staff.

(g) Verification of licensure. A CSU shall verify that a member of the nursing staff, for whom a license is required, has a valid license at the time the staff member assumes responsibilities at the CSU and maintains the license throughout the staff member's employment or association with the CSU

§411.624. Protection of a Patient.

(a) Modifying the environment and monitoring the patient. A CSU shall protect a patient by taking the following measures:

(1) modifying the CSU environment based on the patient's needs including:

(A) providing furnishings that do not present safety hazards to the patient;

(B) securing or removing objects that are hazardous to the patient; and

(C) installing any necessary safety devices;

(2) monitoring the patient at the level of monitoring most recently specified in the patient's medical record; and

(3) making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on patient needs and vulnerabilities.

(b) Levels of monitoring. A CSU shall:

(1) identify, in writing, the levels of monitoring of a patients; and

(2) define each of the levels of monitoring, in writing, including a description of the responsibilities of staff members for each level of monitoring identified.

(c) Separation of patients under 18 years of age. In accordance with Texas Health and Safety Code, §321.002, a CSU shall keep patients who are under the age of 18 years separate from patients who are over the age of 18 years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
Proposal publication date: July 25, 2003
For further information, please call: (512) 206-4516

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DIVISION 5. DISCHARGE

25 TAC §§411.628 - 411.633

These sections are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.628. Discharge Planning.

(a) Involvement of staff, patient, and LAR in planning activities.

(1) Following the admission of a patient to a CSU, the CSU shall conduct discharge planning for the patient.

(2) Discharge planning shall involve qualified staff, the patient, the patient's LAR, and any other individual authorized by the patient or LAR, unless clinically contraindicated.

(3) Discharge planning shall include, at a minimum, the following activities:

(A) qualified staff members recommending services and supports needed by the patient after discharge, including the placement after discharge;

(B) qualified staff members arranging for the recommended services and supports; and

(C) qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care.

(b) Discharge summary. The patient's treating physician shall prepare a written discharge summary that includes:

(1) a description of the patient's treatment at the CSU and the response to that treatment;

(2) a description of the patient's condition at discharge;

(3) a description of the patient's placement after discharge;

(4) a description of the services and supports the patient will receive after discharge;

(5) a final diagnosis based on all five axes of the DSM;

(6) a description of the amount of medication the patient will need until the patient is evaluated by a physician; and

(7) the name of the individual or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the CSU.

(c) Contact with the local mental health authority. In conducting the discharge planning activities described in subsections (a)(3)(A) and (B) of this section, a CSU shall consult with personnel at the local mental health authority who are responsible for ensuring continuity of care for individuals upon discharge from the CSU.

(d) Documentation of refusal. If it is not feasible for any of the activities listed in subsection (a)(3) of this section to be performed because the patient, the patient's LAR, or the patient's caregivers refuse to participate in the discharge planning, the circumstances of the refusal shall be documented in the patient's medical record.

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 December 5, 2003.

TRD-200308314
Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
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For further information, please call: (512) 206-4516

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DIVISION 6. DOCUMENTATION

25 TAC §411.637

This section is adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.637. Content of Medical Record.

(a) Medical record. A CSU shall maintain a medical record for a patient. The medical record shall include, at a minimum:

(1) documentation of whether the patient is a voluntary patient, on emergency detention, or under a protective custody order, including the physician or court order, as appropriate;

(2) documentation of the reasons the patient, LAR, family members, or other caregivers state that the patient was admitted to the CSU;

(3) justification for each mental illness diagnosis and any substance use disorder diagnosis;

(4) the level of monitoring assigned and implemented in accordance with §411.612 of this title (relating to Monitoring Upon Admission) and any changes to such level prior to the implementation of the patient's written treatment plan;

(5) the patient's written treatment plan;

(6) the name of the patient's treating physician;

(7) written findings of the physical examination described in §411.622(e)(1)(A) or (B) of this title (relating to Medical Services);

(8) written findings of the psychiatric evaluation described in §411.622(f) of this title (relating to Medical Services), the assessment described in §411.623(c) of this title (relating to Nursing Services), and any other assessment of the patient conducted by a staff member;

(9) a summary of the revisions made to the written treatment plan in accordance with §411.621(c) of this title (relating to Crisis Stabilization Services and Treatment Planning);

(10) the progress notes for the patient as described in subsection (b) of this section;

(11) documentation of the monitoring of the patient by the staff members responsible for such monitoring, including observations of the patient at pre-determined intervals;

(12) documentation of the discharge planning activities required by §411.628(a)(3) of this title (relating to Discharge Planning); and

(13) the discharge summary as required by §411.628(b) of this title (relating to Discharge Planning).

(b) Progress notes. The progress notes referenced in subsection (a)(10) of this section must be documented in accordance with this subsection.

(1) A physician, RN, and other staff members shall make written notes of a patient's progress to include:

(A) documentation of the patient's response to treatment provided under the treatment plan;

(B) documentation of the findings of a re-evaluation described in §411.622(g) of this title (relating to Medical Services);

(C) documentation of the findings of an evaluation or a reassessment described in §411.623(d) of this title (relating to Nursing Services), including any change in the patient's level of monitoring; and

(D) documentation of the findings of any other reassessment of the patient conducted by a staff member.

(2) Requirements regarding the frequency of making progress notes are as follows:

(A) a physician shall document the findings of a re-evaluation described in §411.622(g) of this title (relating to Medical Services) at the time each re-evaluation is conducted; and

(B) an RN or LVN, as appropriate, shall make the documentation described in paragraph (1)(C) of this subsection at the time each evaluation or reassessment is conducted.

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 December 5, 2003.

TRD-200308315
Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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DIVISION 7. STAFF DEVELOPMENT

25 TAC §411.641

This section is adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.641. Staff Member Training.

(a) Training of staff members. A CSU shall provide training to a staff member in accordance with the following:

(1) All staff members shall receive training in:

(A) identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct in the CSU in accordance with the memorandum of understanding set forth in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct);

(B) dignity and rights of a patient in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); and

(C) confidentiality of a patient's information in accordance with Texas Health and Safety Code, Chapter 611 or Chapter 241, Subchapter G , as applicable, 42 CFR Part 2, and 45 CFR Parts 160 and 164.

(2) An RN, LVN, and UAP shall receive training in:

(A) monitoring for patient safety in accordance with §411.624 of this title (relating to Protection of a Patient); and

(B) infection control in accordance with §134.41(d) of this title (relating to Facility Functions and Services).

(3) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric patient shall receive training in the social, psychological and physiological changes associated with aging.

(4) In accordance with Texas Health and Safety Code, §572.0025(e), a PASP shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(5) In accordance with Texas Health and Safety Code, §572.0025(e), a staff member whose responsibilities include conducting the CSU's intake process shall receive at least eight hours of

pre-admission screening and intake training as described in subsection (c) of this section.

(6) A staff member who may initiate an involuntary intervention shall receive training in and demonstrate competency in performing such interventions in accordance with Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(b) A staff member providing direct patient care shall maintain certification in a course, developed by the American Heart Association or the American Red Cross, in recognizing and caring for breathing and cardiac emergencies. The course shall teach the following skills appropriate to the age of the CSU's patients:

(1) rescue breathing with and without devices;

(2) airway obstruction;

(3) cardiopulmonary resuscitation; and

(4) use of an automated external defibrillator.

(c) Pre-admission screening and intake training. The pre-admission screening and intake training required by subsections (a)(4) and (5) of this section shall provide instruction to staff members regarding:

(1) conducting a pre-admission screening;

(2) obtaining relevant information about the patient, including information about finances, insurance benefits and advance directives;

(3) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(4) explaining, orally and in writing, the CSU's services and treatment as they relate to the patient;

(5) in accordance with Texas Health and Safety Code, §576.008, informing the patient in writing of the existence, telephone number and address of the protection and advocacy system established in Texas, which is Advocacy, Inc.; and

(6) determining whether the patient comprehends the information provided in accordance with paragraphs (3)-(5) of this subsection.

(d) Frequency of training. A CSU shall provide the training described in subsection (a) of this section, periodically, as follows:

(1) A staff member shall receive the training required by subsection (a)(1)(A) of this section at the intervals described in the memorandum of understanding set forth in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct).

(2) A staff member shall receive the training required by subsection (a)(1)(B) of this section:

(A) before assuming responsibilities required by the CSU; and

(B) annually throughout the staff member's employment or association with the CSU.

(3) A staff member shall receive the training required by subsections (a)(1)(C) and (a)(2) and (3) of this section:

(A) before assuming his or her responsibilities at the CSU; and

(B) at reasonable intervals throughout the staff member's employment or association with the CSU.

(4) A staff member shall have the certification required by subsection (b) of this section:

(A) before assuming responsibilities at the CSU; or

(B) not later than 30 days after the staff member is hired by the CSU if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

(5) A PASP shall receive the training required by subsection (a)(4) of this section:

(A) prior to the PASP conducting a pre-admission screening; and

(B) annually throughout the PASP's employment or association with the CSU.

(6) A staff member shall receive the training required by subsection (a)(5) of this section:

(A) prior to conducting the intake process; and

(B) annually throughout the staff member's employment or association with the CSU.

(7) A staff member shall receive the training required by subsection (a)(6) of this section at the intervals described in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(e) Documentation of training.

(1) A CSU shall document that a staff member has successfully completed the training described in subsection (a) of this section including:

(A) the date of the training;

(B) the length of the training session; and

(C) the name of the instructor.

(2) A CSU shall maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training described in subsection (b) of this section.

(f) Performance in accordance with training. A staff member shall perform his or her responsibilities in accordance with the training and certification required by this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308316
Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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DIVISION 8. SENTINEL EVENTS AND EXTERNAL REVIEWS

25 TAC §411.645, §411.646

These sections are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.646. Response to External Reviews.

A CSU shall develop and implement a written plan to evaluate the effectiveness of any plan of correction the CSU submits to an external review entity, such as the Texas Department of Health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308317
Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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DIVISION 9. REFERENCES AND DISTRIBUTION

25 TAC §411.649, §411.650

These sections are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; and THSC, §577.010(a), which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a mental health facility required to obtain a license under THSC, Chapter 577.

§411.649. References.

The following statutes and TDMHMR rules are referenced in this subchapter:

(1) Texas Health and Safety Code:

(A) Chapters 241, 572, 573, 574, 576, 577, and 611; and

(B) §321.002 and §571.003;

(2) Texas Government Code, §662.021;

(3) Texas Occupations Code, Chapters 155, 301, and 302, and §157.001;

(4) 40 TAC §148.205;

(5) 25 TAC Chapters 133 and 134, and §412.303;

(6) Code of Federal Regulations Title 42 Part 2, and Title 45 Parts 160 and 164;

(7) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(8) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(9) Chapter 415, Subchapter F of this title (relating to Interventions for Mental Health Programs); and

(10) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

§411.650. Distribution.

(a) This subchapter will be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) management and program staff in TDMHMR's Central Office;

(3) CEOs of all state mental health facilities; and

(4) CEOs of all crisis stabilization units.

(b) CEOs are responsible for distributing this subchapter to appropriate staff members.

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 December 5, 2003.

TRD-200308318
Rodolfo Arredondo
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
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CHAPTER 414. PROTECTION OF CONSUMERS AND CONSUMER RIGHTS SUBCHAPTER A. PROTECTED HEALTH INFORMATION

25 TAC §414.5, §414.7

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §414.5 and §414.7 of Chapter 414, Subchapter A, concerning protected health information, without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8801).

The amendments identify three additional state statutes that affect the privacy of individuals receiving services from or through TDMHMR.

No comments on the proposal were received.

The rule amendments are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

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 December 4, 2003.

TRD-200308273
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 206-4516

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CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES SUBCHAPTER P. HOME AND COMMUNITY-BASED SERVICES--OBRA (HCS-O) PROGRAM

25 TAC §§419.651 - 419.662, 419.665 - 419.678

The Texas Department of Mental Health and Mental Retardation (department) adopts the repeals of §§419.651 - 419.662 and §§419.665 - 419.678 of Chapter 419, Subchapter P, governing home and community-based services--OBRA (HCS-O) program, without changes to the proposal as published in the June 13, 2003, issue of the *Texas Register* (28 TexReg 4521).

The repeals are adopted because the department no longer operates the Home and Community-based Services--OBRA (HCS-O) Program, a Medicaid waiver program authorized under §1915(c) of the Social Security Act. Since September 1, 2003, Medicaid waiver program services have been provided statewide through the Home and Community-based Services (HCS) Program, another Medicaid waiver program operated by the department.

The preamble to the proposed repeal stated that after September 1, 2003, HCS-O Program services would be offered through the Mental Retardation Local Authority (MRLA) Program, another Medicaid waiver program operated by the department. In the interim, however, the department decided to cease operation of the MRLA Program and continue to provide Medicaid waiver program services statewide through the HCS Program to individuals enrolled in the HCS-O and MRLA programs as of August 31, 2003.

No comments on the proposed repeal were received.

The repeals are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS-O 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 December 5, 2003.

TRD-200308333
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: December 25, 2003
Proposal publication date: June 13, 2003
For further information, please call: (512) 206-5232

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

The Texas Parks and Wildlife Commission adopts the repeal of §65.377 and new §65.377, concerning the Statewide Fur-bearing Animal Proclamation. The repeal of §65.377 is adopted without changes to the proposed text as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5830) and will not be republished. New §65.377 is adopted with changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8569). The change to §65.377 is nonsubstantive, relocating proposed subsection (b)(3) to subsection (a)(4) and adding language to clarify that trappers may sell only to wholesale dealers. By statute, wholesale dealers may only buy from trappers, and by rule, only trappers and wholesale dealers may sell carcasses and pelts. The clarification is intended to plainly state the sale privileges of trappers by eliminating the need to infer those privileges.

New §65.377, concerning Sale or Purchase of Fur-bearing Animals primarily is a consolidation of existing provisions (formerly located in several sections) governing the possession and sale of fur-bearing animals by persons licensed or permitted by the department. By placing all such provisions in a single section, the department intends to make the rules easier to navigate. The new section also contains a substantive change from existing provisions, in that trappers will now be able to possess and sell pelts and carcasses year round, provided the pelts or carcasses were lawfully taken during the open trapping season. The change was necessary to allow trappers to take better advantage of seasonal fluctuations in market prices, which enhances the profitability of fur-bearing animal resources in the state.

The new section will function by setting forth all provisions governing possession and sale of fur-bearing animals.

The department received three comments in support of adoption of the proposed rule.

The Texas Fur Hunters and Fur Trappers Association, Sportsmen Conservationists of Texas and the Texas Wildlife Association commented in favor of adoption of the proposed rule.

31 TAC §65.377

The repeal is adopted under Parks and Wildlife Code, Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, and to provide for permit application forms, fees, procedures, and reports.

The repeal affects Parks and Wildlife Code, Chapter 71.

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 December 1, 2003.

TRD-200308197
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: December 21, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 389-4775

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31 TAC §65.377

The new section is adopted under Parks and Wildlife Code, Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, and to provide for permit application forms, fees, procedures, and reports.

The new section affects Parks and Wildlife Code, Chapter 71.

§65.377. Sale or Purchase of Fur-bearing Animals.

(a) Sale of Fur-bearing animals, their carcasses and pelts, and finished products.

(1) No person other than a licensed fur-bearing animal propagator may sell a live fur-bearing animal.

(2) No person other than a licensed trapper or wholesale fur dealer may sell the carcass or pelt of a fur-bearing animal.

(3) Finished products may be sold by anyone.

(4) A trapper may possess and sell the carcass or pelt of a fur-bearing animal lawfully taken during an open trapping season at any time. A trapper may sell the carcass or pelt of a fur-bearing animal only to a wholesale fur dealer.

(b) Purchase of fur-bearing animals, their carcasses and pelts, and finished products.

(1) Except as provided in §65.378 (c) of this title (relating to Importation, Exportation, and Release of Fur-bearing Animals), no person other than a licensed fur-bearing animal propagator or a person holding a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter C, may purchase a live fur-bearing animal.

(2) No person other than a licensed wholesale fur dealer or a consumer may purchase the carcass or pelt of a fur-bearing animal. A consumer must maintain proof of purchase until the pelt becomes a finished product or the carcass is cleaned for cooking or storage at the consumer's permanent residence.

(3) A wholesale fur dealer may purchase the carcass or pelt of a fur-bearing animal lawfully taken during an open trapping season at any time.

(4) Finished products may be purchased by anyone.

(c) A person who sells fur-bearing animals prepared for immediate consumption may purchase the carcass of a fur-bearing animal only from a wholesale dealer.

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 December 1, 2003.

TRD-200308198
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: October 3, 2003
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3031

The Comptroller of Public Accounts adopts an amendment to §9.3031, concerning rendition forms, with changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8825).

Senate Bill 340, 78th Legislature, Regular Session, is amending this section to implement several language changes to the model forms for renditions. Effective January 1, 2004, all seventeen (17) forms adopted or approved by the Comptroller of Public Accounts must contain a statement that a person could be found guilty of a misdemeanor or state jail felony under Penal Code, §37.10, if a person makes a false statement on a form as required by Tax Code, §22.24(c). This section also requires that the person rendering property shall use the form adopted by the comptroller or a form that has been approved by the comptroller to be in substantial compliance. The comptroller added language to all the forms explaining the change in Tax Code,

§22.23(b), that on written request the chief appraiser must extend the filing deadline to May 15 of the tax year.

During the proposed period, comments were received and considered by the Comptroller.

Swisher County Appraisal District submitted a comment that the General Personal Property Rendition of Taxable Property- Non Incoming Producing (Form 50-142) should specify vehicles by make, model, vehicle identification number or license plate number and estimate of market value, since the district includes tax entities that continue to tax personal vehicles. The Comptroller added the make, model, and vehicle identification number to the form.

Jefferson County Appraisal District submitted a comment that the make, model, and mileage on vehicles be included on Business Personal Property Rendition of Taxable Property (Form 50- 144) "to avoid taxpayers from asking for high mileage adjustments during protest time". The Comptroller made no changes because the law does not specify mileage as a reportable item. An appraisal district may include this or other information in its own form as an optional item, and obtain approval from the Comptroller that its form is in substantial compliance.

As a result of a discussion with Harris County Appraisal District, the Comptroller agreed to add a section on the special personal property rendition forms, subsections (d)(7)-(9), (11), (12) and (14)-(16), giving the property owner with tangible (business) personal property with a value less than $20,000, the option of filing the Business Personal Property Rendition of Taxable Property (Form 50-144) or the special rendition form.

The Comptroller made changes to the affirmation statement on all seventeen (17) forms to clarify that the notary requirement did not apply to property owners, an employee of the property owner or an employee of a property owner on behalf of an affiliated entity of the property owner.

The Comptroller also added the words "Non Incoming Producing" to the title of the form in subsection (d)(2), which had been inadvertently left off. And the Comptroller noticed a typographical error and corrected the word "quantity" from "quality" in the Business Personal Property Rendition of Taxable Property (Form 50-144) on Schedule C: Inventory.

This amendment is adopted under Tax Code, §22.24, which requires the comptroller to prescribe and approve appropriate forms for filing a rendition or report.

The amendment implements Tax Code, §22.24 and §22.27.

§9.3031. Rendition Forms.

(a) All appraisal offices and all tax offices appraising property for purposes of ad valorem taxation shall prepare and make available at no charge, printed or electronic forms for the rendering of property.

(b) A person rendering property shall use the model form adopted by the Comptroller of Public Accounts or a form containing information which is in substantial compliance with the model form if approved by the comptroller.

(c) Nothing in this section shall be construed to prohibit the combination of the information contained on two or more model forms into a single form in order to use a single form to achieve substantial compliance with two or more model forms.

(d) The model rendition forms for various categories of property in paragraphs (1)-(17) are adopted, as amended, by the comptroller by reference. Copies of these forms are available for inspection at the offices of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling toll- free 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. The model rendition forms are:

(1) General Real Estate Rendition of Taxable Property, (Form 50-141);

(2) General Personal Property Rendition of Taxable Property- Non Incoming Producing, (Form 50-142);

(3) Report of Leased Space for Storage of Personal Property, (Form 50-148);

(4) Industrial Real Property Rendition of Taxable Property, (Form 50-149);

(5) Oil and Gas Lease Rendition of Taxable Property, (Form 50-150);

(6) Mine and Quarry Real Property Rendition of Taxable Property, (Form 50-151);

(7) Telephone Company Rendition of Taxable Property, (Form 50-152);

(8) REA-Financed Telephone Company Rendition of Taxable Property, (Form 50-153);

(9) Electric Company and Electric Cooperative Rendition of Taxable Property, (Form 50-154);

(10) Gas Distribution Utility Rendition of Taxable Property, (Form 50-155);

(11) Railroad Rendition of Taxable Property, (Form 50-156);

(12) Pipeline and Right-of-Way Rendition of Taxable Property, (Form 50-157);

(13) Business Personal Property Rendition of Taxable Property, (Form 50-144);

(14) Watercraft Rendition of Taxable Property, (Form 50-158);

(15) Aircraft Rendition of Taxable Property, (Form 50-159);

(16) Mobile Homes Rendition of Taxable Property, (Form 50-160); and

(17) Residential Real Property Inventory, (Form 50-143).

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 December 4, 2003.

TRD-200308289
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: December 24, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §6.1, §6.2

The Texas Department of Public Safety adopts amendments to §6.1 and §6.2, concerning License To Carry Handguns, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7942).

Amendment to §6.1 is necessary due to the codification of Texas Civil Statutes to Texas Government Code. Amendment to §6.2 is necessary in order to make the public aware that approved credit cards will be accepted for applications submitted online.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Chapter 411, Subchapter H.

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 December 5, 2003.

TRD-200308363
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 424-2135

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SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES

37 TAC §§6.11, 6.13, 6.15, 6.16, 6.19, 6.20

The Texas Department of Public Safety adopts amendments to §§6.11, 6.13, 6.15, 6.16, 6.19, and 6.20, concerning License To Carry Handguns, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7943).

Amendments to §6.11 are necessary because effective September 1, 2003, the Texas Legislature changed the eligibility requirements making an applicant eligible for a license as soon as they relocate to the state with intent to establish residency and because they also changed the definition of felony conviction for concealed handgun license applicants. Amendment to §6.13 is necessary in order to correct a grammatical error. Amendments to §6.15 are necessary because of the legislature's change to the eligibility requirements and thus establish procedures for an applicant to provide proof of relocation with intent to establish residency. Amendments to §6.16 are necessary due to the legislature changing the statute to allow non-resident license holders to keep and renew their licenses until licenses issued in their home state are recognized in Texas. In addition, the legislature authorized the governor to negotiate reciprocity agreements or issue a proclamation recognizing licenses issued in other states. Further changes are necessary due the codification of Texas Government Code to the Occupations Code. Amendment to §6.19 is necessary in order to correct an error in syntax. Amendment to §6.20 is necessary to correct a reference to statute.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Chapter 411, Subchapter H.

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 December 5, 2003.

TRD-200308364
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 424-2135

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SUBCHAPTER D. TIME, PLACE, AND MANNER RESTRICTIONS ON LICENSE HOLDERS

37 TAC §6.44

The Texas Department of Public Safety adopts an amendment to §6.44, concerning License To Carry Handguns, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7948).

Amendment to the section is necessary in order to include sites of execution, on the day of execution, as an additional place where weapons are prohibited.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Chapter 411, Subchapter H.

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 December 5, 2003.

TRD-200308365
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 424-2135

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SUBCHAPTER F. SUSPENSION AND REVOCATION PROCEDURES

37 TAC §6.63

The Texas Department of Public Safety adopts an amendment to §6.63, concerning License To Carry Handguns, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7949).

Amendment to §6.63 is necessary in order to correct a reference to statute.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Chapter 411, Subchapter H.

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 December 5, 2003.

TRD-200308366
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 424-2135

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SUBCHAPTER G. CERTIFIED HANDGUN INSTRUCTORS

37 TAC §§6.71, 6.89, 6.95

The Texas Department of Public Safety adopts amendments to §§6.71, 6.89, and 6.95, concerning License To Carry Handguns, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7950).

Amendment to §6.71 is necessary in order to correct a grammatical error. Amendment to §6.89 is necessary in order to keep instructors from offering the entire course by video. Amendment to §6.95 is necessary in order to correct a grammatical error and, because the instructor certification renewal course is only offered during August and September of odd numbered years, this amendment allows the instructors to remain certified if they complete the renewal course after the two year anniversary of their last certification. This amendment will also assist the Training Unit in scheduling the courses by allowing instructors to take any course during that two month period.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Chapter 411, Subchapter H.

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 December 5, 2003.

TRD-200308367
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
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SUBCHAPTER H. INFORMATION AND REPORTS

37 TAC §§6.117 - 6.119

The Texas Department of Public Safety adopts the repeal of §§6.117 - 6.119, concerning License To Carry Handguns, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7951).

Repeal of the sections is necessary because the statute was amended and law enforcement agencies no longer report incidents involving license holders and the department is no longer required to generate statistics based on reports.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Chapter 411, Subchapter H.

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 December 5, 2003.

TRD-200308368

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §§15.1, 15.5 - 15.7

The Texas Department of Public adopts amendments to §§15.1 and 15.5-15.7, concerning Licensing Requirements. Sections 15.1, 15.6 and 15.7 are adopted without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7951) and will not be republished. Section 15.5 is adopted with changes to subsection (c) and will be republished. The change to subsection (c) is necessary in order to change "licensed motorcycle operator age 18 or over in sight" to "licensed motorcycle operator age 21 or over in sight" for consistency.

Amendment to §15.1 is necessary in order to make grammatical corrections. Amendment to §15.5 is necessary in order to make grammatical corrections and to have the rule conform to statute. Amendment to §15.6 is necessary for grammatical corrections and the term "moped" as well as the acceptance of approved motorcycle training certificates from other jurisdictions. Amendment to §15.7 is necessary in order to clarify the requirements for the issuance of an occupational license concerning reinstatement fees and the effect of a subsequent suspension/revocation following the issuance of an occupational license.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

§15.5. Learner's License-Instruction Permit.

(a) A learner's license authorizes the driving of the same vehicles authorized by a classified driver license.

(b) A learner's license is a regular photo-type Class A, B, or C license restricted to "accompanied by licensed driver age 21 or over in front seat" or Class M license restricted to "licensed motorcycle operator age 21 or over in sight." The standard fee and expiration dates apply to a learner's license.

(c) An instruction permit is a driving permit without a photograph. It is issued to any beginning driver for any class of vehicles subject to applicable age and driver education requirements. Class A, B, or C type permits will be restricted to "accompanied by licensed driver age 21 or over in front seat" or the Class M permit will be restricted to "licensed motorcycle operator age 21 or over in sight." The fee for an instruction permit is $5.00.

(d) An instruction permit is renewable only as a photo-type learner's license with statutory validity period applicable to under 18 years of age and 18 years of age and older. A learner's license or instruction permit authorizes the driving of vehicles subject to the license classification and restrictions on the permit. Any restriction which would permit driving any vehicle without an accompanying driver requires a regular photo-type license with the statutory validity period.

(e) Minor's restricted driver license (MRDL) or hardship license issued under the hardship provisions, except 60-day permits, will be a photo-type license which expires on the licensee's birth date.

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 December 5, 2003.

TRD-200308360
Thomas A. Davis, Jr.
Director
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Effective date: December 25, 2003
Proposal publication date: September 12, 2003
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SUBCHAPTER B. APPLICATION REQUIREMENTS-ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.21

The Texas Department of Public Safety adopts amendments to §15.21, concerning Application Requirements-Original, Renewal, Duplicate, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7952).

Amendments to the section are necessary in order to clarify procedures to be followed when processing an applicant that cannot sign their name and must make a "mark."

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department work, and Texas Transportation Code, §521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200308361
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 424-2135

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety adopts amendments to §15.55, concerning Examination Requirements, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7953).

Amendments to the section are necessary in order to restate the acceptance of a motorcycle training course for the waiver of the motorcycle skills test as stated in §15.6 of this title (relating to Motorcycle License) and changes the age restriction of having a "licensed operator age 21 or over in the front seat" to be consistent with statute. The amendment further removes the acceptance of a U.S. Military license to waive the driving test.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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37 TAC §15.58

The Texas Department of Public Safety adopts amendments to §15.58, concerning Medical Advisory Board Referrals, without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8826).

Amendments to the section are necessary in order to enhance the department's ability to identify and assess potential driver limitations. Furthermore, the amendments ensure consistency with current Medical Advisory Board Guidelines. The revised referral criteria result from the department's recent review of all policies, procedures and forms utilized in processing driver license applicants with medical and/or physical conditions that may adversely affect their ability to safely operate a motor vehicle. Department procedures were systematically evaluated to eliminate unnecessary actions and to increase the opportunity to more effectively evaluate driver ability.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, Chapter 521, which provides that the department may adopt rules to administer that chapter.

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 December 5, 2003.

TRD-200308369
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 424-2135

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CHAPTER 31. STANDARDS FOR AN APPROVED MOTORCYCLE OPERATOR TRAINING COURSE

37 TAC §§31.1 - 31.4, 31.6, 31.7, 31.9, 31.10, 31.12

The Texas Department of Public Safety adopts amendments to §§31.1-31.4, 31.6, 31.7, 31.9, 31.10, and 31.12, concerning Standards For An Approved Motorcycle Operator Training Course, without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7952).

Amendments to §31.1 are necessary in order to clean up wording so that the rule may closely parallel the wording in Texas Transportation Code, Chapter 662 and also changes the word "Instructor" to "RiderCoach" because the new Basic RiderCourse prefers the term "RiderCoach."

Amendments to §31.2 are necessary in order to change the word "Instructor" to "RiderCoach" and to change the word "chief school official" to "program administrator." The term "chief school official" relates to a position within a public school system and since many of the training sites are privately owned, the term is changed to "program administrator" since the persons identified actually administer their program.

The word "Instructor" is also changed to "RiderCoach" in §31.3 as well as changing the requirement in paragraph (a)(3) to read "valid Texas motorcycle license or an equivalent license from the applicant's state of residence." This change is necessary in order to allow motorcycle safety RiderCoaches, typically military members or persons vacationing in Texas, the ability to teach motorcycle safety in Texas without having to obtain a Texas driver license. Paragraph (a)(5) is also amended to add the requirement for the applicant for approval to teach motorcycle safety to have to provide a certified copy of their out-of-state driving history so that the department may evaluate the person's driving record.

Amendments to §31.4 are necessary in order to change "be admitted to" to "enroll into" to clarify the requirements that must be met before a minor may enroll into a motorcycle operator training course.

Amendments to §31.6 are necessary in order to change the word "Instructor" to "RiderCoach." The section is also amended to indicate that the Motorcycle Safety Foundation's (MSF) Basic RiderCourse is now the approved basic motorcycle operator training course. Further amendments also increase the instructor to student ratio in accordance with the new curriculum and changed

from the instructor preparation course to the RiderCourse Preparation Course to train RiderCoaches to present the MSF's Basic RiderCourse.

Amendments to §31.7 are necessary in order to change the word "Instructor" to "RiderCoach" and amends wording relating to motorcycles used in the basic or advanced motorcycle operator training course to allow student-owned motorcycles of any displacement to be used per the MSF's Basic RiderCourse. Amendment also requires persons using a personal or borrowed motorcycle in the basic motorcycle operator training course to sign a waiver form stating that they accept all liability for damages caused by, or to the vehicle.

Amendment to §31.9 is necessary in order to change the word "Instructor" to "RiderCoach."

Amendments to §31.10 are necessary in order to change the title from "Quality Assurance Visits" to "Technical Assistance Visits," change "QAV" to "TAV," and provide basic guidance for conducting a Technical Assistance Visit since a TAV differs in focus from the QAV.

Wording in §31.12 is revised in order to improve readability.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §662.009.

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 December 5, 2003.

TRD-200308359
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 25, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Texas Department of Protective and Regulatory Services (PRS) adopts new §§700.1201 - 700.1207; and adopts the repeal of §§700.1310 - 700.1316, in its Child Protective Services chapter. New §700.1203 and §700.1204 are adopted with minor changes to the proposed text published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8838). New §§700.1201, 700.1202, 700.1205 - 700.1207, and the repeal of §§700.1310 - 700.1316 are adopted without changes to the proposed text and will not be republished.

The justification for the repeals and new sections is to revise the permanency planning goals to reflect the focus on finding family placements for children, consistent with the implementation of the definition of permanency planning in the Texas Government Code, §531.151, and guidelines developed by the Health and Human Services interagency workgroups that have addressed this issue. The primary change is the deletion of the current permanency goal of Alternative Long Term Care (long term foster care) to a focus on finding foster families or some other family arrangement for children who stay in the permanent conservatorship of PRS.

The sections will function by ensuring that PRS places more emphasis on seeking families for children when staff conduct permanency planning activities.

During the public comment period, PRS received comments from the UT Texas Center for Disability Studies, Advocacy, Inc., and EveryChild, Inc. Generally, the comments were very supportive of the changes. One commenter suggested the following minor changes, which are discussed below:

Comment concerning §700.1203: One commenter recommended that paragraph (3) specify that a long-term commitment by a foster family for children in permanent PRS custody be listed as a priority goal above the proposed subparagraph (E).

Response: Since the intent was that all goals listed under paragraph (3) would involve long-term commitment by a family, staff agree that specific reference be made to "long- term commitment" but recommend that the reference be made at the beginning of paragraph (3).

Comment concerning §700.1204: One commenter suggested that the word "usually" be removed from subsection (b) because its inclusion allows for deviation from the ordered list. The same commenter also suggested that subsection (b)(3) be changed to reflect the various considerations that might form the basis for reaching the conclusion that a goal was "not appropriate to meet the child's needs and best interests."

Response: Staff agree with the suggestion to remove the word "usually" because its inclusion is unnecessary. However, staff do not believe it is necessary for the rule to specify all the various considerations that are taken into account in determining whether a particular permanency planning goal is contrary to a child's needs and best interests. Such considerations, including opinions of relevant professionals and specialists and processes for reviewing the choice of permanency planning goals, are already set forth in policy in much greater detail. Moreover, permanency planning goals are also subject to review by the court during permanency and placement review hearings.

SUBCHAPTER L. PERMANENCY PLANNING

40 TAC §§700.1201 - 700.1207

The new sections are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The new sections implement the Human Resources Code, §40.029.

§700.1203. What are the permanency planning goals?
A permanency planning goal must be one of the following:

(1) family preservation;

(2) family reunification;

(3) alternative family placement with long-term commitment consisting of:

(A) adoption and care by a relative;

(B) permanent conservatorship and care by a relative;

(C) adoption and care by an unrelated family;

(D) permanent conservatorship and care by an unrelated family;

(E) care by a foster family with PRS having permanent conservatorship; or

(F) care in some other family arrangement with PRS having permanent conservatorship;

(4) another planned living arrangement with the support of a family consisting of:

(A) preparation for independent adult living, for youth who are at least 16 years old and have no developmental disability; or

(B) preparation for adult living with community assistance in the most integrated setting, for youth who are at least 18 years old and who have a developmental disability.

§700.1204. How is the permanency planning goal chosen?

(a) The permanency planning goal that is chosen must serve the child's best interests and long term needs, including the need for an enduring and nurturing family relationship with safety, stability, and continuity of care.

(b) The permanency planning goals, as described in §700.1203 of this title (relating to What are the permanency planning goals?), must generally be addressed as an ordered list of priorities. A lower listed goal is considered only after ruling out the higher listed goal(s) as:

(1) unnecessary to consider, by court order;

(2) unreasonable or unachievable, after pursuing reasonable efforts; or

(3) not appropriate to meet the child's needs and best interests.

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 December 5, 2003.

TRD-200308346
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 438-3437

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SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §§700.1310 - 700.1316

The repeals are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The repeals implement the Human Resources Code, §40.029.

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 December 5, 2003.

TRD-200308347
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: January 1, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 438-3437

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CHAPTER 711. INVESTIGATIONS IN TDMHMR FACILITIES AND RELATED PROGRAMS

The Texas Department of Protective and Regulatory Services (PRS) adopts amendments to §§711.3, 711.7, 711.17, 711.19, 711.415, 711.1403, 711.1405, 711.1409, 711.1413, 711.1417, 711.1427, and 711.1435; adopts the repeal of §711.413 and §711.417; and adopts new §711.413 and §711.417, in its Investigations in TDMHMR Facilities and Related Programs chapter. The amendment to §711.3, §711.17 and new §711.413 are adopted with changes to the proposed text published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8840). The amendments to §§711.7, 711.19, 711.415, 711.1403, 711.1405, 711.1409, 711.1413, 711.1417, 711.1427, and 711.1435; the repeal of §711.413 and §711.417; and new §711.417 are adopted without changes to the proposed text and will not be republished.

The 78th Texas Legislature reduced funding for investigations in MHMR facilities and related programs by 25%, resulting in a loss of 34 Adult Protective Services (APS) facility staff positions. To minimize the effects this loss of staff resources will have on the quality and timeliness of investigations, it is necessary to create a more flexible priority system and to redefine the types of allegations accepted for investigation. These rule changes make those changes. Amendments are also being made to rules related to the Employee Misconduct Registry (EMR). APS investigates abuse, neglect, and exploitation in certain home and community support services agencies (HCSSAs) licensed under Health and Safety Code, Chapter 142. Findings from these investigations are subject to entry into the EMR if the alleged act meets the criteria for reportable conduct. Up to now, licensed HCSSAs have included home health agencies and home and community-based services waiver programs (HCSWs). However, House Bill (HB) 2292 from the Legislative Session amended Health and Safety Code, Chapter 142, to no longer require that an HCSW be licensed as a HCSSA. HB 2292 also amended the definition of "agency" to include a person exempt from licensing under Health and Safety Code, §142.003(a)(19). Therefore, investigation findings involving HCSWs are still eligible for entry into the EMR. The rule changes seek to clarify this situation as well as to remedy

procedural issues related to evidence collection and the conduct of EMR hearings.

The sections will function by ensuring that investigations in MHMR facilities and related programs will be conducted more efficiently and the detrimental effects of the 25% reduction in staff will be minimized. Procedures for conducting Employee Misconduct Registry hearings as well as the authority of the hearings examiner will be more easily understood.

During the comment period, comments were received from Parent Association for the Retarded of Texas, Lufkin State School, Texas Council for Developmental Disabilities, and three individuals. A summary of the comments and responses follows:

Comments concerning §711.3: One commenter noted that the definitions of non-serious physical injury and serious physical injury do not match those found in the TDMHMR companion rules at 25 TAC, Chapter 417, Subchapter K, relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities. The commenter suggested that these definitions be added for consistency.

Response: PRS is adopting this section with change. For clarity and consistency with the TDMHMR companion rules, definitions have been added to paragraphs (22) and (33) for non-serious physical injury and serious physical injury specific to investigations in TDMHMR facilities. Due to the introduction of these new paragraphs, subsequent paragraphs are re-numbered.

Comments concerning §711.17: Three commenters expressed concern that §711.17(b)(2) could be interpreted to mean that an individual has to perceive that an act or communication has had a serious adverse impact on a person served. Some persons served may not be able to show overt signs of distress.

Response: PRS is adopting this section with changes due to public comments. The language has been revised to clarify that the definition is met if the act or communication is of such a serious nature that a reasonable person would consider it harmful or causing distress.

Comments concerning §711.413:

(1) One commenter stated that just because an alleged incident occurred more than 30 days prior to the date of the report, this should not be used to justify giving it a lower priority.

Response: Once 30 days or more have passed since the date of an alleged incident, the likelihood of finding credible evidence will have greatly diminished. The passage of this much time lessens the urgency to respond as quickly as to a priority I or priority II allegation.

(2) One commenter stated that in paragraph (1)(D) it appears that incitement to harm self or others has been classified as verbal/emotional abuse.

Response: The section has been reformatted to clarify that incitement to harm self or others is not considered verbal/emotional abuse.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.3, 711.7, 711.17, 711.19

The amendments are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; §48.251, which directs the department to adopt rules defining abuse, neglect, and exploitation for investigations conducted in MHMR facilities and related programs; and §48.255(f), which authorizes the department to assign priorities to an investigation conducted by the department.

The amendments implement the Human Resources Code, §40.029.

§711.3. How are the terms in this chapter defined?

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

(1) Administrator--The person in charge of a facility, local authority, community center, or home and community-based services waiver program, or designee.

(2) Adult--An adult is a person:

(A) 18 years of age or older; or

(B) under 18 years of age who:

(i) is or has been married; or

(ii) has had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(3) APS--Adult Protective Services, a division of PRS.

(4) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of a:

(A) facility, local authority, community center, or home and community-based services waiver program; or

(B) contractor of one of the programs listed in subparagraph (A) of this paragraph.

(5) Allegation--A report by an individual that a person served has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.

(6) Child--A person under 18 years of age who:

(A) is not and has not been married; or

(B) has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(7) Clinical practice--Relates to the demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the Nursing Practice Act, Vocational Nurse Act, Dental Practice Act, Pharmacy Practice Act, or Medical Practice Act.

(8) Community center--A community mental health center, community mental retardation center, or community mental health and mental retardation center, established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(9) Contractor--Any organization, entity, or individual who contracts with a facility, local authority, community center, or HCSW to provide mental health and/or mental retardation services directly to a person served. The term includes a local independent school district with which a facility, local authority, or community center has a memorandum of understanding (MOU) for educational services.

(10) Contractor CEO--The person in charge of a contractor that has one or more employees, excluding the CEO.

(11) CSRP or Consumer Services and Rights Protection-Ombudsman Office--The office at TDMHMR's Central Office charged with protecting the rights of persons served.

(12) Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.

(13) Emergency services--Services necessary to immediately protect a person served by an HCSW from serious physical harm or death. Examples include, but are not limited to, arranging for:

(A) an emergency order for protective services;

(B) shelter;

(C) medical and psychiatric assessments and/or treatment; and

(D) food, medication, or other supplies.

(14) Facility--A state hospital, state school, or state center that is operated by TDMHMR.

(15) Home and community-based services waiver program (HCSW)--Community-based Medicaid waiver programs authorized under the Social Security Act, §1915(c), operated by TDMHMR under the authority of the Texas Health and Human Services Commission, that are exempt from licensure in accordance with Health and Safety Code, §142.003(a)(19).

(16) Incitement--To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(17) Individual with a disability receiving services--A disabled person as defined in the Human Resources Code, Chapter 48, receiving services from a:

(A) facility, local authority, community center, HCSW; or

(B) contractor or agent of one of the programs listed in subparagraph (A) of this paragraph.

(18) Investigator--An employee of the division of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(19) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(20) Mental health services provider--In accordance with the Texas Civil Practice and Remedies Code, §81.001, an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by the Human Resources Code, §50.001;

(B) chemical dependency counselor as defined by Texas Civil Statutes, Article 4512o;

(C) licensed professional counselor as defined in §2 of the Licensed Professional Counselor Act, (Texas Civil Statutes, Article 4512g);

(D) licensed marriage and family therapist as defined in §2, Licensed Marriage and Family Therapist Act, (Texas Civil Statutes, Article 4512c-1);

(E) member of the clergy;

(F) physician who is practicing medicine as defined in §1.03 of the Medical Practice Act, (Texas Civil Statutes, Article 4495b);

(G) psychologist offering psychological services as defined in §2 of the Psychologists' Certification and Licensing Act, (Texas Civil Statutes, Article 4512c); or

(H) special officer for mental health assignment certified under the Government Code, §415.037.

(21) Non-serious physical injury--Any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include the following:

(A) superficial laceration;

(B) contusion two and one-half inches in diameter or smaller; or

(C) abrasion.

(22) Non-serious physical injury (MHMR facilities only)--Any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice nurse (APN), or physician.

(23) Peer review--A review of clinical and/or:

(A) medical practice(s) by peer physicians;

(B) dental practice(s) by peer dentists;

(C) pharmacy practice(s) by peer pharmacists; or

(D) nursing practice(s) by peer nurses.

(24) Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(25) Person served--An individual with a disability receiving services, or a child receiving services in a:

(A) facility or HCSW who is registered or assigned in the Client Assignment and Registration (CARE) system; or

(B) community center or local authority who is registered or assigned in CARE or who is otherwise receiving services from a community center or local authority, either directly or by contract.

(26) Preponderance of evidence--The greater weight of evidence, or evidence which is more credible and convincing to the mind.

(27) Prevention and management of aggressive behavior (PMAB)--TDMHMR's proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(28) Professional review--A review of clinical and/or professional practice(s) by peer professionals.

(29) Program--A facility, local authority, community center, or HCSW.

(30) PRS--Texas Department of Protective and Regulatory Services.

(31) Reporter--The person, who may be anonymous, making an allegation.

(32) Serious physical injury--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include the following:

(A) fracture;

(B) dislocation of any joint;

(C) internal injury;

(D) contusion larger than two and one-half inches in diameter;

(E) concussion;

(F) second or third degree burn; or

(G) any laceration requiring sutures.

(33) Serious physical injury (MHMR facilities only)--Any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or advanced practice nurse (APN). Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician's assistant, or advanced practice nurse (APN). For the purposes of this subchapter, medical intervention does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication.

(34) Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(35) TDMHMR--Texas Department of Mental Health and Mental Retardation.

(36) Victim--A person served who is alleged to have been abused, neglected, or exploited.

§711.17. How is verbal/emotional abuse defined?

(a) In this chapter, when the alleged perpetrator is an employee, agent, or contractor, verbal/emotional abuse is defined as any act or use of verbal or other communication, including gestures, to:

(1) curse, vilify, or degrade a person served; or

(2) threaten a person served with physical or emotional harm.

(b) In order for the definition of verbal/emotional abuse to be met, the act or communication must:

(1) result in observable distress or harm to the person served; or

(2) be of such a serious nature that a reasonable person would consider it harmful or causing distress.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §711.413, §711.417

The repeals are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; §48.251, which directs the department to adopt rules defining abuse, neglect, and exploitation for investigations conducted in MHMR facilities and related programs; and §48.255(f), which authorizes the department to assign priorities to an investigation conducted by the department.

The repeals implement the Human Resources Code, §40.029.

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40 TAC §§711.413, 711.415, 711.417

The amendment and new sections are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; §48.251, which directs the department to adopt rules defining abuse, neglect, and exploitation for investigations conducted in MHMR facilities and related programs; and §48.255(f), which authorizes the department to assign priorities to an investigation conducted by the department.

The amendment and new sections implement the Human Resources Code, §40.029.

§711.413. How are investigations prioritized?

Each investigation is assigned a priority in accordance with the following:

(1) Priority I reports have a serious risk that a delay in investigation will impede the collection of evidence, or allege that the victim has been subjected to maltreatment by act or omission that caused or may have caused serious physical or emotional harm. Priority 1 reports include, but are not limited to, the following:

(A) Death;

(B) Sexual abuse;

(C) Serious physical injury; or

(D) Verbal/emotional abuse, such as a death threat, threat of serious physical or emotional harm; or

(E) Incitement to harm self or others.

(2) Priority II reports have some risk that a delay in investigation will impede the collection of evidence, or allege that the victim has been subjected to maltreatment by act or omission that caused or may have caused non-serious physical injury, or emotional harm not included in Priority I. Priority II reports include, but are not limited to, the following:

(A) Non-serious physical injury;

(B) Verbal/emotional abuse, such as name-calling, cursing, degrading, or vilifying remarks; or

(C) Exploitation.

(3) Priority III reports allege maltreatment that would otherwise be classified as Priority I or II but the alleged incident occurred more than 30 days prior to the date of the report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §§711.1403, 711.1405, 711.1409, 711.1413, 711.1417, 711.1427, 711.1435

The amendments are adopted under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; §48.251, which directs the department to adopt rules defining abuse, neglect, and exploitation for investigations conducted in MHMR facilities and related programs; and under HRC, Chapter 48, Subchapter I, which specifically directs the department to adopt rules to implement its role in relation to the employee misconduct registry.

The amendments implement the Human Resources Code, Chapter 48, Subchapter I.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 720. 24-HOUR CARE LICENSING

The Texas Department of Protective and Regulatory Services (PRS) adopts amendments to §§720.136, 720.206, 720.366, 720.373, 720.505, 720.525, 720.913, 720.919, and 720.1503; adopts the repeal of §720.912; and adopts new §720.912, in its 24-Hour Care Licensing chapter. New §720.912 is adopted with changes to the proposed text published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8843). The amendments to §§720.136, 720.206, 720.366, 720.373, 720.505, 720.525, 720.913, 720.919, and 720.1503 and the repeal of §720.912 are adopted without changes to the proposed text and will not be republished.

Currently, in situations where the child has not had a psychological evaluation within 14 months prior to the date of admission, one must be completed before the child is moved from an emergency shelter to a more permanent placement. Completion of a psychological evaluation can often extend the length of time a child may have to stay in an emergency shelter. The justification for the amendments is to expand the timeframe to allow a psychological evaluation to be completed within 30 days after admission when a child is being placed from an emergency shelter. This change will allow greater flexibility in the placement of a child in that the need for a psychological evaluation will not prevent a child from being moved into a more permanent placement more quickly. This change may decrease the length of time a child may have to remain in emergency shelter care.

Current standards for emergency shelters require parental consent for a child to remain in emergency shelter care beyond the basic length of stay, which is contingent on the age of the child. The 78th Legislature passed House Bill (HB) 1364, which adds that a shelter may provide emergency care to a child when there is an immediate danger to the physical health or safety of the child or the child's offspring. In addition, HB 1364 allows all minors to remain in emergency shelter care for 15 days. The bill also allows certain minors to consent for emergency shelter care and continuation of emergency shelter care beyond 15 days providing that they meet consenting criteria. The amendments to the minimum standard rules include the requirements for this new legislation.

The sections will function by ensuring that the need for a psychological evaluation may not prevent a child from being moved into a more permanent placement, if an appropriate placement is available, and this may decrease the length of time a child may have to stay in an emergency shelter.

During the comment period, PRS received comments from five child-care providers and one association, the Texas Alliance of Child and Family Services. A summary of the comments and responses follows:

General Comments:

(1) One commenter wanted clarification on what level a CPS child will be placed at when there is no psychological or psychiatric evaluation.

Response: Service level issues are governed by Child Protective Services, not Child-Care Licensing.

(2) The commenter also wanted to know why assessment services rules should even exist if no psychological or psychiatric evaluation will be required prior to placement.

Response: The assessment services rules are still required because, (1) §42.0425 of the Human Resources Code requires minimum standards for assessment services; and (2) Psychological and psychiatric evaluations may still be performed in facilities that provide assessment services.

Comments concerning §720.136: Two commenters responded to this proposed rule. One commenter supported the proposed changes in subsection (a). The other commenter made the same comments as recorded under §§720.206 -720.525.

Response: PRS is adopting this section without change. See response to comments under §§720.206 -720.525.

Comments concerning §§720.206, 720.366, 720.373, 720.505, and 720.525: One commenter stated that allowing a child to be placed from an emergency shelter without a psychological or psychiatric evaluation will increase the likelihood of failure in placement and increase the need for subsequent, numerous moves for a child.

Response: PRS is adopting these sections without change. Child-placing agencies that offer therapeutic foster care under contract with CPS are set up to care for children at the basic service level through the specialized service level. Although children needing services at the intense service level may have to move based on the results of the child's psychological evaluation, it should rarely occur.

Comments concerning §720.912: Three commenters responded to this proposed rule.

(1) One commenter wanted clarification on the number of days a child of any age may stay in emergency shelter care.

Response: A child of any age may stay in an emergency shelter for at least 15 days; this change has been added for clarity.

(2) One commenter stated that the proposed rule eliminates voluntary placements or admission of a homeless child found on the streets.

Response: HB 1364 sets the parameters under which an emergency shelter may admit a child or the child's offspring for care; no changes were made in response to this comment.

(3) The commenter also stated shelters must have the flexibility to respond to the needs of the community even if this means accepting a child whose age or gender violate the conditions of their license or exceeds their licensed capacity for a limited period of time.

Response: Section 42.042 of the Human Resources Code requires PRS to promulgate rules to carry out the provisions of this chapter and to promulgate minimum standards for the provision of child-care services to protect the health and safety of children in care. The conditions of a license must be observed for the health and safety of children. No changes to this rule were made in response to this comment.

(4) Two commenters stated that the proposed rules would cause children to be moved to another shelter to meet the specified 15-day, 30-day, and 90-day deadlines, resulting in more moves per child. One commenter also added that there is no discussion of any special exigency, such as members of a sibling group that would warrant an extension of care beyond that stated.

Response: This rule has been changed to allow children to continue placement in an emergency shelter when their sibling or parent also resides in the emergency shelter. Any change that would allow a longer stay in placement would be a substantive change to the rule; however, this issue will be looked at further during the revision process of minimum standard rules.

(5) One commenter stated that his emergency shelter does not have a licensed physician on staff to provide medical treatment and psychiatric consultation 24-hours a day.

Response: Section 720.912(b)(2) is in current rule and has only been renumbered. Currently, PRS does not require the licensed physician or psychiatrist to be on staff at an emergency shelter.

(6) The commenter also suggested that the parameter regarding children between twelve months and five years be changed to read: "age twelve months to less than five years."

Response: Staff agree with the recommendation to clarify the language.

(7) The same commenter recommended the proposed section be revised to require emergency shelters to have a child examined immediately by a licensed physician only if the child shows symptoms of a "serious" illness.

Response: Section 720.912(j) has only been renumbered and therefore will not be changed from the proposal. An emergency shelter generally has very little information on a child entering the shelter. If the child shows signs of any illness or abuse, it is important that a physician examine the child immediately to provide a professional medical assessment of the child's physical condition to receive appropriate care and for the protection of the other children in care.

(8) Two commenters wanted the proposed rule to be revised to reflect that the responsibility for providing reason(s) for a placement extension, in writing, rests with the agency placing the youth in the emergency shelter.

Response: It is the intent of PRS to allow greater flexibility by allowing the placing agency/parent the option of providing a verbal rationale to the shelter for the need of a placement extension, if applicable. The emergency shelter can then document the verbal rationale received in the child's record, or place the written rationale received in the child's record. No change was made based on this comment.

Comments concerning §720.1503: One commenter made the same comments as recorded under §§720.206 - 720.525.

Response: PRS is adopting this section without change. See response to comments under §§720.206 - 720.525.

SUBCHAPTER C. STANDARDS FOR HABILITATIVE AND THERAPEUTIC AGENCY HOMES

40 TAC §720.136

The amendment is adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The amendment implements the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. STANDARDS FOR HABILITATIVE AND THERAPEUTIC FAMILY HOMES

40 TAC §720.206

The amendment is adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The amendment implements the Human Resources Code, §40.029.

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SUBCHAPTER G. STANDARDS FOR HABILITATIVE AND THERAPEUTIC GROUP HOMES RESPONSIBLE TO A CHILD-PLACING AGENCY AND FOR INDEPENDENT HABILITATIVE AND THERAPEUTIC GROUP HOMES

40 TAC §720.366, §720.373

The amendments are adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The amendments implement the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. CONSOLIDATED STANDARDS FOR 24-HOUR CARE FACILITIES

40 TAC §720.505, §720.525

The amendments are adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The amendments implement the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. STANDARDS FOR EMERGENCY SHELTERS

40 TAC §720.912

The repeal is adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs;

HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The repeal implements the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §§720.912, 720.913, 720.919

The amendments and new section are adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The amendments and new section implement the Human Resources Code, §40.029.

§720.912. Admission Policies.

(a) An emergency shelter may provide shelter services only during an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring. The information constituting the immediate danger must be documented in the child's record.

(b) An emergency shelter may admit only those children for whom it has an operational program and who meet the admission policies.

(1) The emergency shelter must have written admission policies that specify the age, gender, and type of children served. The emergency shelter must submit a copy of the admission policies to the licensing division when the signed application is submitted.

(2) If the emergency shelter adopts a change in the admission policies that requires changes in the conditions of the license, the shelter must apply to the department for a new license.

(3) An emergency shelter must not offer, at the same time and in the same facility, two types of care that conflict with the best interests of the children, the use of staff, or the use of the facility. The shelter must document that there is no conflict.

(4) An emergency shelter must not accept more children than the maximum number specified on the license or children whose age and gender violate the conditions of the license.

(c) An emergency shelter may not deny a child admission to the shelter because of race.

(d) An emergency shelter must not knowingly accept for care a child who has exhibited suicidal behavior or behavior dangerous to others within 30 days before admission or retain a child in care who exhibits such behavior unless:

(1) the physical plant or setting is such that staff can provide direct, continuous observation if necessary; and

(2) the emergency shelter has ensured that medical treatment and psychiatric consultation are available 24 hours a day from a licensed physician. The shelter must obtain written documentation to substantiate that medical treatment and psychiatric care are available. This does not require the licensed physician or psychiatrist to be on staff at the emergency shelter.

(e) A child of any age may stay in an emergency shelter for a maximum of 15 days. However, an emergency shelter may continue the placement of a child less than five years old for more than 15 days for up to a total of 30 days in care if he has a sibling or a parent under 18 years old in the emergency shelter or there is an appropriate reason for the continuation of care that is documented in the child's record. An emergency shelter may continue placement of a child five years of age or older for up to a total of 90 days in care if he has a sibling or a parent under 18 years old in the emergency shelter or there is an appropriate reason for the continuation of care that is documented in the child's record. The appropriate reasons for continuation of care are:

(1) The person or agency responsible for the child has identified for the emergency shelter verbally or in writing that the person or agency has arranged a placement for the child, but requirements to place the child cannot be completed timely because of circumstances beyond the control of the placing party or the emergency shelter. The shelter must place written documentation received from the person or agency responsible for the child in the child's record or document the verbal information in the child's record. The documentation must include:

(A) the name, address, and telephone number of the facility where the child will be placed;

(B) the specifics of what is needed to complete the placement;

(C) the reason(s) why the requirements for placement could not be completed timely; and

(D) the date the placement will be completed;

(2) The person or agency responsible for the child has identified for the emergency shelter verbally or in writing that the person or agency has arranged a placement for the child, but the placement cannot be completed and another placement must be found because of circumstances beyond the control of the placing party or the emergency shelter. The shelter must place written documentation received from the person or agency responsible for the child in the child's record or document the verbal information in the child's record. The documentation must include:

(A) the name, address, and telephone number of the facility where the child was to be placed;

(B) the reason(s) why the placement could not be completed;

(C) the date placement plans were interrupted; and

(D) the specifics, including dates, of all efforts to locate another placement;

(3) The child has special needs and the person or agency responsible for the child has identified for the emergency shelter verbally or in writing that the person or agency cannot make a timely and appropriate placement for the child because of circumstances beyond the control of the placing party or the emergency shelter. The shelter must place written documentation received from the person or agency responsible for the child in the child's record or document the verbal information in the child's record. The documentation must include:

(A) a description of the child's special needs from an expert in the area of the child's disabling or limiting condition and the type of placement appropriate to meet those needs; and

(B) names, addresses, and telephone numbers of placements explored, the date of contact, and the reason why each placement was unavailable and/or inappropriate;

(4) The child has qualified for financial assistance under Chapter 31, Human Resources Code, and is on the waiting list for housing assistance; or

(5) The child meets the requirements to consent to emergency care found at §720.913(b)(1) of this title and consents to the continuation of services to the child or the child's offspring.

(f) The documentation of the appropriate reason for the continuation of care must be in the child's record by the 16th day that the child is in care, and documentation of additional continuations must be included in the child's record every 30 days thereafter. The emergency shelter must make this documentation available for review by licensing staff.

(g) If the child is in emergency care for more than 15 days, the emergency shelter must have a written plan for the discharge of the child from the person or agency responsible for the child, if any.

(1) The emergency shelter must obtain written documentation from the person or agency responsible for the child that the initial plan is reviewed and updated at least weekly.

(2) The emergency shelter must make the initial plan and weekly reviews available for review by staff of the licensing branch.

(h) Each child in an emergency shelter must receive a health screening examination within 48 hours or on the first workday after admission.

(1) A licensed physician, physician's assistant, registered nurse, licensed vocational nurse, or paramedic must provide the screening examination.

(2) The results of the screening examination, signed and dated by the person doing the examination, must be documented in the child's record.

(3) If the child is coming from a medical setting, the emergency shelter may accept a statement from a licensed physician in place of the examination.

(i) If a child in an emergency shelter shows symptoms of illness or abuse, a licensed physician must immediately examine the child.

(j) If a child shows symptoms of abuse or neglect, the emergency shelter must immediately report this to child protective services staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER S. STANDARDS FOR CHILD-CARE FACILITIES SERVING CHILDREN WITH AUTISTIC-LIKE BEHAVIOR

40 TAC §720.1503

The amendment is adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs; HRC §42.042, which requires the department to make rules and promulgate minimum standards in order to carry out the provisions of Chapter 42 of the Human Resources Code; HRC §42.002, which gives the department primary responsibility for regulating child-care operations; and the Texas Family Code, §§32.201-32.202, which includes requirements for emergency shelters.

The amendment implements the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Director, Legal Services
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CHAPTER 745. LICENSING

The Texas Department of Protective and Regulatory Services (PRS) adopts amendments to §§745.115, 745.707, 745.8811, and 745.8813 without changes to the proposed text published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8848).

The justification for the amendments is to add an exemption for certain youth camps operated on or by institutions of higher education. Senate Bill (SB) 253, passed by the 78th Legislature, exempts youth camps from Texas Department of Health (TDH)

regulation if they are operated on or by institutions of higher education, and they are regularly inspected by one or more local government entities for compliance with health and safety standards. Previously, these youth camps were exempt from PRS licensure because they were licensed by TDH. The only other relevant licensure exemption is for a short-term program that operates no more than 11 weeks during the year and only provides care for children who are at least five years and under 14 years. The new exemption from TDH regulation may result in a youth camp being subject to PRS licensure if the program operates outside of the parameters of Licensing's exemption rules. Because the intent of the legislation was to exempt these youth camps from regulation, Licensing is proposing the new exemption rule. The amendments also update the new titles for PRS management staff to conform to the agency reorganization.

The amendments will function by ensuring that the language in the sections will be consistent with the current organizational structure within PRS, and the youth camps currently exempt from PRS regulation will remain exempt to meet the intent of SB 253.

No comments were received regarding adoption of the amendments.

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.115

The amendment is adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The amendment implements the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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SUBCHAPTER F. BACKGROUND CHECKS
DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §745.707

The amendment is adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The amendment implements the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS
DIVISION 1. ADMINISTRATIVE REVIEWS

40 TAC §745.8811, §745.8813

The amendments are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The amendments implement the Human Resources Code, §40.029.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 6. CARBON MONOXIDE DETECTION SYSTEMS

40 TAC §§746.5531, 746.5533, 746.5535, 746.5537

The Texas Department of Protective and Regulatory Services (PRS) adopts new §§746.5531, 746.5533, 746.5535, and 746.5537, concerning carbon monoxide detection systems, in its Minimum Standards for Child-Care Centers chapter. New §746.5533 and §746.5535 are adopted with changes to the proposed text published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8849). New §746.5531 and §746.5537 are adopted without changes and will not be republished.

The justification for the new sections is to implement Senate Bill (SB) 100, which was passed by the 78th Legislature. SB 100 adds the requirement for a registered or licensed child day-care operation to be equipped with carbon monoxide detectors in accordance with PRS rules. The new rules prescribe the requirements regarding the number of, placement, installation, and maintenance procedures for the detectors. Section 746.5531 allows a licensed operation to be exempt from the carbon monoxide detector requirements if the operation is located in a school facility that must comply with the standards adopted under the Education Code, §46.008, or similar safety standards set by a local school district board.

The new sections will function by strengthening safety standards and protecting children in out-of-home care.

During the comment period, PRS received comments from Anchor Safety and DSS Fire, Inc., and 23 center-based individuals. A summary of the comments and responses follows:

Comments concerning §746.5531: PRS received 21 comments, three in support of the proposal. All other commenters stated "all-electric" child-care centers should be exempt from the requirement.

Response: PRS is adopting this section without change. The rule is consistent with the Human Resources Code §42.060 which specifies each day care center, group day care home, and family home be equipped with carbon-monoxide detectors, and exempts only child-care centers operating in public schools.

Comments concerning §746.5533: One commenter stated the detector should meet the minimum requirements of UL Standard 2034.

Response: PRS agrees, and is adopting paragraphs (1) and (2) with changes to incorporate Underwriters Laboratories Inc. requirements (UL-Listed).

Comments concerning §746.5535: Four commenters stated that the rule does not clearly state where and how to install carbon monoxide detectors. One commenter recommended the rule include the following specifics: (1) All CO detectors be equipped with a digital display that shows the current level of CO in the air at all times; (2) CO detectors be placed no closer than 15 ft. but not more than 30 ft. from each fuel burning appliance, on the wall anywhere from the height of a standard outlet to the ceiling; and (3) Place one detector outside each sleeping area. This commenter also requested the cost estimate be eliminated or increased, since fire protection companies who provide individual service would have to charge more for a detector than large retail chains.

Response: Staff recommends this section be adopted with changes due to public comments. The number of detectors required for an operation and how and where these must be installed will vary greatly from operation to operation based on the size of the operation, location and type of appliances, services the operation offers and the type of detector used. The minimum standard publication will include a best practice box that further addresses some of the commenter's issues. Carbon monoxide detectors are designed to sound an alarm before the carbon monoxide levels reach a point where individuals lose the ability to react to the dangers of carbon monoxide. The rule provides satisfactory protection of children and caregivers without the additional expense and monitoring of a digital display. The Texas Government Code requires cost estimates for all rule development. Cost estimates for child-care homes did not include the cost of installation services or individual situations requiring multiple detectors; only the approximate cost of readily available equipment could be determined.

The new sections are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The new sections implement the Human Resources Code, §40.029 and §42.060.

§746.5533. What type of carbon monoxide detection system must I install?

You must install:

(1) Individual electric (plug-in or hardwire) or battery-operated carbon monoxide detectors that meet Underwriters Laboratories Inc. requirements (UL-Listed); or

(2) An electronic carbon monoxide detection system connected to an electronic alarm/smoke detection system that is UL-Listed.

§746.5535. How many carbon monoxide detectors must be installed in my child-care center and how must they be installed?

(a) If you use electric or battery-operated carbon monoxide detectors:

(1) At least one detector must be installed on every level of each building in the child-care operation; and

(2) The detector(s) must be installed in compliance with the state or local fire marshal's instructions.

(b) If you use an electronic carbon monoxide detection system connected to an alarm/smoke detection system, the system must be installed according to the state or local fire marshal's instructions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Director, Legal Services
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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES

DIVISION 6. CARBON MONOXIDE DETECTION SYSTEMS

40 TAC §§747.5331, 747.5333, 747.5335, 747.5337

The Texas Department of Protective and Regulatory Services (PRS) adopts new §§747.5331, 747.5333, 747.5335, and 747.5337, concerning carbon monoxide detection systems, in its Minimum Standards for Child-Care Homes chapter. New §747.5333 and §747.5335 are adopted with changes to the proposed text published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8850). New §747.5331 and §747.5337 are adopted without changes to the proposed text and will not be republished.

The justification for the new sections is to implement Senate Bill (SB) 100, which was passed by the 78th Legislature. SB 100 adds the requirement for a registered or licensed child day-care operation to be equipped with carbon monoxide detectors in accordance with PRS rules. The new rules prescribe the requirements regarding the number of, placement, installation, and maintenance procedures for the detectors. Section 747.5331 allows a licensed operation to be exempt from the carbon monoxide detector requirements if the operation is located in a school facility that must comply with the standards adopted under the Education Code, §46.008, or similar safety standards set by a local school district board.

The new sections will function by strengthening safety standards and protecting children in out-of-home care.

During the comment period, PRS received comments from Anchor Safety and 25 home-based individuals. A summary of the comments and responses follows:

Comments concerning §747.5331: PRS received 25 comments. One commenter supported the proposed rules stating this is good protection for children. One commenter opposed any new rules. One commenter stated CO poisoning only happens at night and therefore, operations that do not offer nighttime care should be exempt. One commenter stated the standards are already too expensive to comply with. All other commenters stated "all-electric" homes should be exempt from the rule requirement.

Response: PRS is adopting this rule without change. The rule is consistent with the Human Resources Code §42.060 which specifies each day care center, group day care home, and family home be equipped with carbon-monoxide detectors, and exempts only child-care centers operating in public schools.

Comments concerning §747.5333: One commenter stated the detector should meet the minimum requirements of UL Standard 2034.

Response: PRS agrees, and is adopting paragraphs (1) and (2) with changes to incorporate Underwriters Laboratories Inc. requirements (UL-Listed).

Comments concerning §747.5335: PRS received one comment. The commenter recommended the rule include the following specifics: (1) All CO detectors be equipped with a digital display that shows the current level of CO in the air at all times; (2) CO detectors be placed no closer than 15 ft. but not more than 30 ft. from each fuel burning appliance, on the wall anywhere from the height of a standard outlet to the ceiling; and (3) Place one detector outside each sleeping area. This commenter also requested the cost estimate be eliminated or increased, since fire protection companies who provide individual service would have to charge more for a detector than large retail chains.

Response: Staff recommends this section be adopted with changes due to public comments. The number of detectors required for an operation and how and where these must be installed will vary greatly from operation to operation based on the size of the operation, location and type of appliances, services the operation offers and the type of detector used. The minimum standard publication will include a best practice box that further addresses some of the commenter's issues. Carbon monoxide detectors are designed to sound an alarm before the carbon monoxide levels reach a point where individuals lose the ability to react to the dangers of carbon monoxide. The rule provides satisfactory protection of children and caregivers without the additional expense and monitoring of a digital display. The Texas Government Code requires cost estimates for all rule development. Cost estimates for child-care homes did not include the cost of installation services or individual situations requiring multiple detectors; only the approximate cost of readily available equipment could be determined.

The new sections are adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The new sections implement the Human Resources Code, §40.029 and §42.060.

§747.5333. What type of carbon monoxide detection system must I install?

You must install:

(1) Individual electric (plug-in or hardwire) or battery-operated carbon monoxide detectors that meet Underwriters Laboratories Inc. requirements (UL-Listed); or

(2) An electronic carbon monoxide detection system connected to an electronic alarm/smoke detection system that is UL-Listed.

§747.5335. How many carbon monoxide detectors must be installed in my child-care home and how must they be installed?

(a) If you use electric or battery-operated carbon monoxide detectors:

(1) At least one detector must be installed on every level of each building in the child-care operation; and

(2) The detector(s) must be installed in compliance with the state or local fire marshal's instructions.

(b) If you use an electronic carbon monoxide detection system connected to an alarm/smoke detection system, the system must be installed according to the state or local fire marshal's instructions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) adopts the amendment to Chapter 800, General Administration, Subchapter A, General Provisions, §800.2 regarding Definitions; and Subchapter E, Sanctions, §800.175 regarding Corrective Actions and Penalties Under the Workforce Investment Act (WIA) with changes as proposed in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9064). Section 800.191 regarding Appeal is adopted without changes and will not be republished.

Purpose: The purpose of this rule change, which is consistent with current federal law and regulations, is to update and clarify the penalties for second-year nonperformance in §800.175, and to update references to the Sanctions rules in §800.191 regarding appeals of sanction determinations. These changes will set forth more clearly when the Commission refers a Local Workforce Development Board (Board) that has failed WIA performance standards for two consecutive years to the Texas Workforce Investment Council (TWIC), formerly referred to as the Texas Council on Workforce and Economic Competitiveness (TCWEC).

Background: WIA and its implementing regulations, as well as Texas Government Code Chapter 2308 and Texas Labor Code, Title 4, have imposed on the Boards a number of duties and responsibilities for the administration of WIA-funded activities, including: maintaining adequate fiscal systems; complying with the uniform rules for administration of grants and agreements; meeting the contract performance measures; and complying with all applicable state and federal statutes and regulations. The Commission, having responsibility for the monitoring and oversight of WIA-funded activities administered by Boards, developed the WIA Sanctions rule to meet statutory and regulatory requirements, as provided in WIA (29 U.S.C. §2801 *et seq.*) and the Department of Labor (DOL) federal regulations governing WIA (including 20 C.F.R. 666.100 *et seq.* and 667.400 *et seq.*).

In its oversight capacity, the Commission conducts ongoing review and analysis, and identifies failure to meet contracted performance levels or noncompliance with WIA. The Commission holds Boards accountable for performance following the Sanctions rules under Subchapter E, which delineate appropriate actions, and impose sanctions when necessary. In addition, under Texas Government Code §2308.268, Assistance and Sanctions for Nonperformance, the Commission is required to identify and refer Boards that failed performance measures for two consecutive years to TWIC.

The Commission proposes amending §800.175(b) to define more clearly what constitutes "failure to achieve negotiated levels of performance" for the purpose of referral to TWIC for the imposition of a reorganization plan. WIA, 20 C.F.R. §666.240(d), states that "only performance that is less than 80% of the negotiated levels will be deemed to be a failure to achieve negotiated levels of performance." The Commission further defines "failure to achieve negotiated levels of performance" as a Board falling below 80% of the contracted performance level on at least 25% of all WIA contracted performance measures for two consecutive program years.

Currently, a Board must be referred to TWIC if it fails performance on only one WIA measure for two consecutive years. Under this proposal, Boards will be referred to TWIC if they fail performance on 25% of the WIA-contracted measures, which equates to more than four of the current 17 measures, for two consecutive years. The Commission sets forth this proposed change in order to apply similar standards to the Boards that DOL applies to the states. This change is not intended to relax the Commission's expectations for excellence in performance. The Commission will continue to set and apply high standards, and will continue to implement a wide range of preventive maintenance and corrective actions, as outlined in the current Sanctions rule.

The Commission understands that a referral to TWIC is a very stringent penalty to impose on a Board for its failure to improve performance through other mechanisms. The threshold for such an action must demonstrate a clear and persistent failure by a Board to achieve performance standards. Therefore, 25% was established as a reasonable threshold to require referral to TWIC for the imposition of a reorganization plan. The Commission notes that there are other circumstances under which the Commission believes that a referral to TWIC may be appropriate. The standard established in this rule merely identifies a situation in which a referral must be made.

The Commission strikes the existing §800.175(c), because it applied to the WIA transition period, which has already occurred. Hence, this section is no longer relevant.

The technical amendments to §800.191 will remove an incorrect reference to §800.178, which does not exist. The correct references are to §800.174 and §800.175. The amendment also clarifies that recommendations to other entities by the Commission are not subject to the appeal process established under §800.191.

The Commission reletters §800.175(d) as (c), and amends (c)(4) to remove subsections (A) through (G), and to delete the phrase "take the following actions and." The current rule specifies certain actions that TWIC must follow upon a Board's referral from the Commission. The actions that TWIC must follow are set forth in Texas Government Code §2308.268. Therefore, these subsections are unnecessary.

The Commission makes technical amendments to §800.2 and relettered §800.175(c) to reflect the name change of the Texas Council on Workforce and Economic Competitiveness (TCWEC) to the Texas Workforce Investment Council (TWIC).

The Commission also amends §800.2. Edits are made to this section to better distinguish references to the Agency and the Commission, and to make other technical amendments.

The amended rules are consistent with current federal law. However, the rules are subject to any amendments in federal law that may change the standards for determining WIA performance failure. In the event of such amendment to federal law, the Commission would exercise the flexibility, as feasible, to comply with the WIA performance failure standards as provided by federal law. For that reason, flexibility is built into the rules because of pending WIA reauthorization, which may revise the standards for WIA performance failure.

Coordination Activities: Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members, and executive directors, and the Workforce Leadership of Texas (WLT) Policy Committee.

For information about services for employers and job seekers, go to www.texasworkforce.org or contact your local workforce development board.

Public comments on the proposed rules were received from the Work Advantage Board of Tarrant County.

Comment: The commenter supported the amendment to the rule because it provides a more realistic and clear understanding of what constitutes second-year nonperformance. The commenter further supported the Commission's efforts to apply the same standards to the Boards as DOL applies to the state.

Response: The Commission appreciates the commenter's support of this amendment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The amendments are adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

Texas Labor Code, Title 4, and Texas Government Code Chapter 2308, including §2308.268, will be affected by the amended rules.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Allocation--The amount approved by the Commission for expenditures during a specified period, according to specific state and federal requirements.

(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(4) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, Welfare-to-Work, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(5) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.*) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(7) Core Outcome Measures--Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(8) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(9) Food Stamp Employment and Training (FSE&T) Activities--The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.

(10) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.

(11) Performance Measure--An expected performance outcome or result.

(12) Performance Standard--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Measures.

(13) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: September 1 - August 31;

(B) Choices: September 1 - August 31;

(C) Welfare-to-Work: September 1 - August 31;

(D) Food Stamp Employment and Training: September 1 - August 31; and

(E) WIA Adult, Dislocated Worker, and Youth: July 1 - June 30.

(14) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.*) and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 C.F.R. Parts 260-265). TANF may also include the TANF State

Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code Chapter 34.

(15) TWIC--Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105. Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.

(16) Texas Workforce Center Partner--an entity which carries out a workforce investment, educational or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a local workforce development area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

(17) WIA--Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.* References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.

(18) WIA formula allocated funds--funds allocated by formula to local workforce development areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

(19) Local Workforce Development Area--Workforce development area designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. §§2831 and 2939). Also referred to as workforce area.

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 December 2, 2003.

TRD-200308222
John Moore
General Counsel
Texas Workforce Commission
Effective date: December 22, 2003
Proposal publication date: October 17, 2003
For further information, please call: (512) 463-2573

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SUBCHAPTER E. SANCTIONS

40 TAC §800.175, §800.191

The amendments are adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The amendments affect Texas Labor Code, Title 4, and Texas Government Code Chapter 2308, including §2308.268.

§800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA).

(a) Corrective Actions.

(1) If a Board fails to meet contract performance measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, in any WIA program year, the Commission may require that, within a specified period of time, the Board:

(A) complete a performance improvement plan;

(B) modify its local plan; or

(C) take other action designed to improve the Board's performance.

(2) A Board's failure to complete the corrective actions described in paragraph (1) of this subsection within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding WIA payments to the Board.

(b) Penalties for Second-Year Nonperformance. If a Board falls below 80% of the contracted performance level on at least 25% of all WIA contracted measures for two consecutive program years, the Commission shall review the performance deficiencies and shall make a recommendation to TWIC that it impose a reorganization plan for the local workforce development area. The Commission's recommendation to TWIC for reorganization of a local workforce development area may include one or more of the corrective actions or penalties included in §800.174(c)(1)-(10) of this subchapter. Notwithstanding this subsection, the Commission may take other action as deemed appropriate as consistent with federal law.

(c) Penalties for Noncompliance with Requirements.

(1) Each local workforce development area, including the Board, chief elected officials, one-stop operators and service providers receiving WIA funds, shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds as promulgated in circulars or rules of the Office of Management and Budget's Uniform Grant Management Standards.

(2) Each local workforce development area, including the Board, Chief Elected Officials, Texas Workforce Center operators, and service providers receiving WIA funds, must comply with Title I of WIA, as well as all other federal and state laws and regulations.

(3) If the Agency finds that a Board is not in compliance with the requirements of paragraph (1) of this subsection, or is in substantial violation of paragraph (2) of this subsection, the Agency shall require corrective action to secure prompt compliance and may assess penalties as provided under this subchapter.

(4) If the Agency finds that a Board has not taken the required corrective action in the time specified, the Commission shall make recommendations to TWIC.

(d) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the establishment and operation of a one-stop service delivery network as required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery Network of this title, may result in the imposition of penalties as provided in this subchapter, and the Agency's withholding of payment for any WIA administrative expenses until the Board can demonstrate to the satisfaction of the Agency that all of the required elements of a One-Stop Service Delivery Network are operational.

(e) Repayment. The Board and Chief Elected Officials shall be jointly and severally liable for repayment to the Agency from non-federal funds for WIA expenditures in the local workforce development area that are found by the Agency not to have been expended in accordance with the WIA.

(f) Other Penalties. In addition to the penalties provisions in subsections (a)-(e) of this section, in the administration and provision of WIA services, a Board and contractor receiving WIA funds shall also be subject to all sections of Subchapter E, relating to Sanctions 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 December 2, 2003.

TRD-200308223
John Moore
General Counsel
Texas Workforce Commission
Effective date: December 22, 2003
Proposal publication date: October 17, 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.

Agency Rule Review Plan

Texas Parks and Wildlife Department

Title 31, Part 2

TRD-200308466
Filed: December 10, 2003

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Proposed Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission), will review and consider for readoption, revision, or repeal of Chapter 57, concerning "Poultry", in accordance with the Texas Government Code, Section 2001.039. The rules to be reviewed are found in Chapter 57, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections: §57.10, Definitions; §57.11,General Requirements and §57.12, Dealer Recordkeeping Requirements.

The commission finds reason for the rule to continue to exist but will consider comments related to whether reasons for re-adoption of these rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the commission after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Rules Proposed" section of the Texas Register and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. 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 Delores Holubec, P.O. Box 12966, Austin, Texas 78711-2966. They may also be sent by facsimile to (512) 719-0721 or by e-mail to "comments@tahc.state.tx.us." Comments will be reviewed and discussed in a future commission meeting.

TRD-200308440
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: December 8, 2003

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Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider Chapter 91, §§91.502 (Director Meeting Fees), 91.510 (Fidelity Bond), 91.601 (Share and Deposit Accounts), 91.602 (Brokered Deposits), 91.608 (Confidentiality of Member Records), 91.610 (Safe Deposit Box Facilities), 91.801 (Investments in CUSOs), 91.802 (Other Investments), 91.803 (Investment Limits), 91.804 (Custody & Safekeeping), 91.805 (Loan Participations), 91.808 (Investment Activities Reporting), 91.901 (Reserve Requirements), 91.902 (Dividends), 91.1004 (Conversion of Charter), and 91.1110 (Share Deposit Guaranty Requirements) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Credit Union Commission's Rule Review as required by Section 2001.39, Government Code.

Comments or questions regarding these rules may be submitted in writing to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to Kerri.Galvin@tcud.state.tx.us.

TRD-200308421
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 8, 2003

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 230, Groundwater Availability Certification for Platting, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking

This review of Chapter 230 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 230 requires that the provisions of the chapter be followed in cases where municipal or county authorities require, as part of the plat application and approval process, certification be made that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply. If required by the municipal or county authority, the provisions apply to the plat applicant

and the Texas licensed professional engineer or the Texas licensed professional geoscientist. The certification must be prepared by a Texas licensed professional engineer or a Texas licensed professional geoscientist, and the plat applicant must provide the certification to the municipal or county authority on a form prescribed by the chapter that includes certain specific information.

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 230 continue to exist. The rules are needed to provide the form and content of a certification of groundwater availability for platting by municipal and county authorities as provided by Local Government Code, §212.0101 and §232.0032.

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 230. Comments may be submitted to Lola Brown, 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 2004-006-230-WT. Comments must be received in writing by 5:00 p.m., January 19, 2004. For further information or questions concerning this proposal, please contact Joseph Thomas, Policy and Regulations Division, at (512) 239-4580.

TRD-200308441
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 8, 2003

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 76, Water Well Drillers and Water Well Pump Installers. The initial intent to review was published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 969). This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Chris Kadas, General Counsel, P.O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-2872, or by e-mail, chris.kadas@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §76.1. Purpose of Rules

16 TAC §76.10. Definitions

16 TAC §76.200. Licensing Requirements--General

16 TAC §76.201. Requirements for Issuance of a License

16 TAC §76.202. Applications for Licenses and Renewals

16 TAC §76.203. Examinations

16 TAC §76.204. License and Apprentice Registration Renewal

16 TAC §76.205. Registration for Driller and/or Pump Installer Apprenticeship

16 TAC §76.206. Responsibilities of the Apprentice and Supervising Driller and/or Pump Installer

16 TAC §76.220. Continuing Education

16 TAC §76.300. Exemptions

16 TAC §76.600. Responsibilities of the Department--Certification by the Executive Director

16 TAC §76.601. Responsibilities of the Department--General

16 TAC §76.602. Responsibilities of the Department--Undesirable water

16 TAC §76.650. Advisory Council

16 TAC §76.700. Responsibilities of the Licensee--State Well Reports

16 TAC §76.701. Responsibilities of the Licensee--Reporting Undesirable Water or Constituents

16 TAC §76.702. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging

16 TAC §76.703. Responsibilities of the Licensee--Standards of Completion for Public Water System Wells

16 TAC §76.704. Responsibilities of the Licensee--Marking Vehicles and Equipment

16 TAC §76.705. Responsibilities of the Licensee--Representations

16 TAC §76.706. Responsibilities of the Licensee--Unauthorized Practice

16 TAC §76.707. Responsibilities of the Licensee--Adherence to Statutes and Codes

16 TAC §76.708. Responsibilities of the Licensee--Adherence to Manufacturer's Recommended Well Construction Materials and Equipment

16 TAC §76.800. Fees

16 TAC §76.900. Disciplinary Actions

16 TAC §76.910. Disciplinary Actions--Disposition of Application

16 TAC §76.1000. Technical Requirements--Locations and Standards of Completion for Wells

16 TAC §76.1001. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents

16 TAC §76.1002. Technical Requirements -- Standards for Wells Producing Undesirable Water or Constituents

16 TAC §76.1003. Technical Requirements--Re-completions

16 TAC §76.1004. Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones

16 TAC §76.1005. Technical Requirements--Standards for Water Wells (drilled before June 1, 1983)

16 TAC §76.1006. Technical Requirements--Water Distribution and Delivery Systems

16 TAC §76.1007. Technical Requirements--Chemical Injection, Chemigation, and Foreign Substance Systems

16 TAC §76.1008. Technical Requirements--Pump Installation

16 TAC §76.1009. Technical Requirements-Variances--Alternative Procedures

16 TAC §76.1010. Appeals-Variances

16 TAC §76.1011 Enforcement by Groundwater Conservation Districts

TRD-200308450
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 9, 2003

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State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning December 2003, will review and consider for readoption, revision, or repeal Chapters 109, Transactions Exempt from Registration; 111, Securities Exempt from Registration; and 139, Exemptions by Rule or Order, in accordance with Texas Government Code, Section 2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's 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 Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Rules Proposed" section of the Texas Register and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. 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 David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting. Issued in Austin, Texas on December 8, 2003.

TRD-200308443
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: December 8, 2003

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Texas Youth Commission

Title 37, Part 3

In accordance with the Texas Government Code, §2001.039, the Texas Youth Commission files this notice of intent to review and consider for readoption, revision, or repeal, chapters 97, Security and Control, and 99, General Provisions.

The Commission will consider whether the reasons for adopting these rules continue to exist.

Comments or questions pertaining to this Notice of Intent to Review may be submitted in writing, within 30 days following the publication of this notice, to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

TRD-200308270
Neil Nichols
Interim Executive Director
Texas Youth Commission
Filed: December 4, 2003

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Adopted Rule Reviews

Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 401, Subchapter C, concerning TDMHMR Rulemaking; and Subchapter G, concerning Community Mental Health and Mental Retardation Centers. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8154).

TDMHMR believes that the reasons for initially adopting the subchapters continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308274
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: December 4, 2003

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 404, Subchapter E, concerning Rights of Persons Receiving Mental Health Services. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28TexReg8154).

TDMHMR believes that the reasons for initially adopting the subchapter continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308275

Rodolfo Arredondo

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: December 4, 2003

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 405, Subchapter A, concerning Prescribing of Medication--Mental Health Services; Subchapter B, concerning Prescribing of Psychotropic Medication--Mental Retardation Facilities; Subchapter C, concerning Life-Sustaining Treatment; Subchapter E, concerning Electroconvulsive Therapy (ECT); Subchapter I, concerning Consent to Treatment with Psychotropic Medication--Mental Retardation Facilities; Subchapter K, concerning Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers; Subchapter L, concerning Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment; Subchapter Y, concerning Client Rights -- Mental Retardation Services; and Subchapter FF, concerning Consent to Treatment with Psychoactive Medication. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8154-8155).

TDMHMR believes that the reasons for initially adopting the subchapters continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308276

Rodolfo Arredondo

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: December 4, 2003

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 411, Subchapter D, concerning Administrative Hearings of the Department in Contested Cases; Subchapter F, concerning Internal Audits and Investigations; Subchapter G, concerning Community MHMR Centers; and Subchapter H, concerning Interstate Transfer. TDMHMR readopts §§411.1 - 411.5, 411.7, 411.8, 411.12, 411.20, and 411.21 of Subchapter A, concerning Advisory Committees; and §§411.51 - 411.55, 411.57, 411.58, 411.60 - 411.64, and 411.75 of Subchapter B, concerning Interagency Agreements. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8155).

TDMHMR believes that the reasons for initially adopting Subchapters D, F, G, and H continue to exist.

TDMHMR believes that the reasons for initially adopting §§411.1 - 411.5, 411.7, 411.8, 411.12, 411.20, and 411.21 of Subchapter A continue to exist. Section 2.151(b), House Bill 2292, 78th Legislature, Regular Session, abolishes each advisory committee of a health and human services agency that was created before September 1, 2003, unless the commissioner of Health and Human Services certifies that the advisory committee is exempt from abolition on September 1, 2003. The advisory committees in the sections of the subchapter that have not been readopted were not certified as exempt from abolition as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7493).

TDMHMR believes that the reasons for initially adopting §§411.51 - 411.55, 411.57, 411.58, 411.60 - 411.64, and 411.75 of Subchapter B continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308277

Rodolfo Arredondo

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: December 4, 2003

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 412, Subchapter B, concerning Contracts Management for Local Authorities; and Subchapter F, concerning Continuity of Services--State Mental Retardation Facilities. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8155).

TDMHMR believes that the reasons for initially adopting the subchapters continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308278

Rodolfo Arredondo

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: December 4, 2003

♦ ♦ ♦

The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 414, Subchapter A, concerning Protected Health Information; Subchapter D, concerning Administrative Hearings Under the PMRA; Subchapter K, concerning Criminal History and Registry Clearances; Subchapter L, concerning Abuse, Neglect, and Exploitation in Local Authorities and Community Centers; and Subchapter P, concerning Research in TDMHMR Facilities. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8155).

TDMHMR believes that the reasons for initially adopting the subchapters continue to exist.

No public comments were received regarding the review. TDMHMR has determined that the reasons for originally adopting the rules continue to exist.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health

and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308279
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: December 4, 2003

♦ ♦ ♦

The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 415, Subchapter C, concerning Use and Maintenance of *TDMHMR Drug Formulary*; Subchapter D, concerning Diagnostic Eligibility for Services and Supports--Mental Retardation Priority Population and Related Conditions; and Subchapter G, concerning Determination of Manifest Dangerousness. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8155).

TDMHMR believes that the reasons for initially adopting the subchapters continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308280
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: December 4, 2003

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) readopts Chapter 417, Subchapter A, concerning Standard Operating Procedures; Subchapter B, concerning Contracts Management for TDMHMR Facilities and Central Office; Subchapter C, concerning Charges for Services in TDMHMR Facilities; Subchapter D, concerning Permanent Improvements by Individuals or Community Groups; Subchapter G, concerning Community Relations; Subchapter K, concerning Abuse, Neglect, and Exploitation in TDMHMR Facilities; and Subchapter S, concerning Negotiation and Mediation of Certain Contract Claims Against TDMHMR. The notice of review was published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8156).

TDMHMR believes that the reasons for initially adopting the subchapters continue to exist.

No public comments were received regarding the review.

The rules are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation (board) to review and consider for readoption each of its rules every four years; and the Texas Health and Safety Code, §532.015(a), which provides the board with broad rulemaking authority for mental health and mental retardation services.

TRD-200308281
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: December 4, 2003

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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: 22 TAC §1.81(a)

FEE SCHEDULE

Effective September 1, 2003
All fees are subject to change as prescribed by the Board.

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	981	***	**
Registration by Examination – Resident	155	*355	*355
Registration by Examination – Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	***310**	***310**	***310**
Active Renewal - Nonresident	***400**	***400**	***400**
Active Renewal 1-90 days late - Resident	***465**	***465**	***465**
Active Renewal 91-365 days late - Resident	***620**	***620**	***620**
Active Renewal 1-90 days late - Nonresident	***600**	***600**	***600**
Active Renewal 91-365 days late - Nonresident	***800**	***800**	***800**
Emeritus Renewal - Resident	**50**	**N/A**	**N/A**
Emeritus Renewal- Nonresident	**183**	**N/A**	**N/A**
Emeritus Renewal 1-90 days late - Resident	**75**	**N/A**	**N/A**
Emeritus Renewal 91-365 days late - Resident	**100**	**N/A**	**N/A**
Emeritus Renewal 1-90 days late - Nonresident	**274.50**	**N/A**	**N/A**
Emeritus Renewal 91-365 days late - Nonresident	**366**	**N/A**	**N/A**
Inactive Renewal - Resident	**50**	**50**	**50**
Inactive Renewal - Nonresident	**125**	**125**	**125**
Inactive Renewal 1-90 days late - Resident	**75**	**75**	**75**
Inactive Renewal 91-365 days late - Resident	**100**	**100**	**100**
Inactive Renewal 1-90 days late - Nonresident	**187.50**	**187.50**	**187.50**
Inactive Renewal 91-365 days late - Nonresident	**250**	**250**	**250**
Reciprocal Reinstatement	**620**	**620**	**620**
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	**685**	**685**	**685**
Reinstatement - Nonresident	**775**	**775**	**775**
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	**25**	**25**	**25**
Examination - Administrative Fee	-	40	25
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

-

**NCIDQ fee: October 2003 - $650 ; April 2004 - $675
***LARE fee: December 2003 - $430 (2 sections only) ; June 2004 - $770

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund.

Figure: 22 TAC §3.81(a)

FEE SCHEDULE

Effective September 1, 2003
All fees are subject to change as prescribed by the Board.

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	981	***	**
Registration by Examination – Resident	155	*355	*355
Registration by Examination – Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*310	*310	*310
Active Renewal - Nonresident	*400	*400	*400
Active Renewal 1-90 days late - Resident	*465	*465	*465
Active Renewal 91-365 days late - Resident	*620	*620	*620
Active Renewal 1-90 days late - Nonresident	*600	*600	*600
Active Renewal 91-365 days late - Nonresident	*800	*800	*800
Emeritus Renewal - Resident	50	N/A	N/A
Emeritus Renewal- Nonresident	183	N/A	N/A
Emeritus Renewal 1-90 days late - Resident	75	N/A	N/A
Emeritus Renewal 91-365 days late - Resident	100	N/A	N/A
Emeritus Renewal 1-90 days late - Nonresident	274.50	N/A	N/A
Emeritus Renewal 91-365 days late - Nonresident	366	N/A	N/A
Inactive Renewal - Resident	50	50	50
Inactive Renewal - Nonresident	125	125	125
Inactive Renewal 1-90 days late - Resident	75	75	75
Inactive Renewal 91-365 days late - Resident	100	100	100
Inactive Renewal 1-90 days late - Nonresident	187.50	187.50	187.50
Inactive Renewal 91-365 days late - Nonresident	250	250	250
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	685	685	685
Reinstatement - Nonresident	775	775	775
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	25
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

-
**NCIDQ fee: October 2003 - $650 ; April 2004 - $675
***LARE fee: December 2003 - $430 (2 sections only) ; June 2004 - $770

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund.

Figure: 22 TAC §5.91(a)

FEE SCHEDULE

Effective September 1, 2003
All fees are subject to change as prescribed by the Board.

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	981	***	**
Registration by Examination – Resident	155	*355	*355
Registration by Examination – Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*310	*310	*310
Active Renewal - Nonresident	*400	*400	*400
Active Renewal 1-90 days late - Resident	*465	*465	*465
Active Renewal 91-365 days late - Resident	*620	*620	*620
Active Renewal 1-90 days late - Nonresident	*600	*600	*600
Active Renewal 91-365 days late - Nonresident	*800	*800	*800
Emeritus Renewal - Resident	50	N/A	N/A
Emeritus Renewal- Nonresident	183	N/A	N/A
Emeritus Renewal 1-90 days late - Resident	75	N/A	N/A
Emeritus Renewal 91-365 days late - Resident	100	N/A	N/A
Emeritus Renewal 1-90 days late - Nonresident	274.50	N/A	N/A
Emeritus Renewal 91-365 days late - Nonresident	366	N/A	N/A
Inactive Renewal - Resident	50	50	50
Inactive Renewal - Nonresident	125	125	125
Inactive Renewal 1-90 days late - Resident	75	75	75
Inactive Renewal 91-365 days late - Resident	100	100	100
Inactive Renewal 1-90 days late - Nonresident	187.50	187.50	187.50
Inactive Renewal 91-365 days late - Nonresident	250	250	250
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	685	685	685
Reinstatement - Nonresident	775	775	775
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	25
Examination - Record Maintenance	25	25	25
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-

**NCIDQ fee: October 2003 - $650 ; April 2004 - $675
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*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund.

Figure: 22 TAC §75.7(a)

Fee	Board Fee	§153(b)	TxOnline Project Fee	Office of Patient Protection Fee	Total Fee
(1) License Renewal--Active	$125	$200	$5	$1	$331
(2) Jurisprudence Examination/Re-examination	$125	$200	$5		$330
(3) Inactive license processing fee	$165				$165
(4) License--New (prorated)	$125			$5	$130
(5) License Replacement	$25				
(6) Annual Certificate Replacement	$10				
(7) Certification of License	$25				
(8) Continuing Education Course Registration (yearly fee per course)	$25				
(9) Radiologic Technologist Registration	$35		$2	$5	$42
(10) Radiologic Technologist Registration Renewal	$35		$5	$1	$41
(11) Facility	$40		$2	$5	$47
(12) Facility Registration Renewal	$40		$5	$1	$46
(13) Verification of Educational Courses/Grades	$50				
(14) Verification of Texas Licensure (per request per chiropractor) plus $1 for postage and handling	$2				
(15) Returned Check	$25				

Figure: 37 TAC §14.1(1)

Medical Examination Report

FOR COMMERCIAL DRIVER FITNESS DETERMINATION

1. DRIVER'S INFORMATION Driver completes this section.

Driver's Name (Last, First, Middle)	Social Security No.	Birthdate M/D/Y	Age	Sex ☐ M ☐ F	☐ New certification ☐ Recertification ☐ Follow Up	Date of Exam

Address	City, State, Zip Code	Work Tel: ( ) Home Tel: ( )	Driver License No.	License Class ☐ A ☐ C ☐ B ☐ D ☐ Other	State of Issue

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes No		Yes No		Yes No	
☐	☐ Any illness or injury in last 5 years?	☐	☐ Lung disease, emphysema, asthma, chronic bronchitis	☐	☐ Fainting, dizziness
☐	☐ Head/Brain injuries, disorders or illnesses	☐	☐ Kidney disease, dialysis	☐	☐ Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring
☐	☐ Seizures, epilepsy ☐ medication _____	☐	☐ Liver disease	☐	☐ Stroke or paralysis
☐	☐ Eye disorders or impaired vision (except corrective lenses)	☐	☐ Digestive problems	☐	☐ Missing or impaired hand, arm, foot, leg, finger, toe
☐	☐ Ear disorders, loss of hearing or balance	☐	☐ Diabetes or elevated blood sugar controlled by: ☐ diet ☐ pills ☐ insulin	☐	☐ Spinal injury or disease
☐	☐ Heart disease or heart attack; other cardiovascular condition ☐ medication _____	☐	☐ Nervous or psychiatric disorders, e.g., severe depression ☐ Medication _____	☐	☐ Chronic low back pain
☐	☐ Heart surgery (valve replacement/bypass, angioplasty, pacemaker)	☐	☐ Loss of, or altered consciousness	☐	☐ Regular, frequent alcohol use
☐	☐ High blood pressure ☐ medication _____			☐	☐ Narcotic or habit forming drug use
☐	☐ Muscular disease				
☐	☐ Shortness of breath				

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

_____

_____

_____

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

_____ _____

Driver's Signature Date

Medical Examiners Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving.)

_____

_____

_____

_____

_____

TESTING (Medical Examiner completes Section 3 through 7)

3. VISION **Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.**

INSTRUCTIONS: *When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report vis ual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified.*

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/	20/	Right Eye o
Left Eye	20/	20/	Left Eye o
Both Eyes	20/	20/	o

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☐ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:

☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Complete next line only if vision testing is done by an ophthalmologist or optometrist

Date of Examination | Name of Ophthalmologist or Optometrist (print) | Tel No. | License No./State of Issue | Signature

4. HEARING **Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB**

☐ Check if hearing aid used for tests. ☐ Check if hearing aid **required** to meet standard.

INSTRUCTIONS: *To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -8.5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.*

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard.	Right Ear Feet	Left Ear Feet

b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951)	Right Ear 500 Hz	1000 Hz	2000 Hz	Left Ear 500 Hz	1000 Hz	2000 Hz
	Average:			Average:		

5. BLOOD PRESSURE / PULSE RATE **Numerical readings must be recorded.**

Blood Pressure	Systolic	Diastolic

Driver qualified if ≤ 160/90 on initial exam.

Pulse Rate	☐ Regular ☐ Irregular

GUIDELINES FOR BLOOD PRESSURE EVALUATION

On initial exam	Within 3 months	Certify
If 161-180 and/or 91-104, Qualify 3 mos. only →	If ≤ 160 and/or 90, Qualify for 1 yr. Document Rx & control the 3rd month →	Annually if acceptable BP is maintained
If > 180 and/or 104, not qualified until reduced to < 181/105. Then qualify for 3 mos. only. →	If ≤ 160 and/or 90, qualify for 6 mos. Document Rx & control the 3rd month →	Biannually

Medical examiner should take at least 2 readings to confirm blood pressure.

6. LABORATORY AND OTHER TEST FINDINGS **Numerical readings must be recorded.**

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR

Other Testing (*Describe and record*)

7. PHYSICAL EXAMINATION

Height: _____(in.) Weight: _____(lbs)

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for.
See Instructions To The Medical Examiner for guidance.

BODY SYSTEM	CHECK FOR:	YES*	NO
1. General Appearance	Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.		
2. Eyes	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, strabismus uncorrected by corrective lenses, retinopathy, cataracts, aphakia, glaucoma, macular degeneration.		
3. Ears	Middle ear disease, occlusion of external canal, perforated eardrums.		
4. Mouth and Throat	Irremediable deformities likely to interfere with breathing or swallowing.		
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker.		
6. Lungs and chest, not including breast examination.	Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/or xray of chest.		
7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		
8. Vascular system	Abnormal pulse and amplitude, carotid or arterial bruits, varicose veins.		
9. Genito-urinary system,	Hernias.		
10. Extremities - Limb impaired. Driver may be subject to SPE certificate if otherwise qualified.	Loss or impairment of leg, foot, toe, arm, hand, finger. Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		
11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness.		
12. Neurological	Impaired equilibrium, coordination or speech pattern; paresthesia, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, ataxia.		

* COMMENTS: _____

_____

_____

_____

Note certification status here. See Instructions to the Medical Examiner for guidance.

- ☐ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate
- ☐ Does not meet standards
- ☐ Meets standards, but periodic evaluation required.
  - Due to _____ driver qualified only for:
    - ☐ 3 months ☐ 1 year
    - ☐ 6 months ☐ Other
- ☐ Temporarily disqualified due to (condition or medication): _____
  - Return to medical examiner's office for follow up on _____
- ☐ Wearing corrective lenses
- ☐ Wearing hearing aid
- ☐ Accompanied by a _____ waiver/exemption
- ☐ Skill Performance Evaluation (SPE) Certificate
- ☐ Driving within an exempt intracity zone.
- ☐ Qualified by operation of 49 CFR 391.64

Medical Examiner's Signature _____

Medical Examiner's Name (print) _____

Address _____

Telephone Number _____

If meets standards, complete a Medical Examiner's Certificate according to 49 CFR 391.43(h). (Driver must carry certificate when operating a commercial vehicle.)

49 CFR 391.41 Physical Qualifications for Drivers

THE DRIVER'S ROLE

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 8-10 hours and then have an 8-hour off-duty period), straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 4-hour driving periods and 4-hour rest periods).

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and trailer(s) before, during, and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s).

In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

§ 391.41 PHYSICAL QUALIFICATIONS FOR DRIVERS

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.

(2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber;

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951;

(12) (i) Does not use a controlled substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. (ii) Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who: (A) Is familiar with the driver's medical history and assigned duties; and (B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.

INSTRUCTIONS TO THE MEDICAL EXAMINER

General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, The Driver's Role.

In addition to reviewing the Health History section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects ad hazards of these medications while driving. Educate driver to read warning labels on all medications. History of certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the condition to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring. In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR 391.64, etc.).

Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (l) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in italics and its reference by section is highlighted.

Federal Motor Carrier Safety Regulations
- Advisory Criteria -

Loss of Limb:
§ 391.41(b)(1)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

Limb Impairment:
§ 391.41(b)(2)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation Certificate pursuant to Section 391.49.

A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation (SPE) Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.

With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual SPE certificates when a State Director for the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a current SPE certificate for his/her physical disability.

Diabetes
§ 391.41(b)(3)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.
Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the diabetic problem. Thus, because of these inherent dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule.
(See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Cardiovascular Condition
§ 391.41(b)(4)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

The term "has no current clinical diagnosis of" is specifically designed to encompass: *"a clinical diagnosis of"* (l) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term *"known to be accompanied by"* is defined to include: a *clinical diagnosis of* a cardiovascular disease (1) which is

accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1790 for additional recommendations regarding the physical qualification of drivers on coumadin.

(See Conference on Cardiac Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Respiratory Dysfunction
§ 391.41(b)(5)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

(See Conference on Pulmonary/Respiratory Disorders and Commercial Drivers at: http.//www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hypertension
§ 391.41(b)(6)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's Cardiac Conference recommendations, which used the report of the 1984 Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure.

A blood pressure of 161-180 and/or 91-104 diastolic is considered mild hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a 3-month period to reduce his or her blood pressure to less than or equal to 160/90; the certifying physician should state on the medical certificate that it is only valid for that 3-month period. If the driver is subsequently found qualified with a blood pressure less than or equal to 160/90, the certifying physician may issue a medical certificate for a 1-year period, but should confirm blood pressure control in the third month of this 1-year period. The individual should be certified annually thereafter. The expiration date must be stated on the medical certificate.

A blood pressure of greater than 180 systolic and/or greater than 104 diastolic is considered moderate to severe. The driver may not be qualified, even temporarily, until his or her blood pressure has been reduced to less than 181/105. The examining physician may temporarily certify the individual once the individual's blood pressure is below 181 and/or 105. For blood pressure greater than 180 and/or 104, documentation of continued control should be made every 6 months. The individual should be certified biannually thereafter. The expiration date must be stated on the medical certificate. Commercial drivers who present for certification with normal blood pressures but are taking medication(s) for hypertension should be certified on the same basis as individuals who present with blood pressures in the mild or moderate to severe range. Annual recertification is recommended if the medical examiner is unable to establish the blood pressure at the time of diagnosis.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days. Inquiry should be made regarding smoking, cardiovascular disease in relatives, and immoderate use of alcohol. An electrocardiogram (ECG) and blood profile, including glucose, cholesterol, HDL cholesterol, creatinine and potassium, should be made. An echocardiogram and chest x-ray are desirable in subjects with moderate or severe hypertension.

Since the presence of target damage increases the risk of sudden collapse, group 3 or 4 hypertensive retinopathy, left ventricular hypertrophy not otherwise explained (echocardiography or ECG by Estes criteria), evidence of severely reduced left ventricular function, or serum creatinine of greater than 2.5 warrants the driver being found unqualified to operate a commercial motor vehicle in interstate commerce.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial drivers.

A commercial driver who has normal blood pressure 3 or more months after a successful operation for pheochromocytoma, primary aldosteronism (unless bilateral adrenalectomy has been performed), renovascular disease, or unilateral renal parenchymal disease, and who shows no evidence of target organ may be qualified. Hypertension that persists despite surgical intervention with no target organ disease should be evaluated and treated following the guidelines set forth above. (See Conference on Cardiac Disorders and Commercial Drivers at: http.//www.fmcsa.dot.gov/rulesregs/medreports.htm)

Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease
§ 391.41(b)(7)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with ability to control and operate a commercial motor vehicle safely.

Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or

vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: (1) the nature and severity of the individual's condition (such as sensory loss or loss of strength); (2) the degree of limitation present (such as range of motion); (3) the likelihood of progressive limitation (not always present initially but may manifest itself over time); and (4) the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter time period may be issued.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Epilepsy
§ 391.41(b)(8)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.
Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (l) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.

If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Mental Disorders
§ 391.41(b)(9)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.
Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "nagging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. See Psychiatric Conference Report for specific recommendations on the use of these medications and potential hazards for driving.
(See Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Vision
§ 391.41(b)(10)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: "Qualified only if wearing corrective lenses".
(See Visual Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hearing
§ 391.41(b)(11)
A person is physically qualified to drive a commercial motor vehicle if that person:
First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.
Since the prescribed standard under the FMCSRs is the American Standards Association (ANSI), it may be necessary to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.

If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18, 23, etc. The examiner should not use only sibilants (s-sounding test materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid".

(See Hearing Disorders and Commercial Motor Vehicle Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Drug Use

§ 391.41(b)(12)

A person is physically qualified to drive a commercial motor vehicle if that person:

Does not use a controlled substance identified in 21 CFR 1308.ll. Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties; and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term "habit- forming" is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required. (See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Alcoholism

§ 391.41(b)(13)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of alcoholism.

The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined _____ in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I find this person is qualified; and, if applicable, only when:

- ☐ wearing corrective lenses
- ☐ wearing hearing aid
- ☐ accompanied by a _____ waiver/exemption
- ☐ driving within an exempt intracity zone (49 CFR 391.62)
- ☐ accompanied by a Skill Performance Evaluation Certificate (SPE)
- ☐ Qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.

SIGNATURE OF MEDICAL EXAMINER	TELEPHONE	DATE

MEDICAL EXAMINER'S NAME (PRINT)	☐ MD ☐ DO ☐ Chiropractor ☐ Advanced Practice Nurse ☐ Physician Assistant

MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO. / ISSUING STATE

SIGNATURE OF DRIVER	DRIVER'S LICENSE NO.	STATE

ADDRESS OF DRIVER

MEDICAL CERTIFICATE EXPIRATION DATE

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.

Office of the Attorney General

Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code section 2254.021 et seq.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2003 ("FY03") (based on actual expenditures) and 2005 ("FY05") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code section 2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY05.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars($49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 - one based on FY03 actual expenditures and one based on FY05 budgeted expenditures

*Identify the sources of financial information;

*Inventory all federal and other programs administered by the OAG;

*Classify all OAG divisions;

*Determine administrative divisions;

*Determine allocation bases for allotting services to benefitting divisions;

*Develop allocation data for each allocation base;

*Prepare allocation worksheets based upon actual FY03 expenditures and budgeted FY05 expenditures;

*Summarize costs by benefitting division;

*Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

*Determine indirect cost rates throughout the OAG on an annual basis;

*Prepare and present draft Indirect Cost Plans to the OAG by April 9, 2004;

*Formalize the Actual FY03 and Budgeted FY05 Indirect Cost Plans and present them to HHS by April 30, 2004; and

*Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2004.

2. Develop standardized billing rates for legal services

*Review current criteria used by the OAG for charging various agencies;

*Determine the types of legal services provided to the agencies;

*Compile direct hours for each type of service;

*Determine effort reporting requirements;

*Re-examine billing rate options;

*Determine the actual cost of services;

*Analyze and confirm revenues and cost analyses;

*Prepare and present a draft Legal Services Billing Schedule for FY 2003 actual costs to the OAG by May 21, 2004;

*Prepare and present a draft Legal Services Billing Schedule for FY 2005 budgeted costs to the OAG by June 18, 2004; and

*Formalize a Legal Services Billing Schedule by July 30, 2004.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 20, 2004. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code section 2254.028, the OAG anticipates entering into the resultant contract on or about February 6, 2004.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);

2. the date(s) the employment(s) terminated; and

3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.

3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of

this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.

10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. consultant must answer the following questions:

*If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

*If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

*If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

*Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 9, 2004 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request

for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

(Phone: 512-475-4495)

TRD-200308454
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: December 9, 2003

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Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas, and State of Texas v. Rosa L. Mendoza & J. B. Harrison, Jr.*, Cause No. 2003-06167, in the 190th District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant J. B. Harrison, Jr., holds legal title to property located at 2533 Cromwell, Harris County, Texas. Plaintiffs' Petition alleges that sewage was illegally discharged from a malfunctioning septic system at the property on several occasions between September 1998 and January 2002, in violation of the water pollution statute, Texas Water Code §26.121, the public health nuisance statute, Tex Health & Safety Code §341.011, and the septic tank statute, Tex. Health & Safety Code §366.051.

Proposed Agreed Judgment: The Agreed Final Judgment with Defendant J. B. Harrison, Jr., orders Defendant Harrison to comply with all the statutes referenced above, to provide information to Plaintiffs related to septic regulation, and to pay court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

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

TRD-200308458
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: December 9, 2003

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Texas Cancer Council

Request for Applications

Cancer Survivor Video Gallery

Notice of Invitation: The Texas Cancer Council announces the availability of state funds to be awarded to support the goals of the *Texas Cancer Plan*. Funds will be awarded to the selected applicant (entity or individual) that designs and implements a video library of recorded interviews with cancer patients and their families. Recorded video interviews are to be stored in a digital repository and arranged in a searchable matrix for instant web-based access. The applicant will host a website that affords easy access and usability to the lay public. Interviews will also be made available for distribution in DVD format. The applicant is expected to produce and have available for distribution a minimum of two separate interviews.

Initial funding will be awarded from March 1, 2004 through August 31, 2004 (a six month period) and the maximum amount will be $50,000 for that time period.

Introduction: The Texas Cancer Council is the state agency dedicated to reducing the human and economic impact of cancer on Texans through the promotion and support of collaborative, innovative, and effective programs and policies for cancer prevention and control. The Council's initiatives are guided by the philosophy that a cooperative and unified effort by public, private, and volunteer sector agencies and individuals increases the ability of limited resources to serve more people and minimizes duplication of effort.

Purpose: Funds awarded under this RFA will provide a service to cancer patients and their families through the use of video recorded interviews that explore the physical and emotional consequences of a cancer diagnosis. Cancer patients and their families will be able to view these interviews in the privacy of their home by either checking out a video/DVD from their (participating) physician's office or viewing the video on the world wide web.

Eligibility Requirements: To be considered for funding, an application must be submitted by an entity or individual that will serve as the

fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Applicant Qualifications: The applicant will:

* Demonstrate knowledge of the concerns, barriers, and physical and emotional issues facing patients with a cancer diagnosis.

* Demonstrate familiarity with the technology needed to produce video interviews to be available on the web and in DVD.

* Provide a website to host the video gallery.

* Demonstrate the ability to leverage additional funds to support the project and provide for future growth of the video gallery.

Application Requirements: An original application **and five copies** are due at the Council office by 12:00 p.m. on Tuesday, January 20, 2004. Applications must be submitted according to the Council's application instructions and forms. **Applications sent by facsimile machine will not be accepted**. Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials and forms can be found in the Texas Cancer Council 2004 Project Guide. A copy of the Project Guide and a copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190, can be obtained in person at 211 East 7th Street, Suite 710, Austin, TX or on the web at www.tcc.state.tx.us.

Funding Awards: TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on or about February 20, 2004. Written notification of approval will be sent on or about February 23, 2004. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the project;

* Reasonableness of budgeted amounts and appropriateness of budget justifications;

* Evidence of a sound and effective program for accomplishing the project; and

* Completeness and clarity of the application.

All Council projects are funded via a cost reimbursement basis. Reimbursement may be submitted monthly or quarterly, as preferred by the project.

It is anticipated that one project will be selected under this initiative to receive Council funding. Council funding is based on the merit of the application received and the availability of funding.

The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

Use of funds:

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, travel, communications, office supplies, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

Additional information:

For additional information about this funding announcement, contact Mickey Jacobs, Executive Director, or Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200308383
Mickey L. Jacobs, M.S.H.P.
Executive Director
Texas Cancer Council
Filed: December 5, 2003

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Central Texas Regional Mobility Authority

Request for Competing Qualifications

On September 15, 2003, the Central Texas Regional Mobility Authority (CTRMA) received an unsolicited proposal for the development of the US 183-A turnpike project through a comprehensive development agreement (CDA). On November 5, 2003, the CTRMA board of directors authorized the issuance of a notice of receipt of the unsolicited CDA proposal and request for competing qualifications (RFCQ).

The RFCQ will be available as of the date of the publication of this notice. Copies may be obtained from the CTRMA web site (www.ctrma.org) or at the offices of the CTRMA's legal counsel, Locke Liddell & Sapp LLP, 100 Congress Avenue, Suite 300, Austin, Texas 78701. Responses to the RFCQ will be due on February 2, 2004.

TRD-200308477
Michael Weaver
Interim Executive Director
Central Texas Regional Mobility Authority
Filed: December 10, 2003

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Comptroller of Public Accounts

Notice of Request for Information

Request for Information: Pursuant to Chapter 447, Texas Government Code, as amended by House Bill 7 (H.B. 7), 78th Legislature, 3rd Called Session (eff. Jan. 11, 2004), the Office of the Comptroller of Public Accounts (Comptroller), on behalf of the State Energy Conservation Office (SECO), issues this Request for Information (RFI #167g) from manufacturers of Fuel Saving Technology (FST) and owners of vehicle fleets that use FST and wish to have that FST considered for inclusion in a subsequent demonstration project to determine which FST may cost effectively reduce fuel consumption and save state revenue. The Texas Department of Transportation (TxDOT) will conduct a subsequent demonstration using up to 100 vehicles or non-road diesels in controlled field tests and through use during the normal course of operations, under the direction of SECO in accordance with H.B. 7. It is anticipated that SECO will make the selection(s) under a process separate from this RFI.

Comptroller and SECO are interested in a subsequent demonstration of at least four FST. The technology may be: (1) a device containing no lead metal that is installed on a motor vehicle or non-road diesel and that has been proven to reduce fuel consumption per mile or per hour of operation by at least five percent; or (2) fuel or a fuel additive that is registered in accordance with 40 C.F.R. Part 79, containing no known mutagenic materials, as appropriate, and that has been proven to reduce fuel consumption per mile or per hour of operation by at least five percent.

Comptroller and SECO are also interested in examining proven FST that have been shown to reduce fuel use by at least five percent in

field tests or recorded use data of government agencies or businesses that operate fleets. For the purposes of this RFI, an FST is considered "proven" if documented through: An Environmental Protection Agency (USEPA) fuel economy federal test protocol performed at a laboratory recognized by the USEPA; or a fuel economy test performed in accordance with protocols and at testing laboratories or facilities recognized by SECO, The Texas Commission on Environmental Quality (TCEQ), or the USEPA. Respondents should be aware that an FST may be disqualified from consideration if it is known to reduce engine performance, reduce the life of the engine, require additional maintenance expenses, degrade air quality, or negatively affect the manufacturer's warranty of a motor vehicle or a non-road diesel.

Contact and Deadline: Parties interested in submitting FSTs for consideration in the Tx DOT demonstration program should contact Charles Bredwell, State Energy Conservation Office, Comptroller of Public Accounts, 111 E. 17th St., Room 1114, Austin, Texas, 78774, email charles.bredwell@cpa.state.tx.us, no later than 5 p.m. Central Zone Time (CZT), on or before January 15, 2004. All written inquiries and questions must be received at the location specified above prior to 5 p.m. CZT on the deadline set forth above in order to be considered. All responses to this RFI must be submitted no later than 5:00 PM CZT, on January 30, 2004. Respondents are solely responsible for ensuring timely receipt of all responses at the location set forth above on or before the deadline.

Responses: Comptroller and SECO reserve the right, in their sole judgment and discretion, to accept or reject any or all responses received. Responses received by the deadline will be subject to evaluation by Comptroller, SECO, and/or a committee and all responses shall become the property of SECO and Comptroller. Responses will be public record and available to any requester. This is not a solicitation for a contract. Neither the Comptroller nor SECO shall pay for any costs incurred by any Respondent, or any other entity in responding to this RFI. All Respondents must include the following items in the following order in their responses to this RFI:

Respondent Information and Documentation. Respondents must provide their full name and address, contact persons names, phone, fax number, and e-mail address. Additionally, all respondents must provide the following documentation as necessary:

1. A document showing that the FST reduces fuel consumption with a projected savings in fuel cost over a one-year period that exceeds the cost of purchasing and using the technology.

2. A document showing that the submitted device, fuel or fuel additive results in a fuel savings of 5% or more in tests conducted under the USEPA fuel economy federal test protocol or tests conducted under protocols at laboratories recognized by SECO, TCEQ or USEPA.

3. A document certifying that the device contains no lead metals.

4. A document showing that the fuel or fuel additive is registered in accordance with 40 C.F.R. part 79 and that the fuel additive contains no mutagenic material.

5. A document showing the willingness of the manufacturer to cover all costs, including, but not limited to the cost of the device, fuel, or fuel additive; the cost of installation of any device including removal; and the cost of vehicle maintenance and operation required due to the use of the device, fuel or fuel additive.

6. A document that shows the FST does not increase oxides of nitrogen emissions or toxic air contaminants.

7. A document showing that the FST does not degrade air quality or human health or negatively impact the environment.

8. A document showing that the FST will not void a manufacturer's warranty, and any other supporting documentation as necessary upon request of Comptroller and SECO.

TRD-200308476
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 10, 2003

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Notice of Request of Proposals

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #167e) for international investment management services for the Texas Guaranteed Tuition Plan, the state's prepaid higher education tuition program and one of the Texas Tomorrow Funds (Program). The funds to be managed are funds from contracts and investments of the Program. The Comptroller and the Board request proposals from qualified firms for international investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about March 22, 2004.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, December 19, 2003, between 10:00 a.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, December 19, 2003, 10:00 a.m. CZT. The website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Tuesday, January 13, 2004. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, January 16, 2004, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Deputy General Counsel for Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, January 30, 2004. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - December 19, 2003, 10:00 a.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - January 13, 2004, 2:00 p.m. CZT; Official Responses to Questions posted - January 16, 2004; Proposals Due - January 30, 2004, 2:00 p.m. CZT; Contract Execution - March 19, 2004, or as soon thereafter as practical; Commencement of Project Activities - March 22, 2004. Issued in Austin, Texas, on December 10, 2003. Pamela Ponder Deputy General Counsel for Contracts Comptroller of Public Accounts

TRD-200308470
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 10, 2003

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Notice of Request of Proposals

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #167f) for investment management services for the Texas Guaranteed Tuition Plan, the state's prepaid higher education tuition program and one of the Texas Tomorrow Funds (Program). The funds to be managed are funds from contracts and investments of the Program. The Comptroller and the Board request proposals from qualified firms for domestic large capitalization growth equity investment management services for the Program's portfolio. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager(s). The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about March 15, 2004.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, December 19, 2003, between 10:00 a.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, December 19, 2003, 10:00 a.m. CZT. The website address is http://esbd.tbpc.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Tuesday, January 6, 2004. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, January 9, 2004, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Deputy General Counsel for Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, January 23, 2004. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - December 19, 2003, 10:00 a.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - January 6, 2004, 2:00 p.m. CZT; Official Responses to Questions posted - January 9, 2004; Proposals Due - January 23, 2004, 2:00 p.m. CZT; Contract Execution - March 12, 2004, or as soon thereafter as practical; Commencement of Project Activities - March 15, 2004. Issued in Austin, Texas, on December 10, 2003. Pamela Ponder Deputy General Counsel for Contracts Comptroller of Public Accounts

TRD-200308471
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 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 12/15/03 - 12/21/03 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 12/15/03 - 12/21/03 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-200308447
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 9, 2003

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Texas Commission on Environmental Quality

Enforcement Orders

A default order was entered regarding WOODY'S SUPERETTES, INCORPORATED, Docket No. 2002-1218-PST-E on November 24, 2003 assessing $59,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHANNON STRONG, Staff Attorney at (512)239-6201, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAGUNA MADRE WATER DISTRICT, Docket No. 2003-0091-MWD-E on November 24, 2003 assessing $13,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SANDRA HERNANDEZ-ALANIZ, Enforcement Coordinator at (512)239-6659, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PENSKE TRUCK LEASING CO., L.P., Docket No. 2003-0550-AIR-E on November 24, 2003 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512)239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED STRUCTURES OF AMERICA, INC., Docket No. 2003-0683-AIR-E on November 24, 2003 assessing $2,125 in administrative penalties with $425 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 V & S PETROLEUM, LTD. DBA BILL'S EXXON TRUCK STOP, Docket No. 2003-0402-PST-E on November 24, 2003 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting ANIEKEME UDOETOK, Enforcement Coordinator at (512)239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DARIN BARE DBA BIGGER AND BETTER SEPTIC TANKS, Docket No. 2003-0274-OSI-E on November 24, 2003 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting JILL REED, Enforcement Coordinator at (432)620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DUKE ENERGY FIELD SERVICES, L.P., Docket No. 2002-0718-AIR-E on November 24, 2003 assessing $7,740 in administrative penalties with $1,548 deferred.

Information concerning any aspect of this order may be obtained by contacting GLORIA STANFORD, Enforcement Coordinator at (512)239-1871, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRYAN ANDERSON DBA ANDERSON LAWN AND LANDSCAPE SERVICES, Docket No. 2003-0542-LII-E on November 24, 2003 assessing $625 in administrative penalties with $125 deferred.

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 CITY OF BALMORHEA, Docket No. 2003-0311-WR-E on November 24, 2003 assessing $485 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 AQUASOURCE UTILITY, INC., Docket No. 2003- 0278-MWD-E on November 24, 2003 assessing $5,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHERRY SMITH, Enforcement Coordinator at (512)239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF COLMESNEIL, Docket No. 2002-1297- MWD-E on November 24, 2003 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CENTER, Docket No. 2003-0313-WR-E on November 24, 2003 assessing $2,875 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 CHEVRON U.S.A., INC., Docket No. 2003-0118-AIR-E on November 24, 2003 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting PHILLIP LOPEZ, Enforcement Coordinator at (806)796-7092, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 8524 GULF, L.L.C. DBA FIRST STOP FOOD STORE NO. 16, Docket No. 2003-0252-PST-E on November 24, 2003 assessing $1,925 in administrative penalties with $385 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 GREIF BROS. CORPORATION, Docket No. 2003- 0142-MLM-E on November 24, 2003 assessing $19,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512)239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANCISCO BARRERA DBA THE GOLDMINE, Docket No. 2002-1253-PST-E on November 24, 2003 assessing $11,250 in administrative penalties with $5,250 deferred.

Information concerning any aspect of this order may be obtained by contacting SANDRA HERNANDEZ-ALANIZ, Enforcement Coordinator at (956)430-6044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY TRANSIT MANAGEMENT CO., INC. DBA CITIBUS OF LUBBOCK, Docket No. 2003-0615-PST-E on November 24, 2003 assessing $1,625 in administrative penalties with $325 deferred.

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 EXXON MOBIL CORPORATION, Docket No. 2002- 1276-AIR-E on November 24, 2003 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (254)965-9212, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF SKELLYTOWN, Docket No. 2002-1144- MWD-E on November 24, 2003 assessing $4,200 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 PRECISION PIPE & EXCAVATING, L.L.C., Docket No. 2003-0195-AIR-E on November 24, 2003 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting JAIME GARZA, Enforcement Coordinator at (956)430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF EDINBURG, Docket No. 2002-1408-PWS-E on November 24, 2003 assessing $19,900 in administrative penalties with $3,980 deferred.

Information concerning any aspect of this order may be obtained by contacting JAIME GARZA, Enforcement Coordinator at (956)430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200308482

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 10, 2003

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Notice of District Petition

Notices mailed December 3, 2003 through December 4, 2003

TCEQ Internal Control No. 10072003-D15; Combined Consumers Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Combined Consumers Water Supply Corporation to Combined Consumers Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 10855 from Combined Consumers Water Supply Corporation to Combined Consumers Special Utility District. Combined Consumers Special Utility District's business address will be: P.O. Box 2829; 10446 Highway 751; Quinlan, Texas 75474. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Combined Consumers Water Supply Corporation and the organization, creation and establishment of Combined Consumers Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 10855 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by Combined Consumers Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by Combined Consumers Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Hunt, and Van Zandt Counties and will contain approximately 14.28 square miles. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 10855. CCN No. 10855 will be transferred after a positive confirmation election.

TCEQ Internal Control No. 07292003-D08; Maryfield, Ltd.; Sunlake Limited; and West Little York 62 Ac., Ltd. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 393 (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) there is one lienholder on the land to be included in the proposed District, and the lienholder has consented to the petition; (3) the proposed District will contain approximately 248.9101 acres located within Harris County, Texas; and (4) all of the land in the proposed District is within the corporate limits of the City of Houston, Texas. The lienholder, Kenneth E. Studdard, Trustee, is not named in the petition but has executed an affidavit consenting to the creation of the proposed District. By Ordinance No. 2003- 988, effective October 28, 2003, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent

with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire- fighting services; and (2) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing parks and recreational facilities. According to the petition, the Petitioners have 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 $14,430,000.

TCEQ Internal Control No. 08262003-D02; Summer Creek Development, Ltd., (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. The petition further states that the proposed District will (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire-fighting services; and (2) purchase interests in land and construct, acquire, improve, extend, maintain, and operate works, and improvements for the purpose of providing parks and recreational facilities. 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.

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-200308480
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2003

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Notice of Public Meeting on January 22, 2004, Concerning the Lyon Property State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the intent to take no further action at the site and to delete the site from the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of intent to take no further action at the Lyon Property State Superfund Site (the Site) and to delete the Site from its proposed-for-listing status on the state Superfund registry. The state registry is the list of state Superfund 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 commission is proposing this deletion because the ED has determined that due to removal actions that have been performed, the Site no longer presents such an endangerment. This combined notice was also published in the *Junction Eagle* on December 17, 2003.

The Site was proposed for listing on the state Superfund registry in the July 5, 2002 issue of the *Texas Register* (27 TexReg 6126). The Site, including all land, structures, appurtenances, and other improvements, is located on U.S. 385, approximately one mile north of the intersection of Farm Road 1871 and U.S. 385 near London, in Kimble County, Texas. The property covers about six acres in an area adjacent to the Llano River. The Site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

A small wire burning operation was conducted at the Site for metal recovery. The burn site encompassed an area approximately 75 feet by 60 feet. There are residences to the north, south, and east of the property, with the Llano River on the west. The Texas Natural Resource Conservation Commission, predecessor agency of the TCEQ, first investigated the Site in 1996 after receiving a complaint about burning. Sampling of soils at the burn site indicated elevated concentrations of cadmium, lead, and total petroleum hydrocarbons.

In August 2003, the TCEQ removed approximately 360 cubic yards of contaminated soil from the Site. As a result of the removal actions that have been performed at the Site, the ED has determined that the Site no longer presents an imminent and substantial endangerment to public

health and safety and the environment. Therefore, no further action is necessary at the Site and the Site is eligible for deletion from the state registry of Superfund sites as provided by 30 TAC §335.344(c).

The commission will hold a public meeting to receive comment on the proposed deletion of the Site and the determination to take no further action. This public meeting will be legislative in nature and is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting is scheduled for 7:00 p.m. on Thursday, January 22, 2004, at the Kimble County Library, Meeting Room, 208 North 10th Street, Junction, Texas.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., January 22, 2004, and should be sent in writing to Carol Dye, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on January 22, 2004.

A portion of the record for this Site, including documents pertinent to the proposed deletion of the Site, is available for review during regular business hours at the Kimble County Library, 208 North 10th Street, Junction, Texas, (325) 446-2342. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible. For further information regarding this meeting, please call Barbara Daywood, TCEQ Community Relations Coordinator, at (800) 633-9363.

TRD-200308448
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2003

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Notice of Water Quality Applications

The following notices were issued during the period of December 2, 2003 through December 9, 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.

CRYSTAL PALACE, INC. has applied for a renewal of TPDES Permit No. 12936-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the north side of State Highway 87, approximately 3,000 feet west of the intersection of State Highway 87 and Monkhouse Road in the City of Crystal Beach in Galveston County, Texas.

THE DUNCAN GROUP, INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. 14391-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,350 gallons per day via drip irrigation of 2.03 acres of public access land. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,821 gallons per day via drip irrigation of 2.03 acres of public access land. The facility and disposal site will be located approximately 0.75 mile northeast of the intersection of Ranch Road 620 and Lohmans Crossing Road and approximately 4.1 miles southwest of the intersection of Ranch Road 620 and Ranch Road 2222 in Travis County, Texas.

CITY OF GOLDTHWAITE has applied for a new permit, Proposed Permit No. 14479-001, to authorize the disposal of treated filter backwash water at a daily average flow not to exceed 22,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the northeast corner of the intersection of the State Highway 16 and Layton Black Lane (formerly Lover's Lane), approximately 230 feet north of State Highway 16 in Mills County, Texas.

MR. JACK CHENG LEE has applied for a renewal of TPDES Permit No. 13560-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located 300 feet west of Interstate Highway 45 and 600 feet north of Northville Road in Harris County, Texas

CITY OF LEVELLAND has applied for a renewal of Permit No. 10965-001, which authorizes the disposal of treated domestic wastewater effluent at a volume not to exceed a daily average flow of 1,800,000 gallons per day via irrigation of 475 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 2 miles southeast of the intersection of U.S. Highway 385 and State Highway 114, southeast of Levelland and 2.5 miles southwest of the intersection of State Highway 114 and Farm-to-Market Road 3261 in Hockley County, Texas.

CITY OF MASON has applied for a major amendment to TPDES Permit No. 10670-001 to authorize the disposal of treated domestic wastewater via irrigation of 30 acres of golf course and 20 acres of nonpublic access pastureland. The facility is located approximately 3/4 mile northeast of the intersection of U.S. Highway 87 and Farm-to-Market Road 1723, southeast of the City of Mason in Mason County, Texas. The pastureland disposal site is located adjacent to the facility; the golf course disposal area is located approximately 1,000 feet south of the facility.

TOWN OF OPDYKE WEST has applied for a renewal of Permit No. 12615-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day via surface irrigation of 5 acres. The facility and disposal site are located 2.5 miles east of the intersection of State Highway 114 and Farm-to-Market Road 3261 in Hockley County, Texas. This permit will not authorize a discharge of pollutants into waters in the State.

CITY OF PENITAS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14437-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 2,400 feet west of the intersection of Farm-to-Market Road 1427 and Military Highway in Hidalgo County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11246-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,200 gallons per day via surface irrigation of 1.9 acres of nonpublic access

pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located near the confluence of the Paluxy River and Opossum Branch within Dinosaur Valley State Park, approximately 1.2 miles northwest of the intersection of State Highway 205 and State Highway-Park Road 21 and approximately 4 miles west- northwest of the intersection (in the City of Glen Rose) of U.S. Highway 67 and Farm-to-Market Road 201 in Somervell County, Texas.

CITY OF WACO has applied for a renewal of TPDES Permit No. 13971-001, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 240,000 gallons per day. The facility is located on Lake Shore Drive between Mt. Carmel Drive and Wooded Acres Drive just east of Lake Waco in McLennan County, Texas.

TRD-200308481
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2003

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Notice of Water Rights Application

Notices mailed November 24, 2003 through December 2, 2003

PROPOSED PERMIT NO. 8247; Sunoco Partners Marketing & Terminals L.P., P.O. Box 758, Nederland, Texas 77627, applicant, seeks a temporary Water Use Permit, pursuant to Texas Water Code (TWC) §11.138 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, et seq. Applicant has applied to the Texas Commission on Environmental Quality for a temporary water use permit to divert and use not to exceed 79 acre-feet of water at a maximum rate of 13.369 cfs (6,000 gpm) from the Neches River, tributary of Sabine Lake, tributary of the Gulf of Mexico, Neches River Basin for industrial purposes (hydrostatic testing) in Jefferson County within a period of one year. Applicant seeks to divert from the Neches River south of Highway 347, located 5 miles southeast from Beaumont, Jefferson County, and 2 miles northeast from Nederland, a nearby town. The application was received on September 22, 2003 and additional fees were received on November 6, 2003. The application was determined to be administratively complete and filed with the Chief Clerk on November 14, 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, by December 15, 2003.

APPLICATION NO. 5812; Lumbermen's Investment Corporation, 5495 Beltline Road, Suite 225, Dallas, Texas, 75248, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to §11.121, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, et seq. Applicant seeks authorization to maintain two existing on-channel dams and reservoirs located approximately 2.90 miles north of the City of Burleson on Channel VC-6, tributary of Village Creek, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, in the S.A. & M.G. Railroad Company Survey No. 1, Abstract No. 1483, Tarrant County, for recreational purposes. Their names, additional descriptions and locations are as follows: Structure No. 1 (Downstream)--Station 0+00 on the centerline of the dam is N 14.79° W (bearing), 2,359 feet from the southeast corner from the S.A. & M.G. Railroad Company Survey No. 1, Abstract No. 1483, at Latitude 32.60° N, Longitude 97.32° W. The normal operating capacity is 4.2 acre-feet of water with a surface area of 1.20 acres. Structure No. 2 (Upstream)--Station 0+00 on the centerline of the dam is N 24.11° W (bearing), 2,561 feet from the southeast corner from the S.A. & M.G. Railroad Company Survey No. 1, Abstract No. 1483, at Latitude 32.61° N, Longitude 97.33° W. The normal operating capacity is 3.6 acre-feet of water with a surface area of 0.92 acres. The only consumptive uses will be from evaporative losses. Those losses will be made up by water supplied by the water distribution system of the adjacent residential subdivision. Ownership of the land is evidenced by a Special Warranty Deed recorded as Document No. 13447-286 in the Official Tarrant County Clerk's office. The application was received on July 8, 2003. Additional information was received on September 2, 2003. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 24, 2003. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-5437A; STP Nuclear Operating Company, P.O. Box 289, Wadsworth, Texas 77483, applicant, seeks an amendment to Certificate of Adjudication No. 14-5437, pursuant to Texas Water Code (TWC) §§11.121, 11.122, 11.046, and any other applicable statutory provisions, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code §§295.1, et seq. and §§297.1, et seq. Applicant seeks this amendment in its capacity as agent on behalf of and for the proportionate benefit of the participants in the South Texas Project ("Participants") under an amended and restated Participation Agreement. At the present time, the Participants are 1) the City of San Antonio, Texas acting through the City Public Service Board; 2) the City of Austin, Texas; 3) AEP Texas Central Company; and 4) Texas Genco, LP. Certificate of Adjudication No. 14-5437 authorizes applicant and the Lower Colorado River Authority to divert and use not to exceed 102,000 acre-feet of water per annum from the Colorado River, Colorado River Basin in Matagorda County. Certificate of Adjudication No. 14-5437 further authorizes applicant to transport and store the water diverted in two existing off-channel reservoirs and to make subsequent diversion from the perimeter of the off-channel reservoirs. Water diverted is used for industrial purposes including development of power by means other than hydroelectric. The maximum diversion rate from the Colorado River is 1,200 cfs (540,000 gpm). Applicant also is authorized to divert, circulate, and recirculate water from the two off-channel reservoirs and to consumptively use through forced evaporation and other miscellaneous industrial uses an amount of water not to exceed 80,125 acre-feet per annum. The time priority of the Owners' right is June 10, 1974 for all authorizations except for the storage of 46 acre-feet of water in the 388 acre-foot capacity second reservoir which has a time priority of March 25, 1986. The Certificate contains Special Conditions. Applicant seeks to amend Certificate of Adjudication No. 14-5437 by adding a new appropriation, pursuant to TWC §§11.121, 11.122, 11.046 and any other applicable statutory provisions, for 102,000 acre-feet per annum of water, including any return flows which may be available for appropriation, for industrial purposes including development of power by means other than hydroelectric, in the Colorado River Basin, commencing January 1, 2031 or upon termination of the contract between applicant and the LCRA entered January 1, 1976, as amended ("Contract"). The water will be diverted from the Colorado River at the existing diversion point and be stored in the currently authorized off-channel reservoirs for subsequent diversion and use in the same manner as currently authorized. Applicant requests that a Special Condition be included, such that, if in separate proceedings it is determined that the Participants have the sole authorized right to divert and use 102,000 acre-feet per annum from the Colorado River with the priority date of June 10, 1974 (currently authorized under Certificate of Adjudication No. 14-5437), Applicant will voluntarily relinquish the additional appropriation of 102,000 acre-feet of water pursuant to this application. Applicant further requests, if and only if the

appropriation of water requested under this application is granted and it is ultimately determined that the Participants do not have all rights currently authorized under Certificate of Adjudication No. 14-5437 upon termination of the Contract, that the river diversion rights currently authorized under Certificate of Adjudication No. 14-5437 be cancelled effective upon termination of the Contract. Applicant requests the new diversion appropriation without regards to whether the existing river diversion authorization is cancelled. This application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies. The application was received on October 29, 2002. Additional information for the application was received on February 14, 2003 and March 6, 2003. The application was accepted for filing and declared administratively complete on March 7, 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, Texas 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-200308272
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2003

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Notice of Water Rights Application

Notice mailed December 2, 2003

PROPOSED TEMPORARY PERMIT NO. TP-8250; Kinder Morgan Texas Pipeline, L.P. (KMTP), 500 Dallas Street, Suite 1000, Houston, Texas 77002, Applicant, seeks a Temporary Water Use Permit to divert and use not to exceed 47.24 acre-feet of water at a maximum diversion rate of 6.69 cfs (3,000 gpm) within a one-year period from the Colorado River, Colorado River Basin, Bastrop County, Texas, for industrial (hydrostatic testing) purposes. The diversion point will be located on the west bank of the Colorado River at the stream crossing of KMTP's right of way, approximately 5 miles southeast of Bastrop, Bastrop County, Texas. The application was received on October 20, 2003, and additional information and fees were received on November 12 and November 21, 2003. The Executive Director reviewed the application and determined it to be administratively complete on November 24, 2003. Pursuant to 30 TAC 295.154, limited mailed notice of the application, allowing for a 15-day comment period, is being given to the water rights owners of record with diversion points downstream of the Applicant's requested diversion point that could be affected by the issuance of this application. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. 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, by December 23, 2003.

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-200308479
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2003

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on December 1, 2003, in the matter of the Executive Director of the

Texas Commission on Environmental Quality, Petitioner v. Fina Oil & Chemical Company; SOAH Docket No. 582-95-1404; TCEQ Docket No. 1995-1004-ISW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Fina Oil & Chemical Company on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Office of the Chief Clerk, (512) 239-3317.

TRD-200308271
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2003

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on December 4, 2003, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Coastal Transport Company, Inc; SOAH Docket No. 582-03-2337; TCEQ Docket 2001-0847-PST-E The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Costal Transport Company Inc; on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Office of the Chief Clerk, (512) 239-3317.

TRD-200308483
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 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 **January 19, 2004**. 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 January 19, 2004**. 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: 7-Eleven, Inc.; DOCKET NUMBER: 2003-1187-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 07387, Regulated Entity Reference Number RN102265527; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.226(1) and THSC, §382.085(b), by failing to maintain a record, on-site, of dates on which gasoline was delivered; and 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain proof of attendance and completion of training; PENALTY: $1,150; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-1105; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Beeville; DOCKET NUMBER: 2003-1268-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0130001; LOCATION: Beeville, Bee County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5), by failing to comply with the maximum contaminant level for haloacetic acids; PENALTY: $650; ENFORCEMENT COORDINATOR: John Schildwachter, (512) 239-2355; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Michael C. Barrilleaux dba C&M Patton Village Grocery; DOCKET NUMBER: 2003-1014-PST-E; IDENTIFIER: PST Facility Identification Number 0033827, Regulated Entity Identification Number RN102046232; LOCATION: Splendora, Montgomery 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: $2,460; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: TT & KH, Inc. dba Corner Store 1; DOCKET NUMBER: 2003-0833-PST-E; IDENTIFIER: PST Facility Identification Number 0014132; LOCATION: Houston, 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: $3,150; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Crockett Farm & Fuel Center, Inc.; DOCKET NUMBER: 2003-0807-PST-E; IDENTIFIER: PST Facility Identification Number 704; LOCATION: Crockett, Houston 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: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: ECBD Development, L.L.C.; DOCKET NUMBER: 2003-0883-PST-E; IDENTIFIER: PST Facility Identification Number 16791, Regulated Entity Reference Number RN101435337; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: development company; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $950; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Saab Petroleum Corporation dba Gordon's Chevron; DOCKET NUMBER: 2003-1093-PST-E; IDENTIFIER: PST Facility Identification Number 68761; LOCATION: Alvin, Brazoria 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: Michael Limos, (512) 239- 5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(8) COMPANY: Metro Suppliers, Inc. dba Great Hills Texaco; DOCKET NUMBER: 2003- 1146-PST-E; IDENTIFIER: PST Facility Identification Number 59555; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c), by failing to provide proper release detection; 30 TAC §334.7(a)(1) and the Code, §26.346(a), by failing to register the facility's waste oil underground storage tank (UST); 30 TAC §334.48(c), by failing to conduct inventory control for all USTs; and 30 TAC §334.8(c)(5)(C), by failing to physically label all tank fill pipes; PENALTY: $9,600; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758- 5336, (512) 339-2929.

(9) COMPANY: Hampshire Chemical Corp.; DOCKET NUMBER: 2003-0469-AIR-E; IDENTIFIER: Air Account Number HG-4998-P; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: synthetic organic chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 8052, and THSC, §382.085(b), by failing to comply with the emission limits, failing to maintain the inlet water temperature of the ammonia scrubber, and failing to appropriately monitor the inlet water temperature of the ammonia scrubber; 30 TAC §101.6(b) (now 30 TAC §101.201(b)), and THSC, §382.085(b), by failing to provide a complete final record for a nonreportable upset; 30 TAC §101.20(2), 40 Code of Federal Regulations §63.163(b)(3) and §63.182(d)(2)(iii), and THSC, §382.085(b), by failing to provide information on the total number of pumps monitored in the semiannual report and failing to perform the weekly pump visual inspection; and 30 TAC §101.221(a) and §116.115(b)(2)(G), Air Permit Number 8052, and THSC, §382.085(b), by failing to keep the manhole cover of a product-receiving tank closed and failing to comply with the emission limits for methanol; PENALTY: $87,856; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Samir Ibrahim; DOCKET NUMBER: 2003-0829-PST-E; IDENTIFIER: PST Registration Number 23141, Regulated Entity Reference Number RN101377760; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: filling station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,460; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Brijesh Patel and Seema Patel dba Lakeside Food Mart; DOCKET NUMBER: 2003-0870-PST-E; IDENTIFIER: PST Facility Identification Number 25511; LOCATION: Ratcliff, Houston 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: $4,880; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: David S. Smonko dba Lakeway Exxon; DOCKET NUMBER: 2003-0863- PST-E; IDENTIFIER: PST Facility Identification Number 43177, Regulated Entity Identification Number RN102873304; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: retail gasoline sales; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Rick Ciampi, (512) 239-3119; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: La Marque Independent School District; DOCKET NUMBER: 2003-0804- PST-E; IDENTIFIER: PST Facility Identification Number 21614; LOCATION: La Marque, Galveston County, Texas; TYPE OF FACILITY: transportation; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: City of Ore City; DOCKET NUMBER: 2003-0396-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10241-001 (Expired); LOCATION: Ore City, Upshur County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.63(a) and §305.125(2), and the Code, §26.121(a), by failing to apply for a permit renewal; PENALTY: $8,601; ENFORCEMENT COORDINATOR: Jill Kelley, (915) 834-4949; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: Park N Fly of Texas, Inc.; DOCKET NUMBER: 2003-0795-PST-E; IDENTIFIER: PST Facility Identification Number 00024597, Regulated Entity Reference Number RN101898120; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: airport customer parking lot and shuttle service; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Rosemary Peters dba Peters Service Station; DOCKET NUMBER: 2003- 0860-PST-E; IDENTIFIER: PST Facility Identification Number 50201, Regulated Entity Reference Number RN101433449; LOCATION: Columbus, Colorado County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239- 6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(17) COMPANY: Pirzada, Inc.; DOCKET NUMBER: 2003-0796-PST-E; IDENTIFIER: PST Facility Identification Number 0030587, Regulated Entity Reference Number RN101867356; LOCATION: Pasadena, 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: $2,400; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(18) COMPANY: Praxair, Inc.; DOCKET NUMBER: 2003-0988-PST-E; IDENTIFIER: PST Facility Identification Number 11161, Regulated Entity Reference Number RN102684974; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: fleet fueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,580; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(19) COMPANY: City of Sabinal; DOCKET NUMBER: 2003-0082-MWD-E; IDENTIFIER: TPDES Permit Numbers 14342001 and 10604-001 (Expired); LOCATION: Sabinal, Uvalde County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121(a), by failing to renew their permit; and the Code, §26.121(a), by allowing continued operation and discharges and failing to properly dispose of sludge generated from the drying beds; PENALTY: $6,930; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425- 6010; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Rakesh Kumar Jain dba Sea Isle Supermarket; DOCKET NUMBER: 2003- 1002-PST-E; IDENTIFIER: PST Facility Identification Number 0046589, Regulated Entity Reference Number RN102849981; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2), by failing to successfully perform an annual pressure decay test; PENALTY: $950; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Ki Chong Dorsey dba Sun Coast Food Market ; DOCKET NUMBER: 2003- 0813-PST-E; IDENTIFIER: PST Facility Identification Number 20484; LOCATION: Houston, 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: Kimberly McGuire, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(22) COMPANY: Amir Saif dba Sun Power Travel Plaza; DOCKET NUMBER: 2003-1162- PWS-E; IDENTIFIER: PWS Number 0610239; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g)(4), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and failing to provide public notice related to its failure to collect and submit samples for bacteriological analysis; PENALTY: $2,275; ENFORCEMENT COORDINATOR: John Schildwachter, (512) 239-2355; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(23) COMPANY: Kassam Memenji dba Sunrise Grocery 1; DOCKET NUMBER: 2003-0783- PST-E; IDENTIFIER: PST Facility Identification Number 0003912; LOCATION: Anahuac, Chambers 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: $3,150; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588- 5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(24) COMPANY: Loan Nguyen dba Super Stop Foodmart; DOCKET NUMBER: 2003-0825- PST-E; IDENTIFIER: PST Facility Identification Number 0008062; LOCATION: Beaumont, Jefferson 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: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Trinity Industries, Inc.; DOCKET NUMBER: 2003-0706-AIR-E; IDENTIFIER: Air Account Number HG-0498-W; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: steel fabricating; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit annual compliance certification; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2003-0519-AIR-E; IDENTIFIER: Air Account Number HG-0130-C; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Numbers 2501A and 2507A, and THSC, §382.085(b), by failing to comply with emission limits and failing to route the refinery acid gas to the sulfur refinery unit; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Varco, L.P. dba Tuboscope; DOCKET NUMBER: 2003-0028-AIR-E; IDENTIFIER: Air Account Number ML-0047-G, Regulated Entity Reference Number RN100825231; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: coating plan; RULE VIOLATED: 30 TAC §122.145(2)(B) and §122.146(2), and THSC, §382.085(b), by failing to submit two Title V Compliance Certifications; 30 TAC §116.115(b)(2)(G) and (c), Standard Permit Number 8296A, and THSC, §382.085(b), by failing to comply with permitted maximum allowable emission rates for volatile organic compounds and failing to maintain the thermal pickle oven firebox temperature; and 30 TAC §§101.27(c)(1), 290.51(a)(3), and 335.323, by failing to pay outstanding general permits stormwater fees; PENALTY: $56,800; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 655-9479.

(28) COMPANY: Webb-Duval Gatherers, A Texas General Partnership; DOCKET NUMBER: 2003-1137-AIR-E; IDENTIFIER: Air Account Number WE-0066-J; LOCATION: near Freer, Webb County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Brad Brock, (512) 239-1165; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200308446
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2003

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Texas Department of Health

Notice of Order Regarding Anant Mauskar, M.D. of Houston

On October 14, 2003, the commissioner of the Texas Department of Health signed an order regarding Anant Mauskar, M.D. of Houston; Texas Department of Health Certification of Registration Number R22288; State Office of Administrative Hearings Docket Number 501-03-3575, assessing $4,000 in administrative penalties for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available for public inspection, by appointment, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200308292
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 4, 2003

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on H & G Inspection Company, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to H & G Inspection Company, Inc. (licensee-L02181) of Houston. A total penalty of $13,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200308468
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 10, 2003

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Texas Health and Human Services Commission

Public Notice Statement

The Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services TN 03-31, Amendment 666 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act, effective December 1, 2003.

This amendment revises the Reimbursement Methodology for Day Activity and Health Services to change the spending requirement for the Attendant Compensation Rate Enhancement. The proposed amendment is not expected to result in an increase in federal or state matching funds.

To obtain copies of the proposed amendment, interested parties may contact Winnie Rutledge, by mail at Health and Human Services Commission, 1100 W. 49th Street, Austin, Texas 78756-3199 or by telephone (512) 491-1320.

TRD-200308399
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: December 8, 2003

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Request for Proposals

The Health and Human Services Commission (HHSC) announces Request for Proposals (RFP) #529-04-265 for "Consulting Services for the Planning and Development of the Medicaid/CHIP Pharmacy Benefit Manager Procurement." This RFP is issued to invite potential contractors to submit proposals to assist HHSC in identifying the best method for developing the procurement documents to outsource some or all of its current Vendor Drug Program. The consultant will be responsible for developing the PBM Request for Proposals (RFP) and related evaluation materials for HHSC's review and approval. In addition, once HHSC receives Pharmacy Benefits Manager proposals, the consultant will prepare a cost benefit analysis documenting whether outsourcing the Vendor Drug Program is cost-effective for the State. If necessary, the consultant will assist in the development of the tools necessary to effectively manage the contracted Vendor Drug Program functions.

The contractor will be selected on the basis of demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fee for services.

The RFP will be posted on the Texas Marketplace and on HHSC's website on or before December 5, 2003. Interested parties may view the RFP on HHSC's website at: http://www.hhsc.state.tx.us, under the "Texas Medicaid Program" link.

The HHSC Project Manager and sole point of contact for the procurement is:

Tim Seelig, Procurement Manager, Phone: 512-491-1328, E-mail: tim.Seelig@hhsc.state.tx.us

Mailing Address: 11209 Metric Blvd., Building H, Austin, Texas 78758

To be considered, all proposals must be received at the foregoing address on or before 5:00 p.m., local time, on January 6, 2004. Proposals received after this time will not be considered.

The selected contractor will be expected to begin performance of the contract on or about February 2, 2004.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice, and the award of a contract is conditioned upon the receipt of a finding of fact from the Governor's Office. HHSC shall pay for no costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows:

(1) Issuance of RFP -- on or before December 5, 2003;

(2) Deadline for submitting questions concerning the RFP -- 5:00 p.m., December 15, 2003;

(3) Deadline for submitting proposals -- 5:00 p.m., January 6, 2004;

(4) Contract execution -- on or before February 2, 2004.

All questions concerning the RFP should be addressed to Tim Seelig.

TRD-200308260
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: December 3, 2003

♦ ♦ ♦

Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of Request for Proposals (RFP) #529-04-269 for consulting services to identify, recommend and develop policy options to improve health care coverage and services necessary to support increased employment of persons with disabilities in Texas.

The RFP will achieve the following goals:

Develop a report which summarizes relevant research and examines options for access to health care coverage and services for people with disabilities in Texas who are employed or are seeking employment; and

Create a proposal for a Medicaid Buy-In program for Texas, including eligibility and premium or other cost-sharing policies.

The RFP will be posted with the Texas Marketplace: http://www.marketplace.state.tx.us on or about December 9, 2003. On or after December 15, 2003, the full content of the RFP will be available on the HHSC website at: http://www.hhsc.state.tx.us/medicaid/rfp/52904269/rfp_home.html

The successful respondent will be expected to begin performance of the contract on or after February 20, 2004. Parties interested in submitting a proposal may contact Kim McPherson, Policy Analyst, Health and Human Services Commission, 4900 N. Lamar, Austin, Texas 78751, telephone number: (512) 424-6562, fax (512) 424-6665, email Kimberly.McPherson@hhsc.state.tx.us regarding the request. Ms. McPherson will be HHSC's sole point-of-contact for purposes of this procurement. All questions regarding the RFP must be sent in writing to the above referenced contact by 5:00 P.M. Central Time on January 9, 2004. HHSC will post all written questions received with HHSC's responses on its website on January 15, 2004, or as they become available.

To be considered, all proposals must be received at the foregoing address in the issuing office on or before 5:00 p.m. Central Time on January 30, 2004. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows:

Final RFP Release Date - December 15, 2003

Vendor Questions Due - January 9, 2004

Vendor Proposals Due - January 30, 2004

Anticipated Contract Award - February 11, 2004

Anticipated Contract Start Date - February 20, 2004

TRD-200308463
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Filed: December 10, 2003

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Announcement of Notice of Fund Availability for the Housing Trust Fund Rental Development

The Texas Department of Housing and Community Affairs, through its Housing Trust Fund (HTF), is pleased to announce the availability of Two Million Dollars ($2,000,000) to finance, acquire, rehabilitate, and develop safe, decent and affordable rental housing for low, very low, and extremely low income individuals and families; including persons with special needs.

The Housing Trust Funds available through this NOFA provide gap financing to eligible multifamily rental developments, in an effort to ensure that affordable housing providers obtain the funding necessary for the completion of their developments. Funds will be awarded consistent with the Department's Regional Allocation Formula as required by §2306.111 of the Government Code. Mixed income developments that include market rate units are encouraged, provided that for all developments at least 50% of the units are reserved for families or individuals at or below sixty percent (60%) of Area Median Family Income. Eligible Applicants include local units of government, public housing authorities, community housing development organizations, nonprofit organizations and for profit entities. TDHCA will reject applications violating §51.6(g) of the Housing Trust Fund Rules regarding site and development restrictions.

Applications must demonstrate leveraging of the HTF funds with other resources, including federal resources and private sector funds. The HTF loan will be no more than 5% of total development costs. Another federal, state or local funding source that also requires affordability must be utilized and total at least 5% of total development costs. Evidence of having applied for the funds will be required at the time the HTF application is submitted. Confirmation of the award of these funds will be required before a commitment is issued.

Applications must comply with the Housing Trust Fund Rules, 10 TAC Chapter 51; the Application Submission Procedures Manual; and the threshold criteria required under 10 TAC §50.9(f), which are those required for the Housing Tax Credit Program. Applications that satisfy the eligibility criteria of the rules and NOFA and that satisfy the Threshold Criteria will then be evaluated for material noncompliance, and scored and ranked according to the following selection criteria, as more fully described in Attachment A.

Targeting of Low-Income Individuals

Development Support/Opposition

Support and Consistency with Local Planning

Site Location Characteristics

Supportive Services

Involvement of Historically Underutilized Businesses (HUB)

Housing Needs Characteristics

In the event that two or more Applications receive the same number of points in any given Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the following factors in the order that they are presented, to determine which Development will receive a preference in consideration for an HTF award.

The number of rentable square feet per award amount requested.

The amount of leveraging from other sources per unit.

It is the goal of the Housing Trust Fund that as many development awards as possible be made as repayable loans in order that the fund be replenished for use by future applicants. Repayment terms will be determined on a case-by-case basis and may not exceed 30 years. A recommendation for the amount of the award, repayment terms, and/or the forgiveness of any portion of the loan will be determined by TDHCA staff. The length of affordability will be 30 years.

The available funding will be allocated to each Uniform State Service Region as required by the Department's Regional Allocation Formula. Because of the limited funds available, each region has not been further subdivided into rural and urban/exurban allocations; however, consistent with the overall statewide urban/exurban and rural allocation, the Department will strive to ensure that approximately 23% of the Housing Trust Funds awarded are made to developments located in rural areas. The funding available to each region is as follows:

Region	Reference City	Funding Available to Region	Overall Regional Funding Distribution
1	Lubbock	$ 85,302	4.3%
2	Abilene	$ 56,191	2.8%
3	Dallas/Fort Worth	$ 368,493	18.4%
4	Tyler	$ 97,464	4.9%
5	Beaumont	$ 78,199	3.9%
6	Houston	$ 489,947	24.5%
7	Austin/Round Rock	$ 101,941	5.1%
8	Waco	$ 109,114	5.5%
9	San Antonio	$ 137,554	6.9%
10	Corpus Christi	$ 86,544	4.3%
11	Brownsville/Harlingen	$ 236,533	11.8%
12	San Angelo	$ 56,066	2.8%
13	El Paso	$ 96,652	4.8%
	Total	$2,000,000	100.0%

Eligible applicants include local units of government, nonprofit organizations, for profit entities, public housing authorities (PHAs), and community housing development organizations (CHDOs). The amounts available for competition are as follows:

$ 790,000 Reserved for eligible nonprofit organizations

$ 1,210,000 Available to all eligible applicants

The Department's Board of Directors reserves the right to change the award amount, and to award more or less than the requested amount. All Housing Trust Fund dollars expended on a development that is canceled prior to completion must be repaid to the Department by the Borrower. Addional Housing Trust Fund dollars may not be used to benefit a completed development that has been previously assisted during its required Affordability Period. All developments financed through the Housing Trust Fund must adhere to the Department's Integrated Housing Rule and the Housing Trust Fund Property Standards.

All interested parties with a viable multifamily rental development are encouraged to participate in this program. A blank version of the application and reference materials will be available on the Multifamily Division's section of the Department's web site at www.tdhca.state.tx.us for the use of applicants on or after December 10, 2003. For additional information please call the Multifamily Finance Production Division Office at (512) 475-3340, check the Department's web site or e-mail your request to emily.price@tdhca.state.tx.us. Applicants should note §51.6 of the HTF Rule regarding restrictions on communication to ensure no violations of the rule occur. Please direct your applications to:

Texas Department of Housing and Community Affairs

Multifamily Finance Production Division

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

507 Sabine, Suite 400

Austin, Texas 78701

Applications must be submitted on or before 5:00 p.m., March 1, 2004.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

Attachment A

All Applications will be evaluated and ranking points will be assigned according to the following Selection Criteria:

Low Income Targeting. Low Income Targeting Points for Serving Residents at 40% and 50% of AMGI (up to 8 points). An Application may qualify for points under subparagraph (C) of this paragraph. To qualify for these points, the rents for the rent-restricted units must

not be higher than the allowable housing trust fund rents at the rent-restricted Area Median Gross Income (AMGI) level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside units at the rent-restricted levels of AMGI and will maintain the percentage of such units continuously over the compliance and extended use period as specified in the Land Use Restriction Agreement.

(A) No more than 40% of the total number of low income units (including units at 60% and 30% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50% and 40% AMGI categories. No more than 15% of the total number of low income targeted units will be counted as designated for tenants at 40% of the AMGI for purposes of determining the points in the 40% AMGI categories. For purposes of calculating "Total Low Income Targeted units" for this exhibit, units at 30% and 60% of AMGI are also included.

(B) In the table below no unit may be counted twice in determining point eligibility. Use normal rounding to the hundredth to calculate the percentages, points and "Total Points" for 40% and 50% units. In calculating the percentages, the denominator includes every low income unit in the Development, not just the 40% and 50% units. Normal rounding disregards all digits that are more than one decimal place past the digit rounded; therefore, the thousandths place must not be rounded prior to rounding to the hundredth, e.g. 35.0449% equals 35.04%, not 35.05%. To calculate "Rounded Total Points" disregard the hundredth place in "Total Points" and round normally, eg. 7.50 equals 8 and 7.49 equals 7. The final total points requested must be a whole number consistent with this rounding methodology.

(C) Developments should be scored based on the structure in the table below. Only Developments located in counties whose AMGI is below the statewide AMGI, may use Weight Factor B. All other Applicants are required to use Weight Factor A.

% of AMGI	# of Rent Restricted Units (a)	Percentage of Rent Restricted Units (a/b)		Weight A	OR	Weight B	Points
50%	(a) _____	_____	X	10		15	_____
40%	(a) _____	_____	X	20		30	_____
							_____
	_____					TOTAL POINTS=	_____
TOTAL LI TARGETED UNITS*	(b) _____					ROUNDED TOTAL POINTS =	_____

*Includes all Low Income Units

Development Support from Elected Officials. Points will be awarded based on the written statements of support or opposition from state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support or opposition of the specific Development at the proposed location. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official no later than May 31, 2004. Letters received after May 31, 2004 will be summarized for the Board in the board summary provided by staff, but will not affect the score of the Application. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Points can be awarded for letters of support or opposition as identified below, not to exceed a total of 9 points. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points.

from State of Texas Representative or Senator (support letters are 3 points each, maximum of 6 points; opposition letters are -3 points each, maximum of -6 points); and

from the Mayor, City Council member for the area, County Judge, County Commissioner for the area, or a resolution from the City Council or County Commission (support letters or resolutions are 3 points each, maximum of 3 points; opposition letters or resolutions are -3 points each, maximum of -3 points).

Support and Consistency with Local Planning. Evidence from the local municipal authority stating that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document; or a letter from the local municipal authority stating that there is no local plan and that the city supports the Development. All documents must no be older than 6 months from the first day of the Application Acceptance Period. (3 points)

Site Location Characteristics. Sites will be evaluated based on the proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria below.

Proximity of site to amenities. Developments located on sites within a one mile radius (two-mile radius for Developments competing in Rural Areas) of at least three services appropriate to the target population will receive five points. A site located within one-quarter mile of public transportation or located within a community that has "on demand" transportation, or specialized elderly transportation for elderly developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If an elderly development is providing its own specialized van service, then this will be a requirement of the LURA. Only one service of each type listed below will count towards the points. A map must be included identifying the development site and the location of the services, as well as written directions from the site to each service. The services must be identified

by name on the map and in the written directions. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted (5 points)

(i) Full service grocery store or supermarket

(ii) Pharmacy

(iii) Convenience Store/Mini-market

(iv) Department or Retail Merchandise Store

(v) Bank / Credit Union

(vi) Restaurant (including fast food)

(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries

(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools

(ix) Hospital/medical clinic

(x) Doctor's offices (medical, dentistry, optometry)

(xi) Public Schools (only eligible for Developments that are not elderly developments)

(xii) Senior Center (only eligible for elderly developments)

Negative Site Features. Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development site. The distances are to be measured from all boundaries of the Development site. Applicants must indicate on a map the location of any negative site feature. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-6 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of an active railroad tracks will have 1 point deducted from their score. Rural Developments funded through TX-USDA-RHS are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of an Interstate Highway including frontage and service roads will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(v) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(vi) Developments located adjacent to or within 100 feet of high voltage transmission power lines will have 1 point deducted from their score.

Development Provides Supportive Services to Tenants. Points may be received under both subparagraphs (A) and (B) of this paragraph.

(A) Applicants will receive points for coordinating their tenant services with those services provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

(B) The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this subparagraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

(I) Two points will be awarded for providing one of the services; or

(II) Four points will be awarded for providing two of the services; or

(III) Six points will be awarded for providing three of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs, youth programs; scholastic tutoring; social events and activities; senior meal program; home-delivered meal program; community gardens or computer facilities; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

Involvement of Historically Underutilized Businesses (HUB). Evidence that a HUB, as certified by the Texas Building and Procurement Commission, has an ownership interest in and materially participates in the development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period. Evidence will need to be supplemented, either at the time the Application is submitted or at the time a HUB certification renewal is received by the Applicant, confirming that the certification is valid through July 31, 2004 and renewable after that date. (3 Points)

Housing Needs Characteristics. Each Application, dependent on the city or county where the Development is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The Uniform Housing Needs Scoring Component scores for each city and county will be published in the Reference Manual. (20 points maximum)

TRD-200308465
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 10, 2003

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Multifamily Housing Revenue Bonds (Montgomery Pines Apartments) 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 Porter Elementary School, 22256 Ford Road, Porter, Texas 77365, at 6:00 p.m. on January 14, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate

principal amount not to exceed $12,300,000 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 Greens Parkway Partners LP, 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: 224-unit multifamily residential rental development to be located at 23461 US HWY 59, Porter, Montgomery County, Texas 77365. 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-200308453
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 9, 2003

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by PEACHTREE CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Longwood, Florida.

Application to change the name of CLARICA LIFE REINSURANCE COMPANY to GENERALI USA LIFE REASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Kansas City, Missouri.

Application to change the name of EQUITABLE OF COLORADO to AXA LIFE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Denver, Colorado.

Application to change the name of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES to AXA EQUITABLE LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in New York, New York.

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-200308467
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 10, 2003

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual filing submitted by Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, and Nationwide Property and Casualty Insurance Company proposing to use a rating manual different than that promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101, §3(l). The companies are proposing an Intra-Agency Transfer Discount, at the 8% level. This discount will apply to business being transferred to Nationwide, subject to the conditions of the companies' rating rule, when the applicant was a policyholder in a portfolio acquired by the Nationwide agent. The Intra-Agency Transfer Discount applies until the policy qualifies for the Renewal Discount, at which time the Renewal Discount will replace the Intra-Agency Transfer Discount. The Intra-Agency Transfer Discount affects only new business policies, and there is no premium effect resulting from the implementation of this rule.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

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 Senior Associate Commissioner for Property & Casualty, Mr. C.H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 by January 20, 2004.

TRD-200308486
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 10, 2003

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Notice of Filing

The following petition has been filed with the Texas Department of Insurance, and is under consideration:

The adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association (TAIPA), pursuant to Article 21.81.

The proposal is to amend the TAIPA Plan of Operation, Section 14.F.6. regarding compensation for certain members of the TAIPA Governing Committee. The current rule, approved in December, 1996, provides for reimbursement for reasonable expenses incurred and compensation in the amount of $150 for each day that a public or producer member of the Governing Committee participates in any meeting as authorized by the Governing Committee. The amended rule will increase the amount of compensation to $250 for each day that a public or producer member participates in an authorized meeting. This compensation amount is similar to the amounts provided to public and producer members in other states where compensation is provided.

This filing is subject to Department approval without a hearing. Any comments may be filed with the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice. An additional copy is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

For further information or to request a copy of the proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (reference number A-1103-22).

TRD-200308474
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 10, 2003

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Texas Lottery Commission

Instant Game No. 348 "Cash Bonanza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 348 is "CASH BONANZA". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 348 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 348.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000, $50,000, and MONEY BAG SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 348 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
MONEY BAG SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN

$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 348 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize- A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (348), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 348-0000001-000.

L. Pack - A pack of "CASH BONANZA" Instant Game tickets contains 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH BONANZA" Instant Game No. 348 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH BONANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If the player matches any of the play symbol YOUR NUMBERS to any of the designated key play symbol BONANZA NUMBERS the player will win the prize indicated. If the player reveals a designated play symbol MONEY BAG SYMBOL under any of YOUR NUMBERS the player will win the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate Your Numbers on non-winning tickets.

C. No duplicate Bonanza Number symbols on a ticket.

D. The autowin symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH BONANZA" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH BONANZA" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH BONANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH BONANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An instant ticket game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 348. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 348 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	752,559	6.82
$10	342,049	15.00
$15	136,777	37.51
$20	119,704	42.86
$50	68,406	75.00
$100	8,984	571.07
$500	462	11,104.87
$1,000	168	30,538.39
$5,000	11	466,404.55
$50,000	5	1,026,090.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 348 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 348, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308396

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 5, 2003

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Instant Game No. 387 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 387 is "BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 387 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 387.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $1,000, $3,000, $30,000, and STACK OF BILLS SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 387 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU
STACK OF BILLS SYMBOL	WIN$

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 387 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
SIX	$6.00
EGT	$8.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize- A prize of $1,000, $3,000, or $30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (387), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 387-0000001-000.

L. Pack - A pack of "BREAK THE BANK" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 are on the top page, tickets 002 and 003 are on the next page, and so forth, and tickets 248 and 249 on the last page. Please note the books will be in an A-B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 387 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any play symbol, YOUR NUMBERS, to any of the designated key symbol three (3) LUCKY NUMBERS, the player will win the prize indicated. If the player reveals a designated play symbol, stack of bills, the player will win the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate Lucky Numbers on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The auto win symbol will never appear more than once on a ticket.

F. No duplicate non-winning play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of $1,000, $3,000, or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An instant

ticket game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,160,000 tickets in the Instant Game No. 387. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 387 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	4,614,720	10.87
$4	2,959,440	16.95
$6	852,720	58.82
$8	200,640	250.00
$10	451,440	111.11
$12	501,600	100.00
$20	351,120	142.86
$50	186,010	269.66
$200	41,382	1,212.12
$1,000	1,045	48,000.00
$3,000	150	334,400.00
$30,000	24	2,090,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 387 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 387, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308451
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 9, 2003

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Instant Game No. 398 "$5,000 Money Match"

1.0 Name and Style of Game.

A. The name of Instant Game No. 398 is "$5,000 MONEY MATCH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 398 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 398.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $25.00, $50.00, $100, and $5,000.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 398 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$5,000	FIV THOU

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 398 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, or $10.00.

H. Mid-Tier Prize - A prize of $25.00, $30.00, $50.00, $100, or $500.

I. High-Tier Prize- A prize of $5,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (398), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 398-0000001-000.

L. Pack - A pack of "$5,000 MONEY MATCH" Instant Game tickets contains 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 on the next page; etc.; and tickets 245 to 249 will be on the last page. Ticket 000 will be folded over to expose the front of tickets 000 and 009 through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$5,000 MONEY MATCH" Instant Game No. 398 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$5,000 MONEY MATCH" Instant Game is determined once the latex on the ticket is scratched off to expose 7 (seven) play symbols. If the player matches any of the play symbol, YOUR AMOUNTS, to the designated play symbol, LUCKY AMOUNT, the player will win the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 7 (seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 7 (seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 7(seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 7 (seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No duplicate non-winning prize amounts.

2.3 Procedure for Claiming Prizes.

A. To claim a "$5,000 MONEY MATCH" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $25.00, $30.00, $50.00, $100, or $500 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "$5,000 MONEY MATCH" Instant Game prize of $5,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$5,000 MONEY MATCH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$5,000 MONEY MATCH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An instant ticket game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 398. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 398 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,814,400	8.33
$2	967,680	15.63
$4	241,920	62.50
$5	120,960	125.00
$10	90,720	166.67
$25	60,480	250.00
$30	5,040	3,000.00
$50	12,915	1,170.73
$100	2,205	6,857.14
$500	315	48,000.00
$5,000	30	504,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 398 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 398, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308452
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 9, 2003

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Instant Game No. 423 "Crown Jewels"

1.0 Name and Style of Game.

A. The name of Instant Game No. 423 is "CROWN JEWELS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 423 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 423.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $2,000, $70,000, and TREASURE CHEST SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 423 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$70,000	70 THOU
TREASURE CHEST SYMBOL	AUTO

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 423 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize- A prize of $2,000 or $70,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (423), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 423-0000001-000.

L. Pack - A pack of "CROWN JEWELS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CROWN JEWELS" Instant Game No. 423 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CROWN JEWELS" Instant Game is determined once the latex on the ticket is scratched off to expose 52 (fifty-two) play symbols. If the player matches any play symbol YOUR NUMBER to any of the designated key play symbol WINNING NUMBERS, the player will win the prize indicated. If the player reveals a designated play symbol treasure chest symbol, the player will win the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 52 (fifty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 52 (fifty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 52 (fifty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 52 (fifty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No 3 or more like non-winning prize symbols.

C. No duplicate non-winning Your Numbers play symbols.

D. No duplicate Winning Numbers play symbols.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The auto win symbol will be used on approximately 40% of winning tickets with the exception of the $2,000 straight win and $70,000 winners, where it will never be used.

H. The auto win symbol will only appear once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CROWN JEWELS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CROWN JEWELS" Instant Game prize of $2,000 or $70,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CROWN JEWELS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CROWN JEWELS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 423. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 423 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	873,600	5.77
$10	302,400	16.67
$15	134,400	37.50
$20	134,400	37.50
$50	67,200	75.00
$100	10,080	500.00
$500	420	12,000.00
$2,000	52	96,923.08
$70,000	5	1,008,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.31. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 423 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 423, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308397
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 5, 2003

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Instant Game No. 425 "Roses & Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 425 is "ROSES & RICHES". The play style is "match up with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 425 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 425.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: FLOWER SYMBOL, CANDY SYMBOL, GIFT SYMBOL, TEDDY BEAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, PERFUME SYMBOL, NECKLACE SYMBOL, DOLLAR SIGN SYMBOL, RING SYMBOL, CUPID SYMBOL, DIAMOND SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 425 - 1.2D

PLAY SYMBOL	CAPTION
FLOWER SYMBOL	FLOWER
CANDY SYMBOL	CANDY
GIFT SYMBOL	GIFT
TEDDY BEAR SYMBOL	TBEAR
MONEY BAG SYMBOL	MBAG
STACK OF BILLS SYMBOL	BILLS
PERFUME SYMBOL	PERFUME
NECKLACE SYMBOL	NKLACE
DOLLAR SIGN SYMBOL	MONEY
RING SYMBOL	RING
CUPID SYMBOL	CUPID
DIAMOND SYMBOL	DIAMD

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 425 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $80.00, $100, $200, or $500.

I. High-Tier Prize- A prize of $1,000 or $20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (425), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 425-0000001-000.

L. Pack - A pack of "ROSES & RICHES" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page, ticket 002 and 003 will be on the next page, and so on, and tickets 248 and 249 will be on the last page. Please note the books will be in an A-B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ROSES & RICHES" Instant Game No. 425 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "ROSES & RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. If the player reveals two (2) identical play symbols in the play area the winner will win the prize that corresponds to the legend for that play symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No three (3) or more like symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "ROSES & RICHES" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $20.00, $40.00, $80.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $80.00, $100, $200, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due.

In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ROSES & RICHES" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ROSES & RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "ROSES & RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 425. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 425 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	766,080	13.16
$3.00	645,120	15.63
$5.00	483,840	20.83
$10.00	141,120	71.43
$20.00	40,320	250.00
$40.00	40,320	250.00
$80.00	20,160	500.00
$100	6,216	1,621.62
$200	3,360	3,000.00
$500	420	24,000.00
$1,000	65	155,076.92
$20,000	10	1,008,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.69. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 425 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 425, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308398
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 5, 2003

♦ ♦ ♦

Public Comment Hearing

A hearing to receive public comment regarding proposed Commission rules 16 TAC §402.530, concerning registry of approved bingo workers; 16 TAC §402.531, concerning advisory opinions; 16 TAC §402.573, concerning gift certificates; and 16 TAC §402.590, concerning the examination of bingo related records during a general audit will be held at 9:00 a.m. on Friday, December 19, 2003 at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 6th Floor, Room 614, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission, at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200308268
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 3, 2003

♦ ♦ ♦

Manufactured Housing Division

Notice of Administrative Hearing

Tuesday, January 20, 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 and Boedeker Mobile Homes, Inc. dba Pacific Mobile Homes to hear alleged violations of Sections 6(m) (currently found at Section 1201.151 of the Occupations Code), 6(m)(1) (currently found at Section 1201.151(a) of the Occupations Code), 6(m)(3) (currently found at Section 1201.151(b) of the Occupations Code), 6(m)(3)(D) (currently found at Section 1201.151(b)(4) of the Occupations Code), and 20(a) (currently found at Section 1201.153 of the Occupations Code) of the Act and Sections 80.54(b) and 80.180(b) of the Rules by refusing to refund a deposit given by consumer within fifteen days after receiving written notice requesting the refund, by not delivering the Formaldehyde Health Notice to consumer, and by not delivering the Site Preparation Notice to consumer. SOAH 332-04-1380. Department MHD2004000066-RD.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200308459
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: December 10, 2003

♦ ♦ ♦

Texas Department of Public Safety

Notice of Public Hearing

The Texas Department of Public Safety, in accordance with Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, is holding a public hearing on December 30, 2003, at 5:30 p.m., in the Texas Department of Public Safety Motor Carrier Bureau (Building P) Conference Room, 6200 Guadalupe Street, Austin, Texas.

The purpose of this hearing is to receive comments from all interested persons regarding adoption of Administrative Rules §§4.1, 4.2, 4.11-4.20, 4.31-4.37, and 4.51-4.55 regarding Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles. The proposed rules were published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10095-10108).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Letters should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0500.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Major Rogers at (512) 424-2116, three working days prior to the hearing so that appropriate arrangements can be made.

TRD-200308294
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: December 4, 2003

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Public Utility Commission of Texas

Notice of Application for Relinquishment of a Certificate of Operating Authority

On December 4, 2003, Heritage Technologies, Ltd. filed an application with the Public Utility Commission of Texas (commission) to relinquish its certificate of operating authority (COA) granted in COA Certificate Number 50033. Applicant intends to relinquish its certificate.

The Application: Application of Heritage Technologies, Ltd. To Relinquish its Certificate of Operating Authority, Docket Number 29011.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 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 29011.

TRD-200308456
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2003

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

On December 3, 2003, Rabbit Communications filed an application with the Public Utility Commission of Texas (PUC) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60529. Applicant intends to relinquish its certificate.

The Application: Application of Rabbit Communications to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 29000.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 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 29000.

TRD-200308320
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2003

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

On December 5, 2003, Broadwing Local Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60402. Applicant intends to relinquish its certificate.

The Application: Application of Broadwing Local Services, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 29021.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 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 29021.

TRD-200308457
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 26, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of EveryCall Communications, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 28974 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas and Verizon Southwest.

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 December 29, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28974.

TRD-200308261
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 26, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Cinergy Communications Company for a Service Provider Certificate of Operating Authority, Docket Number 28977 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas and Verizon Southwest.

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 December 29, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28977.

TRD-200308262
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on December 4, 2003, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend Electric Utility Certificated Service Area Boundaries. Docket Number 29012.

The Application: The application encompasses an undeveloped area situated within the singly certificated area of American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a request to provide electric utility service to Brownsville Housing Authority's warehouse maintenance building. There are no electric distribution facilities within the proposed area. The estimated cost to BPUB to provide service to this proposed area is $25,802.42. If the application is approved, the area would be dually certificated to AEP and BPUB.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than December 29, 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 29012.

TRD-200308472
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2003

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Notice of Petition for Rulemaking to Permit the Disaggregation of State Universal Service Funding

The Public Utility Commission of Texas (commission) received a petition for rulemaking on December 3, 2003, from CenturyTel of San Marcos, Incorporated (CenturyTel) and Texas Telephone Association (TTA) (hereafter collectively referred to as Petitioners). Petitioners requested that the commission conduct a rulemaking to permit the disaggregation of State Universal Service Funding (SUSF). The petition is assigned Project Number 28998, *Petition of CenturyTel of San Marcos, Incorporated, and Texas Telephone Association for Rulemaking to Permit the Disaggregation of State Universal Service Funding*. Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall, not later than the 60th day after the date the petition is filed, either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding.

Petitioners propose amendments to §26.417 relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF). The proposed amendment would add a new subsection (i) to the existing §26.417. The amendment would allow a rural carrier to elect not to disaggregrate and continue receiving SUSF on an access-line-averaged basis, across its study areas, as received today. The amendment would also allow a rural carrier to either disaggregate its SUSF within zones within its study area based on a plan that has been approved by the commission, or to elect a self-certification process.

Comments on the petition may be filed no later than 3:00 p.m. on Friday, January 9, 2004. Copies of the petition may be obtained from the commission's Central Records Division, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas

78711-3326, or through the Interchange on the commission's web site at www.puc.state.tx.us under Project Number 28998.

Questions regarding this notice of petition should be directed to Mike Grable, Senior Attorney, Policy Development Division, at (512) 936-7234, or Roni Dempsey, Rules Coordinator, Policy Development Division, at (512) 936-7308. 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 inquiries and comments concerning this petition for rulemaking should refer to Project Number 28998.

TRD-200308429
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2003

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Notice of Request for Eligible Telecommunications Provider for Uncertificated Areas

Notice is given to the public of a request filed with the Public Utility Commission of Texas on November 5, 2003, for designation of an eligible telecommunications provider (ETP) for uncertificated areas pursuant to P.U.C. Substantive Rule §26.421.

Docket Title and Number: Request for ETP for Uncertificated Areas Pursuant to P.U.C. Substantive Rule 26.421. Docket Number 28766.

The Application: Ben or Jennifer Streetman request designation of an eligible telecommunications provider (ETP) for uncertificated areas.

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. 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 28766.

TRD-200308269
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 3, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and NetSpan Corporation doing business as Foremost Telecommunications, 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 2004) (PURA). The joint application has been designated Docket Number 29001. 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 29001. 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 January 5, 2004, 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 29001.

TRD-200308282
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 3, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and IQC, 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 2004) (PURA). The joint application has been designated Docket Number 29002. 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 29002. 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 January 5, 2004, 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 29002.

TRD-200308283
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 3, 2003, AT&T Wireless Services, Incorporated and GTE Southwest, Incorporated doing business as Verizon Southwest, 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 2004) (PURA). The joint application has been designated Docket Number 29007. 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 29007. 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 January 5, 2004, 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 29007.

TRD-200308285
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 4, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and IQC, 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 2004) (PURA). The joint application has been designated Docket Number 29014. 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 29014. 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 January 6, 2004, 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 29014.

TRD-200308321
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 4, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and BBC Telephone, 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 2004) (PURA). The joint application has been designated Docket Number 29016. 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 29016. 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 January 6, 2004, 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 29016.

TRD-200308322
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 4, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and BroadLink Telecom, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29017. 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 29017. 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 January 6, 2004, 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 29017.

TRD-200308323

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: December 5, 2003

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Public Notice of Interconnection Agreement

On December 2, 2003, United Telephone Company of Texas, Incorporated doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Budget Phone, Incorporated, 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 2004) (PURA). The joint application has been designated Docket Number 28991. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28991. 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 January 5, 2004, 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 28991.

TRD-200308263

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Public Notice of Interconnection Agreement

On December 2, 2003, Granite Telecommunications, LLC, and GTE Southwest, Incorporated doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) 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). The joint application has been designated Docket Number 28993. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28993. 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 January 5, 2004, 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 28993.

TRD-200308264

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Public Notice of Interconnection Agreement

On December 2, 2003, United Telephone Company of Texas, Incorporated doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and TCG Dallas and Teleport Communications Houston, Incorporated, collectively referred to as applicants, filed a joint application for approval of a negotiated and adopted interconnection agreement pursuant to the §252(e) 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). The joint application has been designated Docket Number 28994. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28994. 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 January 5, 2004, 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 28994.

TRD-200308265
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Public Notice of Interconnection Agreement

On December 2, 2003, United Telephone Company of Texas, Incorporated doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and AT&T Communications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of a negotiated and adopted interconnection agreement pursuant to the §252(e) 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). The joint application has been designated Docket Number 28995. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28995. 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 January 5, 2004, 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 28995.

TRD-200308266
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Public Notice of Interconnection Agreement

On December 2, 2003, United Telephone Company of Texas, Incorporated doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Quality Telephone, Incorporated, 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 2004) (PURA). The joint application has been designated Docket Number 28996. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28996. 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 January 5, 2004, 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 28996.

TRD-200308267
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2003

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Public Notice of Interconnection Agreement

On December 3, 2003, Capital 4 Outsourcing, Incorporated, and GTE Southwest, Incorporated doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) 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). The joint application has been designated Docket Number 29006. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29006. 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 January 5, 2004, 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 29006.

TRD-200308284
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2003

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Public Notice of Interconnection Agreement

On December 3, 2003, ACN Communication Services, Incorporated, and GTE Southwest, Incorporated doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) 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). The joint application has been designated Docket Number 29008. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29008. 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 January 5, 2004, 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 29008.

TRD-200308286
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2003

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Public Notice of Interconnection Agreement

On December 3, 2003, Mid-Tex Cellular, Limited, and GTE Southwest, Incorporated doing business as Verizon Southwest, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) 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). The joint application has been designated Docket Number 29009. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29009. 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 January 5, 2004, 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 29009.

TRD-200308287
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2003

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Stephen F. Austin State University

Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant Mark Lewis, Educator Preparation Program, 3900 University Boulevard, Tyler, Texas 75799. The original contract was in the sum of $10,260 plus expenses. The contract will be renewed beginning January 10, 2004 and continuing through September 30, 2007, with a total multiple year sum not to exceed $50,000, plus expenses.

The University's President finds that the consulting services are necessary in order to comply with requirements of the Texas Middle and Secondary Mathematics Project award by the National Science Foundation. The Project award contains requirements for external evaluation for planning assessment, evaluation of project effectiveness, annual reports, and a final report. The consultant must have a PhD in statistics or educational psychology, with extensive experience in assessment and evaluation of projects with goals to improve teacher preparation and student achievement in grades 4-12. The consultant must also possess knowledge of evaluation processes based on culture of evidence and partnership building.

The consultant will provide the University with a final report, in compliance with the project award. Services are provided on an as-needed basis.

For further information, please call Dr. Jasper Adams at (936) 468-3805.

TRD-200308298
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 5, 2003

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Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant Patrick Odell, 3200 Windsor, Waco, TX 76708. The original contract was in the sum of $6,156.00 plus expenses. The contract will be renewed beginning January 10, 2004 and continuing through September 30, 2007, with a total multiple year sum not to exceed $50,000, plus expenses.

The University's President finds that the consulting services are necessary in order to comply with requirements of the Texas Middle and Secondary Mathematics Project award by the National Science Foundation. The Project award contains requirements for external evaluation for planning assessment, evaluation of project effectiveness, annual reports, and a final report. The consultant must have a PhD in statistics or educational psychology, with extensive experience in assessment and evaluation of projects with goals to improve teacher preparation and

student achievement in grades 4-12. The consultant must also possess knowledge of evaluation processes based on culture of evidence and partnership building.

The consultant will provide the University with a final report, in compliance with the project award. Services are provided on an as-needed basis.

For further information, please call Dr. Jasper Adams at (936)468-3805.

TRD-200308299
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 5, 2003

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Texas Department of Transportation

Notice of Availability - Availability of Final Environmental Impact Statement

Pursuant to Title 43, Texas Administrative Code, §2.43(e)(5)(F), the Texas Department of Transportation (TxDOT) is advising the public of the availability of the approved Final Environmental Impact Statement (FEIS) for the construction of State Highway (SH) 45 Southeast, a new candidate toll road located southeast of Austin, Texas, in Travis County, Texas. The limits of proposed SH 45 Southeast would extend from Interstate Highway (IH) 35 on the west to the interchange of SH 130/US 183 on the east.

The proposed project is approximately 7 miles in length and involves the proposed construction of a six-lane controlled access roadway with directions of travel separated by a center median. The facility would accommodate future transportation needs within the proposed right-of-way. Interchanges or grade separations would be constructed at major thoroughfares and direct connector ramps would be provided to and from the east at IH 35 and in all directions at SH 130/US 183. Frontage roads would be constructed only where necessary.

The purpose of the proposed State Highway (SH) 45 Southeast is to enhance the local, regional, and national transportation systems by providing an efficient direct connection between IH 35 and SH 130/ US 183 while facilitating multimodal and intermodal connectivity; facilitating management of traffic congestion on IH 35, SH 71, and other roadways within the Austin metropolitan area; thus, improving safety, mobility and accessibility in and around the study area, and providing the transportation infrastructure necessary to support local public policies that encourage growth east of IH 35.

The social, economic, and environmental impacts of the proposed project have been analyzed in the FEIS. A total of ten route alternatives, in addition to the no-build alternative and alternative transportation modes, were evaluated in the FEIS for this project. The three primary route alternatives are referred to as Alternatives 4, 6, and 6M. Primary Route Alternative 4 was identified as the preferred alternative. The preferred alternative has fewer impacts to water resources, hazardous materials, and noise sensitive receivers. It has the least number of potential displacements and the lowest estimated capital cost.

Copies of the FEIS are available for review at the Buda Public Library, 303 North Main Street, Buda, Texas, 78610; the Texas Department of Transportation, 125 E. 11th Street, Austin, Texas, 78701-2483; and the Austin History Center, 810 Guadalupe, Austin, Texas, 78701. For further information, please contact Jon Geiselbrecht at (512) 225-1300.

Copies of the FEIS and other information about the project may also be obtained at the Central Texas Turnpike Project Office, located at 1421 Wells Branch Parkway, Suite 107, Pflugerville, Texas, 78660. Printed copies of the FEIS are available for $120.

Comments regarding the FEIS should be submitted to Mr. Geiselbrecht at the Central Texas Turnpike Project Office located at the above address. The deadline for the receipt of comments is 5:00 p.m., 30 days following the publication of the Notice of Availability in the *Texas Register*.

TRD-200308462
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 10, 2003

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Public Notice - Municipal Restriction on Use of State Highway

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601-25.603, the City of San Antonio has proposed an ordinance establishing lane use restrictions for certain trucks on a portion of US 90, IH 10, and US 87 within the city.

The proposed ordinance would apply to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also defined by Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed ordinance would prohibit those vehicles from using any traffic lane other than the two controlled access lanes on each side of the highway that are most immediately to the right of the left hand (or inner) controlled access lane on the following highways:

United States Highway 90 between the center line of Interstate Highway 410 West and the center line of Loop 353;

Interstate Highway 10 and United States Highway 90 between the center line of Loop 353 and the center line of Interstate Highway 35;

Interstate Highway 10, United States Highway 87 and United States Highway 90 between the center line of Interstate Highway 35 and the center line of United States Highway 87;

Interstate Highway 10 and United States Highway 90 between the centerline of United States Highway 87 and the centerline of Interstate Highway 410 East.

The proposed restriction would apply between the hours of 6:00 a.m. and 9:00 p.m., Monday through Friday, holidays observed by the closure of City of San Antonio offices excepted, and would allow the operation of such a truck in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.603(f), the Texas Department of Transportation will evaluate the impact of the proposed restriction and the proposed ordinance's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601-25.603. Interested persons are requested to submit comments concerning the proposed ordinance. Written comments may be submitted to Mr. Carlos Lopez, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of comments is 5:00 p.m. on January 20, 2004.

TRD-200308296
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 5, 2003

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Request for Proposal for Aviation Engineering Services

Request for Proposal for Aviation Engineering Services: The City of Graham through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division, will solicit and receive proposals for professional aviation engineering design services described.

Airport Sponsor: City of Graham, Graham Municipal Airport. TxDOT CSJ No.:0403GRAHM; Scope: Provide engineering design services to extend Runway 21; reconstruct Runway 3-21; construct intersection tapers; mark Runway 3-21; Rehabilitate and mark Runway 17-35; install new medium intensity runway lights; relocate precision approach path indicator-2 on Runway 21; replace regulator and vault; replace Runway 3 visual approach slope indicator with precision approach path indicator-2; replace rotating beacon and tower; install 8 runway exit, 7 hold, and 2 terminal signs; extend taxiway between Runway 17 and taxiway "B"; construct taxiway between auxiliary apron and taxiway "E"; rehabilitate existing taxiways; rehabilitate existing aprons; construct new culvert; regrade ditches; regrade runway safety area; install special markings on taxiway dogleg; install deer resistant fencing and provide an environmental assessment in accordance with current TxDOT and Federal Aviation Administration (FAA) guidance and obtain required permits.

The DBE goal is set at 13%. TxDOT Engineering Project Manager is Alan Schmidt, P.E. TxDOT Environmental Analysis Project Manager is Sandra Gaither.

To assist in your proposal preparation, the most recent airport layout plan, 5010 drawing, and project narrative are available online by selecting "Graham 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.

Five completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight January 14, 2004 (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 January 15, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. January 15, 2004 (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 Aviation Division staff members and a City of Graham representative. 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 Amy Deason, Grant Manager, or Alan Schmidt, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200308442
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 8, 2003

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University of Houston System

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System furnishes this notice of request for proposal. The University of Houston System seeks proposals from qualified consulting firms to provide advice and consultation to the Administration and Finance Committee and System Staff on matters related to assistance in the evaluation of the System's Treasury business processes with the goal of implementing best practices. This advice and consultation is authorized and supported by the UH System Chancellor/UH President as being of substantial need and necessary in performing the needed evaluation. Interested parties are invited to express their interest and describe their capabilities on or before January 30, 2004.

The term of the contract is to be for a one (1) year period beginning on or about April 5, 2004 and ending April 4, 2005, subject to one (1) year renewal option. Further technical information can be obtained from Raymond Bartlett at 713.743.8781. All proposals must be specific and must be responsive to the criteria set forth in this request.

GENERAL INSTRUCTIONS: Submit one (1) orginal and two (2) copies of your proposal in a sealed envelope to: Office of the Treasurer, University of Houston, Ezekial Cullen Building, Room 10F, Houston, Texas 77204-2009 before 3:00 P.M. January 30, 2004.

SCOPE OF WORK: The Consultant will (i) Perform an evaluation of the System's Treasury business processes with the goal of implementing "best practices" to reduce the cost of cash management and depository services, improve internal efficiency through the better utilization of treasury management services and technology, reduce manual and/or redundant internal processes, and improve control measures. Areas of specific focus should include, but are not necessarily limited to, general Treasury operations, cash management processes, bank relationship structure, account analysis fees, merchant credit card processing, and credit card fees, (ii) Develop a draft report of all current business processes in the Treasurer's Office with recommendations and timetables for improvements to such things as treasury operations and

cash management practices, bank relationship structure, account analysis fees (including an estimate of the fee savings to be realized), and the credit card merchant processing program. The recommendations should focus on improving efficiency, utilizing additional technology, and control measures based on "best practices". The report shall include a section that provides recommendations with timetables for a series of iterative steps that could be implemented by the System over time that would lead to the use of "best practices" in the event resource limitations preclude the System from changing its business processes to "best practices" processes immediately, (iii) Review the draft report of findings, recommendations, and time lines with System staff, and (iv) Submit a final report of findings, recommendations, and time lines after discussion with System staff. TERMINATION: This Request for Proposal (RFP) in no manner obligates the University of Houston System to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston System and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston System reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200308461
Dona G. Hamilton
VC/VP for Legal Affairs and General Counsel
University of Houston System
Filed: December 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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