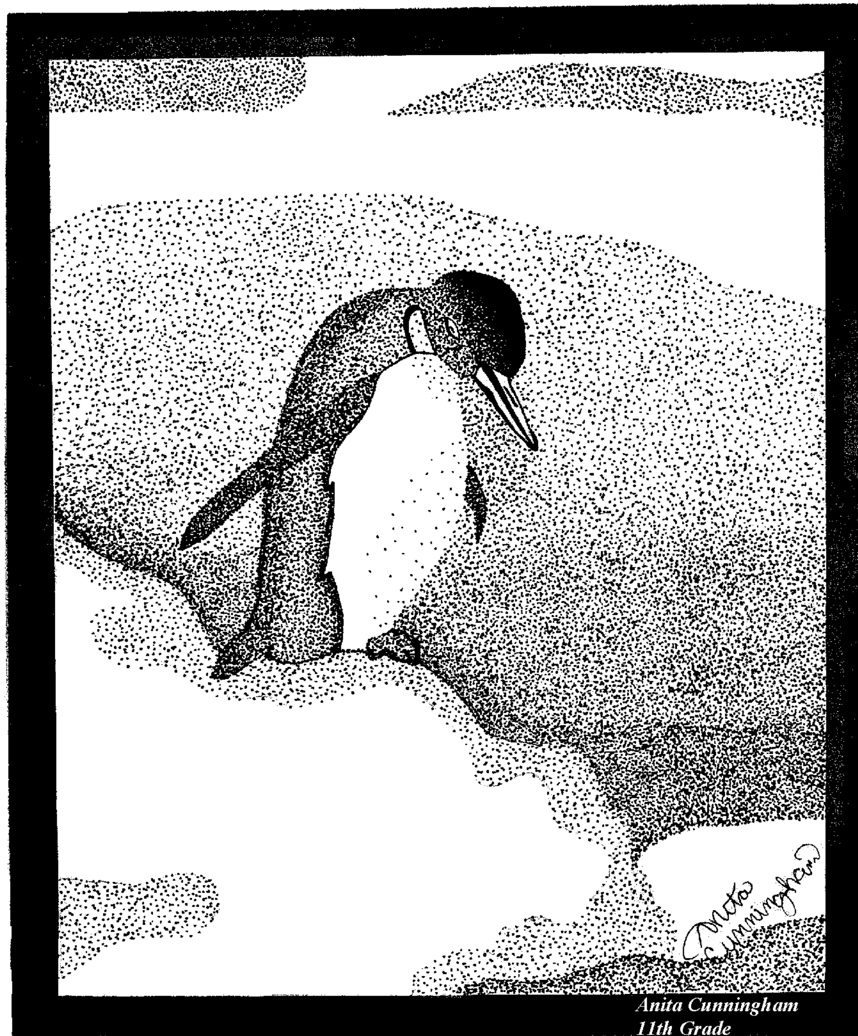
Texas Register

Volume 29 Number 6 February 6, 2004 Pages 1097-1268



Anita Cunningham
11th Grade

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

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

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

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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Open Meetings

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

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

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

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

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

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 January 16, 2004

Appointed to the Office of Patient Protection Executive Committee, pursuant to HB 2985, 78th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Eddie J. Miles of San Antonio.

Appointed to the Office of Patient Protection Executive Committee, pursuant to HB 2985, 78th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Judith Day Powell of The Woodlands.

Appointed to the Office of Patient Protection Executive Committee, pursuant to HB 2985, 78th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Harry M. Whittington of Austin.

Appointments for January 20, 2004

Appointed to the Texas Water Development Board for a term to expire December 31, 2009, Jack Hunt of Houston (Mr. Hunt is being reappointed).

Appointed to the Texas Water Development Board for a term to expire December 31, 2009, James Edward Herring of Amarillo (replacing Wales Madden of Amarillo whose term expired).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2009, Roberto I. Lopez of Pasadena (replacing William Miller of Lubbock whose term expired).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2009, Bob Ed Culver, Jr. of Canadian (replacing Michael Cantrell of Garland whose term expired).

Appointed to the Joint Interim Study Committee on Nutrition and Health in Public Schools, pursuant to SB 474, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, William John Klish, M.D. of Houston.

Appointed to the Joint Interim Study Committee on Nutrition and Health in Public Schools, pursuant to SB 474, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Nancy M. DiMarco of Denton.

Appointed to the Joint Interim Study Committee on Nutrition and Health in Public Schools, pursuant to SB 474, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Dora Rivas of San Benito.

Appointed to the Joint Interim Study Committee on Nutrition and Health in Public Schools, pursuant to SB 474, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Melissa Ann Wilson, M.D. of Corpus Christi.

Appointed to the Joint Interim Study Committee on Nutrition and Health in Public Schools, pursuant to SB 474, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Adrian B. Johnson, Ed.D. of Texas City.

Appointed to the Joint Interim Study Committee on Nutrition and Health in Public Schools, pursuant to SB 474, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Michael J. Sullivan of Abilene.

Rick Perry, Governor

TRD-200400477

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.

Opinion

Opinion No. GA-0138

The Honorable Tracey Bright

Ector County Attorney

Ector County Courthouse

Room 201

Odessa, Texas 79761

Re: Whether individual county commissioners are entitled to access medical insurance coverage information regarding a former commissioner and his wife (RQ-0077-GA)

SUMMARY

An individual county commissioner is entitled to access employee insurance records as necessary to effectively perform the commissioner's official duties as a member of the court, subject to privacy constraints imposed by state or federal law. The Medical Practice Act ("MPA") makes confidential patient-physician communications and records, and limits their disclosure and subsequent redisclosure. Under the MPA, any redisclosure of confidential information must be consistent with the authorized purposes for which the information was first obtained. Whether the Privacy Rule under the Federal Health Insurance Portability and Accountability Act of 1996 permits disclosure of medical insurance coverage information regarding a former commissioner and his wife cannot be answered without a full investigation and resolution of fact questions, which is beyond the scope of the opinion process. The exception in the Public Information Act relating to criminal investigations does not preclude county commissioners from accessing county records that they are otherwise entitled to review.

For further information, please access the web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200400530
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 28, 2004

Opinions

Opinion No. GA-0133

The Honorable Leticia Van de Putte, R.Ph.

Chair, Veteran Affairs and Military Installations

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether a certain promotional campaign violates chapter 40 of the Business and Commerce Code, the Contest and Gift Giveaway Act (RQ-0080-GA)

SUMMARY

A car key does not constitute a "winning number" under chapter 40 of the Business and Commerce Code, the Contest and Gift Giveaway Act. *See* TEX. BUS. & COM. CODE ANN. §40.003(a)(14) (Vernon 2002). For this reason, a promotional campaign pursuant to which a used car sales business distributes keys and offers to award a car as a prize to the person whose key starts the car does not constitute a "matched contest" under the Act. *See id.* §40.003(a)(7). If any of the promotional materials mailed by the business (including the written materials, the sealed envelope containing the key, or written information on the key) identifies the recipient by name or by number, letter, or symbol, then the item may constitute an "entry form" under the Act. *See id.* §40.003(a)(4). The determination whether a particular promotional campaign involves sales presentations or constitutes a contest within the meaning of the Act would require factual inquiry beyond the purview of an attorney general opinion.

Opinion No. GA-0134

The Honorable Ben W. "Bud" Childers

Fort Bend County Attorney

301 Jackson Street, Suite 728

Richmond, Texas 77469-3108

Re: Whether a tax abatement agreement entered into under the Property Redevelopment and Tax Abatement Act, chapter 312, Tax Code, may be amended retroactively (RQ-0081-GA)

SUMMARY

Section 312.208 of the Tax Code, permitting amendment of tax abatement agreements, does not modify the rule established by §11.42(a) of the Tax Code that a "person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year."

TEX. TAX CODE ANN. §11.42(a) (Vernon Supp. 2004). In addition, a retroactive amendment of a tax abatement agreement that extinguishes an existing tax liability violates article III, section 55 of the Texas Constitution.

Opinion No. GA-0135

The Honorable David K. Walker

Montgomery County Attorney

210 West Davis, Suite 400

Conroe, Texas 77301

Re: Whether a bail bond licensee may operate under one or more assumed names, and whether a bail bond board may regulate the number of names under which a licensee operates (RQ-0075-GA)

SUMMARY

In a county with a bail bond board, an individual who acts as a bail bond surety or an individual who acts as an agent for a corporate surety may operate under an assumed name, but may not use more than one assumed name. A corporate surety, like an individual bail bond surety, may not use more than one assumed name, but the corporation may operate through various individual agents, each of whom uses a distinct assumed name. Attorney General Letter Opinion 98-068 is overruled to the extent it conflicts with this opinion.

Opinion No. GA-0136

The Honorable Ray Montgomery

Leon County District Attorney

Post Office Drawer 1010

Centerville, Texas 75833

Re: Whether a company in which the Leon County Judge has a substantial interest may sell fuel and oil products to the county (RQ-0084-GA)

SUMMARY

A business entity in which the Leon County Judge owns a substantial interest may sell fuel or oil products to the County only if, in accordance with §171.004 of the Local Government Code, the judge has filed an affidavit "stating the nature and extent of" his interest in the company and abstains from participating in a deliberation or vote on any matter that will "have a special economic effect [on the company,] . . . distinguishable from its effect on the public." TEX. LOC. GOV'T CODE ANN. §171.004(a)(1) (Vernon 1999).

Opinion No. GA-0137

The Honorable Florence Shapiro

Chair, Education Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether House Bill 3534 invalidates or prohibits sales tax rebate contracts between a municipality and certain businesses (RQ-0085-GA)

SUMMARY

House Bill 3534, which amended §321.002(a)(3) and §321.203 of the Tax Code, prevents certain outlets, offices, facilities, or locations from qualifying as a "place of business of the retailer" for municipal sales tax purposes. House Bill 3534 does not invalidate existing municipal sales tax rebate contracts nor prohibit municipalities and businesses from executing new contracts.

For further information, please access the web site at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200400427
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 21, 2004

Request for Opinions

RQ-0161-GA

Requestor:

The Honorable Robert E. Talton

Chair, Committee on Urban Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78769-2910

Re: Validity of the Qualified Allocation Plan of the Texas Department of Housing and Community Affairs in light of amendments to Chapter 2306 of the Texas Government Code (Request No. 0161-GA)

Briefs requested by February 23, 2004

RQ-0162-GA

Requestor:

The Honorable Richard J. Miller

Bell County Attorney

P.O. Box 1127

Belton, Texas 76513

Re: Whether a statement to a reporter that a county official intends to run for another public office constitutes an "announcement" for purposes of Article XVI, Section 65 of the Texas Constitution (Request No. 0162-GA)

Briefs requested by February 26, 2004

RQ-0163-GA

Requestor:

D.C. Jim Dozier, J.D., Ph.D.

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

6330 U.S. Highway 290 East, Suite 200

Austin, Texas 78723

Re: Whether a peace officer may simultaneously hold a commission from more than one law enforcement agency (Request No. 0163-GA)

Briefs requested by February 26, 2004

RQ-0164-GA

Requestor:

The Honorable Robert E. Talton

Chair, Committee on Urban Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78769-2910

Re: Whether a peace officer may order the removal of a disabled vehicle to a location other than a vehicle storage facility (Request No. 0164-GA)

Briefs requested by February 26, 2004

For further information, please access the web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200400520
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 28, 2004

TEXAS ETHICS COMMISSION

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

Advisory Opinion

EAO-452. The Texas Ethics Commission has been asked the following questions:

(1) A complying candidate's supporter hosts a campaign fundraising reception for the candidate. The supporter pays for all costs associated with the event itself, including refreshments and facility rental expense.

(A) Are those expenses "in-kind" contributions to the candidate?

(B) If so, do those expenses count toward the candidate's aggregate expenditure limits under §253.168?

(2) A complying candidate orders campaign bumper stickers from a printer. The printer completes the job and sends an invoice to the candidate. The candidate asks a supporter to pay the invoice for him, which the supporter does.

(A) Is the supporter's payment of the invoice an "in-kind" contribution?

(B) If so, does the amount of the payment count toward the candidate's aggregate expenditure limits under §253.168? (AOR-506)

SUMMARY

The in-kind contributions to a judicial candidate that are described in this opinion would count toward the judicial candidate's expenditure limits under §253.168 of the Election Code.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

(1) Chapter 572, Government Code;

(2) Chapter 302, Government Code;

(3) Chapter 303, Government Code;

(4) Chapter 305, Government Code;

(5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

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

TRD-200400450
Sarah Woelk
General Counsel
Texas Ethics Commission
Filed: January 22, 2004

EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The General Land Office is renewing the effectiveness of the emergency adoption of the amended §3.31, for a 60-day period. The text of amended section was published in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10361).

Filed with the Office of the Secretary of State, on January 21, 2004.

TRD-200400431
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: February 13, 2004
Expiration date: April 11, 2004
For further information, please call: (512) 305-9129

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 B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §111.14

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

The Texas Building and Procurement Commission proposes the repeal of 1 TAC, Chapter 111, Subchapter B, §111.14, concerning subcontracting for Historically Underutilized Business Program (HUB). The section outlines the steps to be followed in determining whether subcontracting opportunities are probable under a contract, the good faith required in developing a HUB subcontracting plan, submission and review during contract performance, and contract compliance.

The repeal is necessary because this section is being replaced with a new §111.14 approved by the commissioners and published contemporaneously in this issue of the *Texas Register*. Repealing the rule allows for a new rule which will function more effectively because it more correctly reflects the statutes, will meet the objectives of the program, and addresses concerns raised by interested parties.

Cindy Reed, Deputy Executive Director, has determined for the first five year period the repeal is in effect, there will be no fiscal implication for the state or local governments as a result of the repeal of the rule.

Ms. Reed has also determined that for each year of the first five year period the repeal is in effect, the public benefit anticipated as a result of repealing the rule will be negligible. There will be no effect on large, small or micro-businesses. There is no anticipated economic cost to persons as a result of the repeal and there is no impact on local employment.

Comments on the proposal may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to travis.langdon@tbpc.state.tx.us. Comments must be received no later than 15 days from the date of publication of the proposal in the *Texas Register.*

The repeal of §111.14 is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§152.003, 2161.002, and 2161.253.

The following statute is affected by the repeal: Texas Government Code, Chapters 2161.

§111.14. Subcontracts.

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 January 22, 2004.

TRD-200400440
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-4257

1 TAC §111.14

The Texas Building and Procurement Commission proposes new rules to Title 1, Texas Administrative Code, Chapter 111, Subchapter B, §111.14 concerning subcontracting for Historically Underutilized Business (HUB). The new rules will revise the current (HUB) program rules to bring the rules into alignment with statutory requirements, meet the objectives of the program without creating costly administrative requirements for the vendors and agencies which must comply with the rules, and address concerns raised by interested parties.

Ms. Cindy Reed, Deputy Executive Director, has determined for the first five year period the new rules are in effect there will be a decrease in the administrative costs required to respond to state contracting opportunities, as well as award state contracts when the expected value is $100,000 or more and the contracting agency has determined that subcontracting opportunities are probable.

Ms. Reed further determines that for each year of the first five year period the new rules are in effect, the public benefit anticipated as a result of enforcing the rules is compliance with the current statutory requirements of Texas Government Code, Chapter 2161, as they apply to HUB. Respondents to state contracting opportunities will experience moderate decreases in administrative costs with regard to responding to state contracting opportunities where the expected contract value is $100,000.00 or more and the contracting agency has determined that subcontracting opportunities are probable. There will be no adverse impact on large, small or micro-businesses. Ms. Reed has also

determined that for each year of the first five year period after the new rules are in effect, there will be no effect on employment.

Comments on the proposals may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be sent via email to travis.langdon@tbpc.state.tx.us. All comments must be received no later than thirty (30) days from the date of publication of the proposal to the *Texas Register*.

The new rules in §111.14 are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003, 2161.002, and 2161.253.

The following codes are affected by these rules: Texas Government Code, Chapters 2161.

§111.14. Subcontracting.

(a) General Provisions

(1) In accordance with Texas Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

(A) State agencies shall use the following steps to determine if subcontracting opportunities are probable under the contract:

(i) Use the HUB participation goals in §111.13 of this title (relating to Annual Procurement Utilization Goals); and

(ii) Research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories, identified by the commission, for HUBs that may be available to perform the contract work.

(B) In addition determination of subcontracting opportunities may include, but is not limited to, the following:

(i) contacting other state and local agencies and institutions of higher education to obtain information regarding similar contracting and subcontracting opportunities; and

(ii) reviewing the history of similar agency purchasing transactions.

(2) If subcontracting opportunities are probable, each agency's invitation for bids, requests for proposals or other purchase solicitation documents for construction, professional services, other services, and commodities with an expected value of $100,000 or more shall state that probability and require a HUB subcontracting plan.

(A) The HUB subcontracting plan shall be submitted at the same time as the response (bid, proposal, offer, or other applicable expression of interest), except for construction contracts involving alternative delivery methods. For construction contracts involving alternative delivery methods, the HUB subcontracting plan may be submitted up to 24 hours following the date/time that responses are due provided that responses are not opened until the HUB subcontracting plan is received.

(B) Responses that do not include a completed HUB subcontracting plan in accordance with paragraph (3) of this section, shall be rejected due to material failure to comply with advertised specifications in accordance with §113.6 (a) of this title (relating to Bid Evaluation and Award).

(3) A state agency shall require a respondent to state whether it is a certified HUB. A state agency shall also require a respondent to state overall subcontracting and overall certified HUB subcontracting to be provided in the contract. Respondents shall follow procedures in subsection (a)(3)(A)(i), (a)(3)(A)(ii), and (a)(3)(A)(iii) of this section when developing the HUB subcontracting plan.

(A) The HUB subcontracting plan shall consist of completed forms prescribed by the Texas Building and Procurement Commission and shall include the following:

(i) certification that respondent has made a good faith effort to meet the requirements of this section,

(ii) identification of the subcontractors that will be used during the course of the contract,

(iii) the expected percentage of work to be subcontracted

(iv) and the approximate dollar value of that percentage of work. The plan shall include goals established pursuant to §111.13 of this title (relating to Annual Procurement Utilization Goals).

(B) The successful respondent shall provide all additional documentation required by the agency to demonstrate compliance with good faith effort requirements prior to contract award. If the successful respondent is unable to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) within the timeframe specified by the agency to demonstrate compliance with this subsection prior to contract award, that respondent's bid/proposal shall be rejected for material failure to comply with advertised specifications.

(b) Construction Contracts

(1) Evidence of good faith effort in developing a HUB subcontracting plan for construction contracts, including heavy construction, building construction, and special trade construction includes, but is not limited to, the following procedures:

(A) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(B) Provide written justification of the selection process if a non HUB subcontractor is selected.

(C) Provide notice to minority or women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers no less than five (5) working days for construction contracts prior to submission of the response (bid, proposal, offer, or other applicable expression of interest).

(D) Notify HUBs of the subcontracting opportunities that the respondent intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors prior to submission of the respondent's response.

(2) The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than five (5) working days for construction contracts, including heavy construction, building construction, and special trade construction, from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file.

(3) The respondent shall use the commission's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the commission or agency when searching for HUB subcontractors. Respondents may rely on the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

(4) The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. If more than three subcontracting opportunities are identified the respondent shall contact a total minimum of nine (9) HUBs. The respondent must document the HUBs contacted on the forms prescribed by the Texas Building and Procurement Commission.

(c) Professional Services Contracts

(1) Evidence of good faith effort in developing a HUB subcontracting plan for professional services contracts is established if the prime contractor meets the following conditions and procedures:

(A) A HUB subcontracting plan for a professional services contract which meets or exceeds HUB participation goals in §111.13 of this title (relating to Annual Procurement Utilization Goals), constitutes good faith effort under this section, or

(B) Develop a HUB Subcontracting Plan under the following procedures:

(i) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(ii) Notify HUBs of the subcontracting opportunities that the respondent intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the scope of the work, required qualifications, and identify a contact person. The notice shall be provided to potential HUB subcontractors prior to submission of the respondent's response.

(2) The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than five (5) working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file.

(3) The respondent shall use the commission's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the commission or agency when searching for HUB subcontractors. Respondents may rely on the services of minority, women, and community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

(4) The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. If more than three subcontracting opportunities are identified the respondent shall contact a total minimum of nine (9) HUBs. The respondent must document the HUBs contacted on the forms provided by the Texas Building and Procurement Commission.

(A) Provide written justification of the selection process if a non HUB subcontractor is selected.

(B) Provide notice to minority or women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of the work, required qualifications, and identify a contact person. Respondent must provide notice to organizations or development centers no less than five (5) working days prior to submission of response (bid, proposal, offer, or other applicable expression of interest).

(d) Commodities and Other Services Contracts

(1) Evidence of good faith effort in developing a HUB subcontracting plan for commodities and other services contracts includes, but is not limited to, the following procedures:

(A) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(B) Notify HUBs of the subcontracting opportunities that the respondent intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the scope of the work, specifications, and identify a contact person. The notice shall be provided to potential HUB subcontractors prior to submission of the respondent's response.

(i) The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than five working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file.

(ii) The respondent shall use the commission's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the commission or agency when searching for HUB subcontractors. Respondents rely on the services of minority, women, and community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

(iii) The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. If more than three subcontracting opportunities are identified the respondent shall contact a total minimum of nine (9) HUBs. The respondent must document the HUBs contacted on the forms provided by the Texas Building and Procurement Commission.

(C) Provide written justification of the selection process if a non HUB subcontractor is selected.

(D) Provide notice to minority or women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of the work, specifications, and identify a contact person. Respondent must provide notice to organizations or development centers no less than five (5) working days for construction contracts prior to submission of the response (bid, proposal, offer, or other applicable expression of interest).

(2) In making a determination if a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to each criterion listed in subsection (a)(3)(A)(i), (a)(3)(A)(ii), and (a)(3)(A)(iii). The documentation shall include at least the following:

(A) how the respondent divided the contract work into reasonable lots or portions consistent with prudent industry practices;

(B) how the respondent's notices contain adequate information about bonding, insurance, the availability of plans, the specifications, scope of work, required qualifications and other requirements of the contract to three or more certified HUBs per each identified subcontracting opportunity or a minimum of nine HUBs for contracts with more than three (3) identified subcontracting opportunities per contract allowing reasonable time for HUBs to participate effectively;

(C) how the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;

(D) how the respondent provided notice to minority or women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants;

(E) for contracts subject to (c)(1)(A), how the respondent plans to subcontract with certified HUBs in an effort to meet or exceed HUB participation goals in §111.13 of this title (relating to Annual Procurement Utilization Goals) for each identified subcontracting opportunity.

(3) A respondent's participation in a Mentor Protégé Program under the Texas Government Code §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé. When submitted, state agencies may accept a Mentor Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé). The agency shall consider the following in determining the respondent's good faith effort:

(A) if the respondent has entered into a fully executed Mentor Protégé Agreement that has been registered with the commission prior to submitting the plan, and

(B) if the respondent's HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protégé.

(4) If the respondent is able to fulfill any of the potential subcontracting opportunities identified with its own equipment, supplies, materials and/or employees, respondent must sign an affidavit and provide a statement explaining how the respondent intends to fulfill each subcontracting opportunity. The respondent must agree to provide the following if requested by the agency:

(A) evidence of existing staffing to meet contract objectives,

(B) monthly payroll records showing company staff fully engaged in the contract, and

(C) on site reviews of company headquarters or work site where services are to be performed.

(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

(5) The HUB subcontracting plan shall be reviewed and evaluated prior to contract award and, if accepted, shall become a provision of the agency's contract. Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. State agencies shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with this section. If the agency determines that a submitted HUB subcontracting plan was not developed in good faith, the agency shall treat the lack of good faith as a material failure to comply with advertised specifications, and the subject response (bid, proposal, offer, or other applicable expression of interest) shall be rejected. The reasons for rejection shall be recorded in the procurement file.

(6) If the respondent is selected and decides to subcontract any part of the contract after the award, as a provision of the contract, the contractor/vendor must comply with provisions of this section relating to developing and submitting a subcontracting plan before any modifications or performance in the awarded contract involving subcontracting can be authorized by the state agency. If the selected contractor/vendor subcontracts any of the work without prior authorization and without complying with this section, the contractor/vendor would be deemed to have breached the contract and be subject to any remedial actions provided by Texas Government Code, Chapter 2161, state law and this section. Agencies may report nonperformance relative to its contracts to the commission in accordance with Chapter 113, Subchapter F of this title (relating to the Vendor Performance and Debarment Program).

(7) If at any time during the term of the contract, a contractor/vendor desires to make changes to the approved subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The contractor/vendor must comply with provisions of subsection (a), paragraph 3, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file.

(8) If a state agency expands the original scope of work through a change order or contract amendment, including a contract renewal that expands the scope of work, the state agency shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If the agency determines additional probable subcontracting opportunities exist, the agency will require the contractor/vendor to submit a HUB subcontracting plan/revised HUB subcontracting plan for the additional probable subcontracting opportunities.

(9) The HUB subcontracting plan/revised HUB subcontracting plan shall comply with the provisions of this section relating to development and submission of a subcontracting plan before any modifications or performance in the awarded contract involving the additional scope of work can be authorized by the agency. If the contractor/vendor subcontracts any of the additional subcontracting opportunities identified by the agency without prior authorization and

without complying with this section, the contractor/vendor would be deemed to have breached the contract and be subject to any remedial actions provided by Texas Government Code, Chapter 2161, state law and this section. Agencies may report nonperformance relative to its contracts to the commission in accordance with Chapter 113, Subchapter F of this title (relating to the Vendor Performance and Debarment Program.)

(10) The contractor/vendor shall maintain business records documenting its compliance with the HUB subcontracting plan and shall submit a compliance report to the contracting agency monthly and in the format required by the Texas Building and Procurement Commission. The compliance report submission shall be required as a condition for payment.

(11) During the term of the contract, the state agency shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, state agencies shall audit and require a contractor/vendor to whom a contract has been awarded to report to the agency the identity and the amount paid to its subcontractors in accordance with §111.16(c) of this title (relating to State Agency Reporting Requirements). If the contractor/vendor is meeting or exceeding the provisions, the state agency shall maintain documentation of the contractor's/vendor's efforts in the contract file. If the contractor/vendor fails to meet the HUB subcontracting provisions specified in the contract, the state agency shall notify the contractor of any deficiencies. The state agency shall give the contractor/vendor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the contractor/vendor.

(12) To determine if the contractor/vendor made the required good faith effort, the agency may not consider the success or failure of the contractor/vendor to subcontract with HUBs in any specific quantity. The agency's determination is restricted to considering factors indicating good faith effort including, but not limited to, the following:

(A) whether the contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the contractor facilitated access to the work site, electrical power, and other necessary utilities; and

(C) whether documentation or information was provided that included potential changes in the scope of contract work.

(13) If a determination is made that the contractor/vendor failed to implement the HUB subcontracting plan in good faith, the agency, in addition to any other remedies, may report nonperformance to the commission in accordance with Chapter 113, Subchapter F of this title (relating to Vendor Performance and Debarment Program). In addition, if the contractor/vendor failed to implement the subcontracting plan in good faith, the agency may revoke the contract for breach of contract and make a claim against the contractor/vendor.

(14) State agencies shall review their procurement procedures to ensure compliance with this section. In accordance with §111.26 of this title (relating to HUB coordinator responsibilities) the agency's HUB coordinator and contract administrators should facilitate institutional compliance with 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 January 22, 2004.

TRD-200400443
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Proposed date of adoption: March 17, 2004
For further information, please call: (512) 463-4257

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 32. DISEASE MANAGEMENT

1 TAC §354.1415

The Texas Health and Human Services Commission (HHSC) proposes to amend Chapter 354, Medicaid Health Services by adding a new division to the existing subchapters. HHSC adds Division 32, Disease Management §354.1415, concerning Conditions for Participation. Chapter 354 describes the benefits and provider requirements of the Texas medical assistance (Medicaid) program. The new division added at §354.1415, Conditions for Participation, outlines the requirements for entities that wish to contract with HHSC to provide disease management services to recipients of Medicaid. The proposed section is required to satisfy the requirements of House Bill 727, 78th Legislature, regular session (2003), which mandates that HHSC, by rule, shall prescribe the minimum requirements that a provider of a disease management program must meet to be eligible to receive a contract.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the new rule as proposed as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Dena Stoner, Associate Medicaid and CHIP director for Program Innovation, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be the establishment of minimum program requirements for providers of disease management services, and to ensure Medicaid recipients obtain consistent, quality health service interventions.

HHSC has determined that the proposed rule is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

HHSC has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Written comments on the proposal may be submitted to Geri Willems, Program Analyst, at P.O. Box 13247 Mail Code H-100, Austin, Texas 78711-3247, by fax to 512-424-6665, or by e-mail to geri.willems@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*. A public hearing is scheduled for February 17, 2004 from 9:00 a.m. to 11:00 a.m. (central time) in the Public Hearing Room of the Brown Heatly State Office Building, 4900 North Lamar, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Linda Williams at (512) 424-6646.

The new rule is proposed 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 provides the Health and Human Services Commission (HHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed new rule.

§354.1415. Conditions for Participation.

In addition to the general requirements for contractors listed in Chapter 391, Purchase of Goods and Services by Health and Human Services Agencies and Chapter 392, Procurements by the Health and Human Services Commission, disease management companies must meet all of the following program requirements to be considered for a contract with the state. Entities who wish to contract with the Health and Human Services Commission (HHSC) to provide disease management services must meet the following conditions:

(1) Have an appropriate method for using HHSC healthcare data to identify targeted disease populations;

(2) Have an evidence-based healthcare practice guideline with minimum standards of care and clinical outcomes for each targeted disease;

(3) Have collaborative healthcare practice models in place to include HHSC's contracted physicians, support service providers, and existing community resources;

(4) Ensure that a recipient's primary care physician (PCP) and other appropriate specialty physicians, or registered nurses, advance practice nurses, or physician assistants become directly involved in the disease management program through which the recipient receives services;

(5) Have patient self-care management education materials and methods appropriate to each targeted disease population that demonstrate cultural competency;

(6) Have service provider education materials and methods appropriate to each targeted disease population;

(7) Have process and outcome measurements, evaluations, and management systems based on standardized best practice guidelines;

(8) Have routine reporting processes that are proven to properly support disease management goals;

(9) Have demonstrable, measurable, and successful experience in disease management for the targeted disease populations;

(9) Provide access to 24 hour-a-day, seven days-per-week nurse call center;

(10) Have the ability to guarantee program savings; and

(11) Meet applicable federal and state laws and regulations governing the participation of providers in the Medicaid 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 January 27, 2004.

TRD-200400515
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 424-6576

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) proposes to amend §355.5902, concerning reimbursement methodology for Primary Home Care, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to change the term for clients who receive a priority service break designation from "Priority 1" to "priority." The amendment also replaces the term "provider agency" with "contract," and the terms "contracted provider" and "provider" with "provider agency," as appropriate.

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five-year period the proposed section is in effect, there are no fiscal implications for state government or local government as a result of enforcing or administering the section.

David Palmer, Director, Rate Analysis, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that the reimbursement methodology for the Primary Home Care Program will appropriately reflect the name change made by DHS

for clients with a priority service designation and will more accurately describe the use of contracts in reimbursement determination. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal is technical in nature and does not add any new requirements for businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 685- 3127 (fax: (512) 685-3104) in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Ms. Pratt via fax or mailed to HHSC Rate Analysis, Mail Code H- 400, 1100 West 49th Street, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the 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 the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §§531.033 and 531.021(b).

§355.5902. Reimbursement Methodology for Primary Home Care.

(a) (No change.)

(b) Cost reporting. Provider agencies [~~Providers~~] must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures).

(1) All provider agencies [~~contracted providers~~] must submit a cost report unless the number of days between the date the first Texas Department of Human Services client received services and the provider agency's [~~provider's~~] fiscal year end is 30 days or fewer. The provider agency may be excused from submitting a cost report if circumstances beyond the control of the provider agency make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider agency's [~~provider's~~] custody by any governmental entity. Requests to be excused from submitting a cost report must be received at the address specified in the letter mailed along with the cost report before the due date of the cost report.

(2) Provider agencies [~~Providers~~] are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determination unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by provider agencies [~~providers~~]. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

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

(c) Reimbursement determination. Reimbursement is determined in the following manner.

(1) Cost determination by cost area. Allowable costs are combined into three cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Service support cost area. This includes field supervisors' salaries and wages, benefits, and mileage reimbursement expenses. This also includes building, building equipment, and operation and maintenance costs; administration costs; and other service costs. Administration expenses equal to $0.18 per priority [~~Priority 1~~] unit of service are allocated to priority [~~Priority 1~~]. The administration costs remaining after this allocation are summed with the other service support costs.

(B) Non-priority [~~Nonpriority~~] attendants cost area. This includes non- priority [~~nonpriority~~] attendants' salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(C) Priority [~~1~~] attendants cost area. This includes priority [~~Priority 1~~] attendants' salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §355.112 of this title [~~(relating to Attendant Compensation Rate Enhancement)~~].

(2) Recommended reimbursement by cost area. For the service support cost area described in paragraph (1)(A) of this subsection the following is calculated:

(A) Projected costs. Each contract's [~~provider's~~] total allowable costs, excluding depreciation and mortgage interest, per unit of service are projected from each contract's [~~provider agency's~~] reporting period to the next ensuing reimbursement period, as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. Reimbursement may be adjusted where new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(B) Projected cost per unit of service. To determine the projected cost per unit of service for each contract [~~provider agency~~], the total projected allowable costs for the service support cost area are divided by total units of service, including non-priority [~~nonpriority~~] services, priority [~~Priority 1~~] services, and STAR+PLUS services, in order to calculate the projected cost per unit of service.

(C) Projected cost arrays. Each contract's [~~All provider agencies'~~] projected allowable costs per unit of service are rank ordered from low to high, along with each contract's [~~provider agency's~~] corresponding [~~total~~] units of service for each cost area.

(D) Recommended reimbursement for the service support cost area. The total units of service for each contract [~~provider agency~~] are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The weighted median cost component is multiplied by 1.044 to calculate the recommended reimbursement for the service support cost area. The service support cost area recommended reimbursement is limited, if necessary, to available appropriations.

(3) Total recommended reimbursement.

(A) For non-priority [nonpriority] clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(B) of this subsection

(B) For priority [Priority 1] clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(C) of this subsection.

(d) Reimbursement determination authority. The reimbursement determination authority is specified in §355.101 of this title [(relating to Introduction)].

(e) Desk reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all provider agencies [contracted providers]. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and provider agencies [providers] will be notified of the results of a desk review or an audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Provider agencies [Providers] may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(f) Factors affecting allowable costs. Provider agencies [Providers] must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) (No change.)

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

Filed with the Office of the Secretary of State on January 22, 2004.

TRD-200400464
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 20. ADMINISTRATION

SUBCHAPTER G. EMPLOYEE TRAINING AND EDUCATION PROGRAM

16 TAC §§20.601 - 20.605

The Railroad Commission of Texas (Commission) proposes new §§20.601-20.605, relating to Employee Training and Education Program, In-Service Instruction, Staff Development, Tuition Reimbursement Program, and Required Training, which will be in 16 TAC Chapter 20, new subchapter G, to be entitled Employee Training and Education Program. The Commission proposes the new rules to establish its employee training program in accordance with the requirements of Texas Government Code, Chapter 656, Subchapters C and D.

Proposed new §20.601 states the scope, purpose, and limitations and conditions of the Commission's employee training and education program. The program consists of in-service instruction, staff development training, the tuition reimbursement program, and required training. Employees are eligible to participate in the Commission's training and education program to increase their job-related knowledge and skills, without regard to race, color, religion, sex, age, national origin, disability, or veteran status.

The Commission's employee training and education program must relate to an employee's job duties following the training. The Commission's objectives for the employee training program include developing and retaining a well-trained and competent staff; acquainting employees with new technical, legal, or security developments; motivating employees and stimulating their involvement and participation in Commission work; assisting employees in achieving their maximum potential and usefulness to the Commission; and improving the efficiency and economy of state government.

The Commission's employee training and education program is contingent upon funding authorized by the legislature or through available funds in the Commission's regular budget. An employee's participation in training or education for which the Commission would expend funds is not a right, nor is it an obligation of the Commission to any of its employees. There is no guarantee that budgeted amounts will be available at all times in a fiscal year. The funds available to any one employee may not exceed $1,200 per fiscal year. An employee's participation in training under the program does not in any way affect an employee's at-will status; is not considered a guarantee or indication that approval will be granted for subsequent requests to participate; and does not constitute a guarantee or indication of either continued employment in a current position or future employment in a prospective position.

Proposed new §20.602 describes the type of training offered as in-service instruction. In-service instruction includes new employee orientation; training on policies prohibiting discrimination; and other instruction including but not limited to technical courses that provide technical knowledge and skill requirements for effective job performance in a specific classification series, such as hazardous materials training; computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications; information and data security training that offer best practices for ensuring the security and integrity of the Commission's information resources; and safety training, such as disaster preparedness, basic first aid, highway and traffic safety, and office safety and health that are offered to all employees. The Commission may require employees to attend in- service instruction.

Proposed new §20.603 describes staff development training offered to employees. The Commission may pay for an employee

to attend a workshop, seminar, conference, institute, or continuing education course that is related to a current or prospective duty assignment. An employee's request to attend a staff development program must be approved in advance by the employee's supervisor and division director. An employee's participation in a continuing education course or program that is required for an employee to maintain a professional license is considered a priority in allocating a division's training budget if the professional license is a requirement of the employee's job. Attendance at an approved staff development program is considered part of the employee's normal work duties, and the employee is not required to use accrued leave to attend. The Commission may reimburse travel expenses incurred by employees attending a staff development program according to current Commission policy regarding employee travel.

Proposed new §20.604 sets for the guidelines for the tuition reimbursement program. In this section, "training" means instruction, teaching, or other education received by a Commission employee that is not normally received by other Commission employees and that is designed to enhance the ability of the employee to perform his or her job. The term includes a course of study at an institution of higher education or a private or independent institution of higher education as defined by Texas Education Code, §61.003. The tuition reimbursement program does not include training required either by state or federal law or that is determined necessary by the Commission and offered to all employees of the Commission performing similar jobs. In-service instruction and staff development are not part of the tuition reimbursement program.

A Commission employee may participate in the tuition reimbursement program without regard to the employee's race, color, religion, sex, age, national origin, disability, or veteran status, provided that the employee meets the other qualifications for the program, as set forth in proposed new §20.604(b). Even if an employee meets all the qualifications of the tuition reimbursement program, the employee has neither a right to reimbursement nor a guarantee that budgeted amounts will be available at all times in a fiscal year. The funds available to any one employee for tuition reimbursement may not exceed $1,200 per fiscal year.

The Commission will not reimburse employees for any tuition or registration costs, mandatory fees, and expenses for books and other written materials that are covered by scholarships, grants, or other awarded funds; for costs other than tuition or registration costs, mandatory fees, and expenses for books and other written materials; for auditing a course; or for any federal income taxes incurred because of the Commission's reimbursement of costs pursuant to the employee training and education program.

Proposed new §20.604(b) sets forth the minimum qualifications for participation in the tuition reimbursement program. As of the date the employee makes the request to participate, the employee must have been employed full time by the Commission for at least 12 months; must have received an overall performance rating of at least "meets requirements" on the employee's current Employee Performance Evaluation (EPE); and must have received no disciplinary action in the prior six months. "Disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

Proposed new §20.604(c) requires that an employee requesting approval to participate in the tuition reimbursement program must meet the minimum requirements and provide to the supervisor the following information, in writing, prior to enrolling or registering for a course, class, or training program the employee's name, job title, and overall rating on the employee's current EPE; the name of the training course or educational institution; the name and number, if any, of the class, course, or program; the dates, hours, and duration of the training, and whether any or all of the training falls during the employee's regularly scheduled work hours; the amount of the tuition or registration fee; the amount of any mandatory fees that are assessed or charged in addition to tuition or registration fees; the approximate cost of books and other written materials; the deadline for enrolling in or registering for the training; and an explanation of the way in which the requested training relates to the employee's job duties after the training, whether related to a current or a prospective position.

The employee's supervisor must review the employee's request for tuition reimbursement to determine if the employee meets the requirements of subsection (b) of this section; the requested training is related to the employee's current or prospective employment duties; the requested training meets one or more of the objectives set forth in proposed new §20.601(b); and the requested dates and times for attending the training will not adversely affect the employee's workload or performance.

If the supervisor determines that all elements have been satisfied, then the supervisor must meet with the employee to discuss the obligations that the employee will be expected to meet and those that the employee may be required to assume should the request for tuition reimbursement be approved. The employee will be expected to continue working at Commission for at least one month for each month of the training course for which the Commission has paid. If an employee terminates before the end of this month-for-month period, the employee shall repay the Commission the full amount of the reimbursement to the employee. If an employee ceases to be employed by the Commission because of a reduction in force prior to the end of the month-for-month period, the employee's obligation to repay the Commission is terminated.

In addition, the employee's supervisor or division director may require the employee to make regular reports regarding the employee's progress in the training; discuss information obtained at the training with other employees; share materials obtained from training with other employees, to the extent such sharing does not violate copyright law; assume additional job duties for which the training prepared the employee; and conduct training for other employees concerning the information or skills taught at the training.

The supervisor must also discuss with the employee the specific attendance times that the training would require. If the employee would be required to attend the training during normal work hours, the supervisor and employee must devise a flex-time work schedule for the employee. If a flex-time work schedule is not feasible, the supervisor and employee must discuss the use of the employee's accrued vacation and compensatory leave time to accommodate attendance at the training.

In addition to the information provided in the employee's request for tuition reimbursement and the discussion with the employee, the supervisor may also consider the current or prospective job duties of the employee; the employee's current and previous two EPEs; the specific skill needs of the section or division; whether

there is a lack of employees or applicants with the skills the requested training would provide the employee; whether allowing the employee to attend training during work hours, if that has been requested, would adversely affect workload or performance; the funding available; and any other factor that is relevant to the employee's request for tuition reimbursement.

The supervisor must consider the employee's application, the information gathered in discussion with the employee, and other relevant factors, and must issue a decision in writing. If the supervisor concludes that the request should be denied, the supervisor must include a statement of the reason or reasons for the denial. An employee may appeal a supervisor's denial to the division director. If the supervisor decides that the employee's request for tuition reimbursement should be approved, the supervisor then forwards the request to the division director with a written recommendation for approval.

The division director will review the employee's request and the supervisor's recommendation, and issue a decision in writing. If the division director concludes that the request should be denied, the division director must include a statement of the reason or reasons for the denial. An employee may appeal a division director's denial to the deputy executive director. If the division director decides that the employee's request for tuition reimbursement should be approved, the division director then forwards the employee's request and the supervisor's recommendation to the deputy executive director with a written recommendation for approval.

The deputy executive director is authorized to approve or deny the employee's request for tuition reimbursement, and must issue a decision in writing. A denial must include a statement of the reason or reasons for the denial. An employee may appeal the deputy executive director's denial of a request for tuition reimbursement to the executive director, whose decision is final. If the deputy executive director approves the request, the original documents will be retained in the office of the deputy executive director, and copies of the documents provided to the employee.

Proposed new §20.604(e) provides that an employee who has received final approval of his or her request for tuition reimbursement must meet all admission requirements of the educational institution offering the course for which the request for tuition reimbursement was approved; complete all paperwork and pay all costs for the training, including tuition or registration costs, mandatory fees, expenses for books or other written materials, etc.; and retain all original dated receipts indicating the amounts the employee paid for each type of expenditure.

Proposed new §20.604(f) requires an employee to complete the training within the time period for which tuition reimbursement was approved. The employee must immediately notify his or her supervisor if the employee ceases to be enrolled in a class for which tuition reimbursement was approved. The Commission will not reimburse an employee for training expenses for incomplete or dropped training.

Proposed new §20.604(g) prohibits an employee attending training approved for tuition reimbursement from using Commission equipment or resources such as personal computers, printers, copiers, fax machines, e-mail, internet connections, etc. During the employee's work hours, the employee may not do research, writing, projects, homework, or other activities related to the training.

Proposed new §20.604(h) requires an employee to use flex time, if possible, to accommodate attendance at training. If flex time is not used, then the employee must use accrued vacation and compensatory leave time for attendance at training.

Proposed new §20.604(i) sets forth the qualifications and procedure for tuition reimbursement. Failure to comply with the reimbursement requirements will result in denial of reimbursement. To qualify for tuition reimbursement, an employee must complete the training with a grade of "C" or better for training graded on an "A" through "F" scale; a 75 percent or better score for training graded on a numerical scale; or a passing grade for training graded on a "pass/fail" scale. The employee must complete any course in which a grade of "I" (Incomplete) has been awarded within three months, unless there are valid reasons, such as serious illness, to the contrary. A course dropped after registration does not qualify for reimbursement.

To receive tuition reimbursement, within 15 working days of receiving the final grade or grades, the employee must submit to the Personnel Division a reimbursement claim. A reimbursement claim consists of copies of the employee's request; all recommendation memoranda; the deputy executive director's or executive director's final approval memorandum; the itemized paid receipts for tuition, mandatory fees, and books and other written materials; and the official grade report, which the Commission will keep confidential.

The Personnel Division will verify the employee's grade and the costs for tuition or registration fees, other mandatory fees, and expenses for books and other written materials. Upon approval of the reimbursement claim, the Personnel Division will forward the claim to the Finance Division for reimbursement to the employee.

Proposed new §20.605 pertains to required training. Pursuant to Texas Government Code, §656.045, the Commission may require an employee to attend, as all or part of the employee's duties, a training or education program if the training or education is related to the employee's duties or prospective duties. The Commission may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, the expense of training materials, and other necessary expenses of an employee who is required to participant in a training or education program.

An employee who is engaged in training pursuant to this section and who does not perform his or her regular duties for three or more months as a result of the training may use Commission equipment or resources such as personal computers, printers, copiers, fax machines, e-mail, internet connections, etc.; and may be required by the supervisor or division director to use a Commission vehicle to attend the training. The employee is required to sign an agreement of understanding and assume mandatory obligations, pursuant to Texas Government Code, §§656.103 and 656.104. If the employee receives training paid for by the Commission, and during the training period the employee does not perform the employee's regular duties for three or more months as a result of the training, the employee must agree in writing that the employee will either work for the agency following the training for at least one month for each month of the training period or pay the Commission for all the costs associated with the training that were paid during the training period, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensatory leave.

If the employee does no work for the Commission following its reimbursement to the employee for training costs, works for some

but not all of the required amount of time, or fails to pay the Commission amounts reimbursed for training costs, and the Commission does not release the employee from the obligation to either provide the services or make the payments, the employee is liable to the Commission for all costs associated with the training that the Commission paid, including any amounts of the employee's salary that were paid during the training period and that were not accounted for as paid vacation or compensatory leave, and for the Commission's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees.

The Commission may waive the statutory requirements and release an employee from the obligation to meet those requirements only if the Commission finds that such action is in the best interest of the agency or is warranted because of an extreme personal hardship suffered by the employee and enters an order to that effect in open meeting.

Mark Bogan, Director of Personnel, has determined that for each year of the first five years the new sections are in effect there may be fiscal implications to state and local governments as a result of administering or enforcing some of the new sections. The Commission currently provides in-service and professional development training to its employees, as set forth in proposed new §§20.602 and 20.603, within current appropriated and budgeted amounts; therefore there will be no fiscal implication to state government as a result of these two new sections. If the Commission expends funds for employee training pursuant to new §§20.604 and 20.605, it will do so only if such funds are appropriated by the legislature or become available in the Commission's regular budget process; absent those events, the tuition reimbursement and required training programs are not funded, and therefore there will be no fiscal implications for state government as a result of these two new sections. Should the Commission fund the tuition reimbursement and required training programs, other state agencies, including state-supported colleges or universities, could be recipients of payments pursuant to contracts that the Commission would be authorized to enter into to provide training or education for one or more Commission employees. There will be no fiscal implications for local governments as a result of new §§20.602 and 20.603. There may be fiscal implications for local governments, in the form of revenue, as a result of new §§20.604 and 20.605 if funds are appropriated by the legislature or become available in the Commission's regular budget process and the Commission enters into a contract with a local government to provide training or education for one or more Commission employees.

The public benefit anticipated as a result of the new sections will be better educated and trained Commission employees. There is no anticipated economic cost of compliance for small businesses, micro-businesses, or individuals, because the proposed new sections apply only to the Commission, a state agency, and its employees; however, small businesses, micro- businesses, and individuals could be the recipients of payments for tuition, mandatory fees, and books by Commission employees who participate in training or education provided by such entities.

Comments on the proposed new sections may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. For further information, call Mr. Bogan at (512) 463-6981. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the new sections under Texas Government Code, Subchapter C, the State Employee Training Act, and Subchapter D, Restrictions on Certain Training, and specifically under Texas Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency and to the obligations assumed by the administrators and employees on receiving the training and education. The rules are also adopted under Texas Government Code, §656.102, which provides that before a state agency spends any money on training for a state employee, the state agency must adopt a policy governing the training of employees (in addition to the rules required by §656.048) that requires training to relate to an employee's duties following the training.

Texas Government Code, Chapter 656, Subchapters C and D are affected by the proposed new sections.

Issued in Austin, Texas on January 23, 2004.

§20.601. Employee Training and Education Program.

(a) Scope of program. The rules in this subchapter establish the Commission's employee training and education program. The program consists of in-service instruction, as set forth in §20.602 of this title (relating to In-Service Instruction); staff development training, as set forth in §20.603 of this title (relating to Staff Development); the tuition reimbursement program as set forth in §20.604 of this title (relating to Tuition Reimbursement Program); and required training as set forth in §20.605 of this title (relating to Required Training). Employees are eligible to participate in the Commission's training and education program to increase their job-related knowledge and skills, without regard to race, color, religion, sex, age, national origin, disability, or veteran status.

(b) Purpose. The Commission's employee training and education program shall relate to an employee's job duties following the training. The Commission's objectives for the employee training program include:

(1) developing and retaining a well-trained and competent staff;

(2) acquainting employees with new technical, legal, or security developments;

(3) motivating employees and stimulating their involvement and participation in Commission work;

(4) assisting employees in achieving their maximum potential and usefulness to the Commission; and

(5) improving the efficiency and economy of state government.

(c) Limitations and conditions.

(1) The employee training and education program is contingent upon funding authorized by the legislature or through available funds in the Commission's regular budget.

(2) An employee's participation in training or education for which the Commission would expend funds pursuant to §§20.603-20.605 of this title is not a right; is not an obligation of the Commission to any of its employees; and is not a guarantee that budgeted amounts will be available at all times in a fiscal year.

(3) The funds available to any one employee pursuant to §§20.603 and 20.604 shall not exceed $1,200 per fiscal year.

(4) An employee's participation in training pursuant to §§20.603-20.605 of this title shall not:

(A) in any way affect an employee's at-will status;

(B) be considered a guarantee or indication that approval will be granted for subsequent requests to participate;

(C) constitute a guarantee or indication of either continued employment in a current position or future employment in a prospective position.

§20.602. In-Service Instruction.

(a) New employee orientation. The Commission provides a program of instruction for agency employees, including new employee orientation.

(b) Training on policies prohibiting discrimination. Within 30 days of the date of employment, each employee shall attend an orientation session containing information on the Commission's policies and procedures, including information on discrimination and sexual harassment. Each employee shall attend supplemental training on discrimination, including sexual harassment, every two years.

(c) Other instruction. In-service instruction includes but is not limited to:

(1) technical courses that provide technical knowledge and skill requirements for effective job performance in a specific classification series, such as hazardous materials training;

(2) computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications;

(3) information and data security training that offer best practices for ensuring the security and integrity of the Commission's information resources; and

(4) safety training, such as disaster preparedness, basic first aid, highway and traffic safety, and office safety and health that are offered to all employees.

(d) Attendance requirement. The Commission may require employees to attend in-service instruction.

§20.603. Staff Development.

(a) Work related. The Commission may pay for an employee to attend a workshop, seminar, conference, institute, or continuing education course that is related to a current or prospective duty assignment. An employee's request to attend a staff development program shall have been approved in advance by the employee's supervisor and division director.

(b) Licensing requirement. An employee's participation in a continuing education course or program that is required for an employee to maintain a professional license shall be considered a priority in allocating a division's training budget if the professional license is a requirement of the employee's job.

(c) Use of accrued leave. Attendance at an approved staff development program shall be considered part of the employee's normal work duties, and the employee shall not be required to use accrued leave to attend.

(d) Travel expenses. The Commission may reimburse travel expenses incurred by employees attending a staff development program. In that event, the expenses shall be reimbursed according to current Commission policy regarding employee travel.

§20.604. Tuition Reimbursement Program.

(a) General provisions.

(1) As used in this section, "training" means instruction, teaching, or other education received by a Commission employee that is not normally received by other Commission employees and that is designed to enhance the ability of the employee to perform his or her job. The term includes a course of study at an institution of higher education or a private or independent institution of higher education as defined by Texas Education Code, §61.003.

(2) The tuition reimbursement program does not include training required either by state or federal law or that is determined necessary by the Commission and offered to all employees of the Commission performing similar jobs. In-service instruction and staff development, as set forth in §§20.602 and 20.603 (relating to In-Service Instruction and Staff Development, respectively) are not part of the tuition reimbursement program.

(3) A Commission employee may participate in the tuition reimbursement program without regard to the employee's race, color, religion, sex, age, national origin, disability, or veteran status, provided that the employee meets the qualifications set forth in subsection (b) of this section.

(4) An employee has neither a right to reimbursement, even if the employee meets the qualifications of the tuition reimbursement program, nor a guarantee that budgeted amounts will be available at all times in a fiscal year. The funds available to any one employee for tuition reimbursement shall not exceed $1,200 per fiscal year.

(5) The Commission shall not reimburse employees for:

(A) any tuition or registration costs, mandatory fees, and expenses for books and other written materials that are covered by scholarships, grants, or other awarded funds;

(B) costs other than tuition or registration costs, mandatory fees, and expenses for books and other written materials;

(C) auditing a course; or

(D) any federal income taxes incurred because of the Commission's reimbursement of costs pursuant to this subchapter.

(b) Minimum qualifications. As of the date the employee makes the request to participate in the tuition reimbursement program, the employee shall have:

(1) been employed full time by the Commission for at least 12 months;

(2) received an overall performance rating of at least "meets requirements" on the employee's current Employee Performance Evaluation (EPE); and

(3) received no disciplinary action in the prior six months. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

(c) Request to participate. An employee requesting approval to participate in the tuition reimbursement program shall meet the minimum requirements set forth in subsection (b) of this section and shall provide to the supervisor the following information, in writing, prior to enrolling or registering for a course, class, or training program:

(1) the employee's name, job title, and overall rating on the employee's current EPE;

(2) the name of the training course or educational institution;

(3) the name and number, if any, of the class, course, or program;

(4) the dates, hours, and duration of the training, and whether any or all of the training falls during the employee's regularly scheduled work hours;

(5) the amount of the tuition or registration fee;

(6) the amount of any mandatory fees that are assessed or charged in addition to tuition or registration fees;

(7) the approximate cost of books and other written materials;

(8) the deadline for enrolling in or registering for the training; and

(9) an explanation of the way in which the requested training relates to the employee's job duties after the training, whether related to a current or a prospective position.

(d) Supervisor review and action; agency decision.

(1) The employee's supervisor shall review the employee's request for tuition reimbursement to determine if:

(A) the employee meets the requirements of subsection (b) of this section;

(B) the requested training is related to the employee's current or prospective employment duties;

(C) the requested training meets one or more of the objectives set forth in §20.601(b) of this title (relating to Employee Training and Education Program); and

(D) the requested dates and times for attending the training will not adversely affect the employee's workload or performance.

(2) If the supervisor determines that all four elements of paragraph (1) of this subsection have been satisfied, then the supervisor shall meet with the employee to discuss the obligations that the employee will be expected to meet and those that the employee may be required to assume should the request for tuition reimbursement be approved.

(A) The employee will be expected to continue working at the Commission for at least one month for each month of the training course for which the Commission has paid. If an employee terminates before the end of this month-for-month period, the employee shall repay the Commission the full amount of the reimbursement to the employee. If an employee ceases to be employed by the Commission because of a reduction in force prior to the end of the month-for-month period, the employee's obligation to repay the Commission is terminated.

(B) The employee's supervisor or division director may require the employee to:

(i) make regular reports regarding the employee's progress in the training;

(ii) discuss information obtained at the training with other employees;

(iii) share materials obtained from training with other employees, to the extent such sharing does not violate copyright law;

(iv) assume additional job duties for which the training prepared the employee; and

(v) conduct training for other employees concerning the information or skills taught at the training.

(3) The supervisor shall also discuss with the employee the specific attendance times that the training would require. If the employee would be required to attend the training during normal work hours, the supervisor and employee shall devise a flex-time work schedule for the employee. If a flex-time work schedule is not feasible, the supervisor and employee shall discuss the use of the employee's accrued leave time to accommodate attendance at the training.

(4) In addition to the information provided in the employee's request for tuition reimbursement and the discussion with the employee, the supervisor may also consider:

(A) the current or prospective job duties of the employee;

(B) the employee's current and previous two EPEs;

(C) the specific skill needs of the section or division;

(D) whether there is a lack of employees or applicants with the skills the requested training would provide the employee;

(E) whether allowing the employee to attend training during work hours, if that has been requested, would adversely affect workload or performance;

(F) the funding available; and

(G) any other factor that is relevant to the employee's request for tuition reimbursement.

(5) The supervisor shall consider the employee's application, the information gathered in discussion with the employee, and other relevant factors, and shall issue a decision in writing. If the supervisor concludes that the request should be denied, the supervisor shall include a statement of the reason or reasons for the denial. An employee may appeal a supervisor's denial to the division director. If the supervisor decides that the employee's request for tuition reimbursement should be approved, the supervisor shall forward the request to the division director with a written recommendation for approval.

(6) The division director shall review the employee's request and the supervisor's recommendation, and shall issue a decision in writing. If the division director concludes that the request should be denied, the division director shall include a statement of the reason or reasons for the denial. An employee may appeal a division director's denial to the deputy executive director. If the division director decides that the employee's request for tuition reimbursement should be approved, the division director shall forward the employee's request and the supervisor's recommendation to the deputy executive director with a written recommendation for approval.

(7) The deputy executive director is authorized to approve or deny the employee's request for tuition reimbursement, and shall issue the decision in writing. A denial shall include a statement of the reason or reasons for the denial. An employee may appeal the deputy executive director's denial of a request for tuition reimbursement to the executive director, whose decision is final. If the deputy executive director approves the request, the original documents shall be retained

in the office of the deputy executive director, and copies of the documents shall be provided to the employee.

(e) Registration and payment for the training. An employee who has received final approval of his or her request for tuition reimbursement shall:

(1) meet all admission requirements of the educational institution offering the course for which the request for tuition reimbursement was approved;

(2) complete all paperwork and pay all costs for the training, including tuition or registration costs, mandatory fees, expenses for books or other written materials, etc.;

(3) retain all original dated receipts indicating the amounts the employee paid for each type of expenditure.

(f) Attendance; notice. The employee shall complete the training within the time period for which tuition reimbursement was approved. The employee shall immediately notify his or her supervisor if the employee ceases to be enrolled in a class for which tuition reimbursement was approved. The Commission shall not reimburse an employee for training expenses for incomplete or dropped training.

(g) Use of Commission resources. An employee attending training approved for tuition reimbursement shall not use Commission equipment or resources such as personal computers, printers, copiers, fax machines, e-mail, internet connections, etc. During the employee's work hours, the employee shall not do research, writing, projects, homework, or other activities related to the training.

(h) Time used to attend training. The employee shall use flex time, if possible, to accommodate attendance at training. If flex time is not used, then the employee shall use accrued leave time for attendance at training.

(i) Tuition reimbursement qualifications and procedure. Failure to comply with the reimbursement requirements will result in denial of reimbursement.

(1) To qualify for tuition reimbursement, an employee shall complete the training with a grade of "C" or better for training graded on an "A" through "F" scale; a 75 percent or better score for training graded on a numerical scale; or a passing grade for training graded on a "pass/fail" scale. The employee shall complete any course in which a grade of "I" (Incomplete) has been awarded within three months, unless there are valid reasons, such as serious illness, to the contrary. A course dropped after registration does not qualify for reimbursement.

(2) To receive tuition reimbursement, within 15 working days of receiving the final grade or grades, the employee shall submit to the Personnel Division a reimbursement claim.

(3) A reimbursement claim consists of copies of:

(A) the employee's request;

(B) all recommendation memoranda;

(C) the deputy executive director's or executive director's final approval memorandum;

(D) the itemized paid receipts for tuition, mandatory fees, and books and other written materials; and

(E) the official grade report, which the Commission will keep confidential.

(4) The Personnel Division shall verify the employee's grade and the costs for tuition or registration fees, other mandatory fees, and expenses for books and other written materials.

(5) Upon approval of the reimbursement claim, the Personnel Division shall forward the claim to the Finance Division for reimbursement to the employee.

§20.605. Required Training.

(a) Required training or education. Pursuant to Texas Government Code, §656.045, the Commission may require an employee to attend, as all or part of the employee's duties, a training or education program if the training or education is related to the employee's duties or prospective duties.

(b) Use of funds. The Commission may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, the expense of training materials, and other necessary expenses of an employee who is required to participant in a training or education program.

(c) Use of Commission resources. An employee who is engaged in training pursuant to this section and who does not perform his or her regular duties for three or more months as a result of the training:

(1) may use Commission equipment or resources such as personal computers, printers, copiers, fax machines, e-mail, internet connections, etc.; and

(2) may be required by the supervisor or division director to use a Commission vehicle to attend the training.

(d) Agreement of understanding. The employee shall sign an agreement of understanding and assume the following mandatory obligations, pursuant to Texas Government Code, §§656.103 and 656.104:

(1) If the employee receives training paid for by the Commission, and during the training period the employee does not perform the employee's regular duties for three or more months as a result of the training, the employee shall agree in writing that the employee will either work for the agency following the training for at least one month for each month of the training period or pay the Commission for all the costs associated with the training that were paid during the training period, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensatory leave.

(2) If the employee does no work for the Commission following its reimbursement to the employee for training costs, works for some but not all of the required amount of time, or fails to pay the Commission amounts reimbursed for training costs, and the Commission does not release the employee from the obligation to either provide the services or make the payments, the employee is liable to the Commission for all costs associated with the training that the Commission paid, including any amounts of the employee's salary that were paid during the training period and that were not accounted for as paid vacation or compensatory leave, and for the Commission's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees.

(3) The Commission may waive the requirements prescribed under paragraph (1) of this subsection and release an employee from the obligation to meet those requirements only if the Commission finds that such action is in the best interest of the agency or is warranted because of an extreme personal hardship suffered by the employee and enters an order to that effect in open meeting.

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 January 23, 2004.

TRD-200400479
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 475-1295

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 16 Texas Administrative Code ("TAC"), §60.10 and §§60.100-60.108, 60.120-60.124, 60.150-60.160, 60.170-60.174, and 60.190-60.192 and proposes new rules at 16 TAC §60.10; §60.66, and §§60.100-60.101, 60.150-60.160, and 60.170-60.173, concerning authority and responsibilities, organization, and practice and procedure before the Texas Commission of Licensing and Regulation and the Department.

The proposed repeal removes the sections concerning definitions and hearings procedures that must be rewritten to comply with Senate Bills 279 and 1147 passed during the 78th Legislative Session that amend Chapter 51, Texas Occupations Code, providing for the addition of new requirements that hearings before the Department be heard by the State Office of Administrative Hearings and that the Department develop and implement a negotiated rulemaking and an alternative dispute resolution procedure. The new rules are necessary to comply with new legislation, provide the public access to new avenues for settling cases, and increase regulatory efficiency.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect the public benefits expected as a result of adoption of the proposed repeal are that new rules will simplify and harmonize procedures as well as encourage settlements of complaints. For each year of the first five-year period the new rules are in effect, the public benefits will be a simplification of procedural rules for hearings and development and implementation of a new avenue to resolve disputed matters.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed repeal is in effect, there will be no cost to state or local government as a result of enforcing or administering the repeal because the repeal requires no action by anyone. There will be no cost to state or local government as a result of enforcing or administering the new rules.

There will be no effect on large, small, or micro-businesses as a result of the proposed repeal and new rules. There are no anticipated economic costs to persons who are required to comply with the repeal because there is no requirement to take any action or with the new rules other than the minimal attendant costs for those who choose to avail themselves of the hearings process.

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

SUBCHAPTER A. AUTHORITY AND RESPONSIBILITIES

16 TAC §60.10

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

The repeal is proposed under Chapter 51, §51.201 and §51.203, Texas Occupations Code, which authorize the Commission to adopt rules as necessary for its own procedures and to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in the Chapter 51, Texas Occupations Code. No other statutes, articles, or codes are affected by the repeal.

§60.10. Definitions.

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 January 26, 2004.

TRD-200400497
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-7348

16 TAC §60.10

The new rule is proposed under Chapter 51, §51.201 and §51.203, Texas Occupations Code, which authorize the Commission to adopt rules as necessary for its own procedures and to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rule are those set forth in the Chapter 51, Texas Occupations Code. No other statutes, articles, or codes are affected by the proposal.

§60.10. Definitions.

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

(1) ADR--alternative dispute resolution

(2) ADR Administrator--The trained coordinator in the Departmental office designated by the Commission to coordinate and oversee the ADR procedures which may include conducting mediations. The ADR Administrator shall serve as a resource for ADR training and shall collect data concerning the effectiveness of the ADR procedures.

(3) ALJ--administrative law judge employed by the State Office of Administrative Hearings.

(4) Alternative Dispute Resolution (ADR) Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third- party.

(5) APA--The Administrative Procedure Act (TEX. GOV'T. CODE, Chapter 2001).

(6) Applicant--Any person seeking a license, certificate, registration, commission, title or permit from the Department.

(7) Commission--Texas Commission of Licensing and Regulation

(8) Complainant--Any person who has filed a complaint with the Department against any person whose activities are subject to the jurisdiction of the Department.

(9) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission and/or Executive Director after an opportunity for adjudicative hearing.

(10) Department--Texas Department of Licensing and Regulation

(11) Executive Director--the executive director of the Texas Department of Licensing and Regulation.

(12) Final decision maker--The Commission and/or the Executive Director, both of whom are authorized by law to render the final decision in a contested case.

(13) Judge--Administrative law judge employed by the State Office of Administrative Hearings

(14) License--The whole or part of any Departmental registration, license, commission, certificate of authority, approval, permit, endorsement, title or similar form of permission required or permitted by law.

(15) Mediator--The Departmental employee or other State employee who presides over ADR proceedings regardless of which ADR method is utilized.

(16) Party--A person admitted to participate in a case before the final decision maker.

(17) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(18) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(19) Private Mediator--A person in the mediation profession who is not a Texas State employee and who has met all the qualifications prescribed by Texas law for mediators.

(20) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law establishing a regulatory program administered by the Department or a rule or order issued by the Commission or the Executive Director.

(21) Rule--Any Commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Department or Commission and is filed with the Texas Register.

(22) SOAH--State Office of Administrative Hearings.

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 January 26, 2004.

TRD-200400498
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-7348

SUBCHAPTER B. ORGANIZATION

16 TAC §60.66

The new rule is proposed under Chapter 51, §51.201 and §51.203, Texas Occupations Code, which authorize the Commission to adopt rules as necessary for its own procedures and to implement each law establishing a program regulated by the Department.

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

§60.66. Negotiated Rulemaking.

(a) It is the Commission's policy to employ negotiated rulemaking procedures when appropriate. When the Commission is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the Commission will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described in Chapter 2008, Government Code, and shall make a recommendation to the Executive Director to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Government Code, §2008.052(c).

(c) Upon the convener's recommendation to proceed, the department shall initiate negotiated rulemaking according to the provisions of Chapter 2008, Government Code.

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

Filed with the Office of the Secretary of State on January 26, 2004.

TRD-200400499
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-7348

SUBCHAPTER D. PRACTICE AND PROCEDURE

16 TAC §§60.100 - 60.108, 60.120 - 60.124, 60.150 - 60.160, 60.170 - 60.174, 60.190 - 60.192

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

The repeals are proposed under Chapter 51, §51.201 and §51.203, Texas Occupations Code, which authorize the Commission to adopt rules as necessary for its own procedures and to implement each law establishing a program regulated by the Department.

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

§60.100. Purpose and Scope.

§60.101. Filing, Computation of Time, and Notice.

§60.102. Agreements To Be in Writing.

§60.103. Hearings Examiner.

§60.104. Conduct and Decorum.

§60.105. Ex Parte Consultations.

§60.106. Parties.

§60.107. Representative Appearances.

§60.108. Form and Content of Pleadings.

§60.120. Motions.

§60.121. Service of Documents on Parties.

§60.122. Examination and Correction of Pleadings.

§60.123. Amended Pleadings.

§60.124. Prepared Testimony and Exhibits.

§60.150. Dismissal Without Hearing.

§60.151. Disposition by Agreement.

§60.152. Prehearing Conference.

§60.153. Postponement, Continuance, Withdrawal, or Dismissal.

§60.154. Consolidation.

§60.155. Discovery.

§60.156. Place and Nature of Hearings.

§60.157. Order of Procedure.

§60.158. Briefs.

§60.159. Participation by Telephone.

§60.160. Failure To Attend Hearing and Default.

§60.170. Reporters and Transcripts.

§60.171. The Record.

§60.172. Evidence.

§60.173. Offer of Proof.

§60.174. Formal Exceptions Not Required.

§60.190. Proposals for Decision.

§60.191. Filing of Exceptions and Replies.

§60.192. Final Orders, Motions for Rehearing, and Emergency Orders.

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 January 26, 2004.

TRD-200400500
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-7348

16 TAC §§60.100, 60.101, 60.150 - 60.160, 60.170 - 60.173

The new rules are proposed under Chapter 51, §51.201 and §51.203, Texas Occupations Code, which authorize the Commission to adopt rules as necessary for its own procedures and to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the proposed new rules are those set forth in the Chapter 51, Texas Occupations Code. No other statutes, articles, or codes are affected by the proposal.

§60.100. Purpose and Scope.

(a) Purpose. Unless otherwise provided by statute or by the provisions of this subchapter, this subchapter will govern the institution and final conclusion of proceedings followed in handling all adjudicative matters under the Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. Chapter 2001. Once the Department files the Request to Docket Case form with SOAH, SOAH acquires jurisdiction over a contested case, and a hearing conducted by SOAH on a contested case proceeding pending before the Department is governed by SOAH's rules of procedure. In the case of a conflict with rules in this subchapter, SOAH's rules, 1 TAC Chapter 155, control after the filing of the Request to Docket Case form and until after final amendments or corrections to the proposal for decision.

(b) Scope. These rules govern the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the Department or by the filing of an application, claim, complaint, or any other pleading. These rules shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Commission, the Executive Director, or the substantive rights of any person or agency.

§60.101. Filing, Computation of Time, and Notice.

(a) The Department shall provide notice to all parties in accordance with APA §2001.052, Chapter 51, Texas Occupations Code, and the following:

(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the Department determines that a violation has occurred, the Department shall issue a notice of the alleged violation, stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty or administrative sanction, or both, be imposed on the person charged, and recommending the amount of that proposed penalty and/or type of sanction. The Department shall base the recommendation on the factors set forth in §60.62(e).

(2) The written Notice of Alleged Violation shall include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the penalty and/or sanction recommended; and

(C) a statement of the right of the Respondent to a hearing.

(b) Not later than the 20th day after the date on which the notice is received, the Respondent may accept the determination of the Department, including the recommended penalty and/or sanction, or make a written request for a hearing on that determination. Upon receipt of a written request for hearing, the Department shall submit a Request for Docket Case form to SOAH accompanied by legible copies of all pertinent documents, including but not limited to the Notice of Hearing or other document describing the agency action giving rise to a contested case. In accordance with 1 TAC §155.9, the Department shall request one or more of the following actions on the Request to Docket Case form:

(1) Setting of hearing;

(2) Assignment of an administrative law judge; and/or

(3) Setting of alternative dispute resolution proceeding, including but not limited to mediated settlement conference, mediation, or arbitration.

(c) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the Department's Executive Director and/or Commission as well as the Department's Enforcement Division, P.O. Box 12157, Austin, Texas 78711; 920 Colorado Street, Austin Texas; or by facsimile mail at 512-475-2891 if the documents contain 20 or fewer pages including exhibits. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.

§60.150. Disposition by Agreement.

(a) Disposition by agreement of any contested case may be made by stipulation, agreed settlement, or consent order, unless precluded by law.

(b) Parties agreeing to such informal disposition shall prepare a settlement agreement, containing proposed findings of fact and conclusions of law, which shall be signed by all the parties and their designated representatives.

(c) Upon receipt of the settlement agreement the Executive Director and/or the Commission may:

(1) adopt the settlement agreement and issue a final order;

(2) reject the settlement agreement and remand the contested case for a hearing before SOAH;

(3) reject the settlement agreement and order further investigation by the Department; or

(4) take such other action as the Executive Director and/or the Commission find just.

(d) The Commission may designate its Chair and/or the Executive Director to adopt or reject agreed orders.

§60.151. Alternative Dispute Resolution Policy.

It is the Department's policy to encourage the fair and expeditious resolution of all contested matters through voluntary settlement procedures. The Department is committed to working with all parties to achieve early settlement of contested matters.

§60.152. Referral of Contested Matter for Alternative Dispute Resolution Procedures

The Department's Director of Enforcement or Human Resources Office, on behalf of the Department, may seek to resolve a contested matter through negotiation or mediation involving all parties and if so, shall refer the matter for mediation in accordance with §60.155.

§60.153. Appointment of Mediator.

(a) For each matter referred for ADR procedures, the ADR Administrator shall mediate or assign another Departmental mediator unless the parties agree upon the use of another agency's mediator or private mediator. The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

(b) A private mediator may be hired for Departmental ADR procedures provided that:

(1) the parties unanimously agree to use a private mediator;

(2) the parties unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator agrees to be subject to the direction of the Department's ADR Administrator and to all time limits imposed by the Administrator, statute or regulation.

(c) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the mediator.

(d) All mediators in Departmental mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

§60.154. Qualifications of Mediators.

(a) A Departmental mediator will receive at a minimum 40 hours of formal training in ADR procedures through a program approved by the Department's Executive Director.

(b) SOAH mediators, employees of other agencies who are mediators, and private pro bono mediators, may be assigned to contested matters as needed.

(1) Each mediator shall first have received 40 hours of Texas mediation training as prescribed by Texas law.

(2) Each mediator shall have some expertise in the area of the contested matter.

(3) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to public hearing. If the mediator is an employee of the Department and dispute does not settle, that mediator will not have any further contact or involvement concerning the disputed matter.

§60.155. Commencement of ADR.

(a) The Department encourages resolution of disputes at any time; however, ADR procedures may begin, at the discretion of the Director of Enforcement or the Human Resources Office, anytime after the Department anticipates initiation of an adverse action against an applicant, respondent, or employee. The Department may issue a Notice of Mediation along with a Notice of Alleged Violation or along with a notice of a proposed denial of licensure or opportunity to take an examination. Prior to the submission of a Request for Docket Case form to SOAH, and with agreement of all parties, the ADR Administrator may schedule mediation upon any party's request.

(b) A Departmental employee, subsequent to appealing a personnel action to the appropriate Departmental Division Director in accordance with the Department's Personnel Manual and without having obtained satisfaction, may request approval of mediation from the Human Resources Office.

(c) Upon unanimous motion of the parties and at the discretion of the administrative law judge, the provisions of this section may apply to contested case hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow the use of ADR procedures.

§60.156. Stipulations.

When the ADR procedures do not result in the full settlement of a matter, the parties in conjunction with the mediator, may limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the administrative law judge assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

§60.157. Agreements.

All agreements between or among parties that are reached as a result of ADR must be committed to writing and will have the same force and effect as a written contract.

§60.158. Confidentiality.

(a) Except as provided in subsections (c) and (d) of this section, a communication relating to the subject matter made by a participant in an ADR procedure, whether before or after the institution of formal ADR proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding.

(b) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(e) All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during the mediation conference will be destroyed at the end of the process.

§60.159. Place and Nature of Hearings.

Every effort should be made to conduct administrative hearings in Austin, Texas, to achieve the Department's mission to ensure effective and economical use of public resources while adhering to the provisions of 1 TAC §155.13.

§60.160. Failure to Attend Hearing and Default.

(a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the Department's determination and recommended administrative penalty and/or sanction, or fails to make a written request for a hearing on the determination, the Department may propose entry of a default order against the Respondent unless otherwise provided by applicable law.

(b) Where a Respondent fails to answer to the Notice of Alleged Violation, the Department may present to the Commission and/or the Executive Director a motion for default order along with a proposed default order containing findings of fact and conclusions of law. Respondents will be notified as to the time and place the motion for default order will be considered. If a Respondent attends at the time and place prescribed in the notice, an administrative hearing may be set in accordance with §60.101(b).

(c) If, after receiving a notice proposing denial of an application or a notice proposing denial of an opportunity to take an examination, an Applicant may request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law.

(d) 1 TAC §155.55 (SOAH rules) applies where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the Department's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the judge.

(e) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's last known complete, correct address as shown by the Department's records. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

§60.170. The Adjudicative Hearing Record.

(a) On the written request by a party to a case or on request of the judge, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the judge requests a transcript, costs will be assessed to the Respondent(s) or Applicant(s), as appropriate.

(b) Any party who needs a certified language interpreter for presentation of its case shall be responsible for requesting the services of an interpreter. The requesting party shall be responsible for making arrangements with a certified language interpreter once a request is made. The cost of the certified language interpreter shall be borne by the party requiring the interpreter's services.

§60.171. Proposals for Decision.

Proposed decisions shall be brought before the Executive Director and/or the Commission for decision under their respective authorities.

§60.172. Filing of Exceptions and Replies.

(a) Any party of record may, within 14 days after the date of service of a proposal for decision, file exceptions to the proposal for decision with the Executive Director of the Department and/or the Commission, as appropriate. Replies to such exceptions may be filed within 10 days after the deadline for filing such exceptions. Copies of exceptions and replies shall be served on the Enforcement Division of the Department and SOAH at the addresses referenced in §60.101(c) of these rules.

(b) A request for extension of time within which to file exceptions or replies shall be filed with the Department and SOAH, a copy thereof shall be served on all other parties of record by the party making such a request. An extension of time may be granted by agreement of parties or by order of the administrative law judge assigned to the case upon a showing of good cause.

§60.173. Final Orders, Motions for Rehearing, and Emergency Orders.

(a) A final order in a contested case shall be in writing and shall be signed by the Commission, the Executive Director or both, as applicable. Final orders shall include findings of fact and conclusions of law separately stated. A party notified by mail of a final decision or order shall be presumed to have been notified on the third day after the date on which the notice is mailed.

(b) The timely filing of a motion for rehearing is a prerequisite to appeal.

(c) In the absence of a timely filed motion for rehearing, a decision is final on the expiration of the period for filing a motion for rehearing. If a motion for rehearing is filed, a decision is final and appealable on the date an order is signed overruling a motion for rehearing or on the date the motion is overruled by operation of law.

(d) If the Commission and/or the Executive Director find that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed, in which event the decision or order is final and appealable on the date signed and no motion for rehearing is required as a prerequisite for appeal.

(e) A petition for judicial review must be filed in a District Court of Travis County Texas within 30 days after the order is final and appealable, as provided by Government Code, Title 10, Subtitle A, Chapter 2001. A party filing a petition for judicial review must also comply with the requirements of Occupations Code, §51.307.

(f) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(g) If, after judicial review, the penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the Department and ending on the date the penalty is remitted.

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 January 26, 2004.

TRD-200400501
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-7348

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.20, 70.30, 70.50, 70.71, 70.73 - 70.75, 70.80, 70.102

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§70.10, 70.20, 70.30, 70.50, 70.71, 70.73 - 70.75, 70.80, and 70.102 regarding the industrialized housing and buildings program.

There are a number of changes throughout the rules to address statutory changes made by Senate Bill ("SB") 279, 78th Legislature, and to address the codification of the Industrialized Housing and Buildings ("IHB") statute made by House Bill ("HB") 3507, 78th Legislature.

The following additions, deletions, and changes were made to §70.10, Definitions. The definition of 'Act' was deleted and the definition of 'Chapter 1202' was added to reflect the codification of the Industrialized Housing and Buildings statute by HB 3507. The terms 'Act' and 'the Act' were changed to 'Chapter 1202' wherever referenced in other definitions in this section. A definition of 'Alteration' and 'Alteration decal' was added to reflect statutory changes made by SB 279 that require local municipalities to accept unaltered industrialized buildings as complying with the current code editions adopted under the program and to require that industrialized buildings that are altered comply with the adopted code editions. The definition of 'Commercial structure' was revised to reflect statutory changes made by SB 279. The definition of 'Commissioner's designee' was deleted as unnecessary. The definition of 'Design package' was revised to clarify that this applies only to manufacturers. A definition of 'ICC' was added and the definitions of 'ICBO' and 'SBCCI' were deleted to reflect the merger of ICBO and SBCCI into one organization known as the ICC. The definition of 'Installation Permit' was revised to clarify that installation permits are only for persons who purchase industrialized housing or buildings for their personal use. The definition of 'Lease, or offer to lease' was revised to clarify that this applies only in industrialized housing or buildings and not to the property on which they are installed. A definition of 'Permanent industrialized building' was added to reflect statutory changes made by SB 279. The definition of 'Special conditions and/or limitations' was amended by changing the word "state" to "building" just before the word "codes" to reflect a change in SB 279 that refers to "mandatory building codes" rather than construction or state codes. The definition of 'Structure' was amended by adding the phrase "or modular component" after the phrase "complete assemblage of the modules" to clarify that a structure may also be an assemblage of modular components.

Section 70.10 is amended by adding subsection (c) to clarify that other terms not defined in this chapter may be defined in the mandatory building codes adopted under the industrialized housing and building program.

Section 70.20 is amended in paragraph (1) to correct the reference to the fee schedule from "70.70 to 70.80".

Section 70.30 was amended to replace the exemption for temporary buildings with an exemption for buildings specifically exempt from permit in the mandatory building codes to clarify the types of temporary buildings that are exempt. Section 70.30 was also amended to delete the exemption for buildings not designed to be placed on a permanent foundation and to add an exemption for construction site office buildings and to add new subsection (b) to reflect statutory changes made by SB 279.

Section 70.50 was amended to require an industrialized builder to report where a building is stored if it has not been installed, to keep a copy of the site inspection reports for all units installed outside the jurisdiction of a municipality, and to require industrialized builders to report on if a unit was transferred to the ownership of another industrialized builder or installation permit holder. The changes are made to clarify the type of records that a builder must be able to supply in response to a department audit. Section 70.50(4) was also amended to delete the requirement that the builder identify the type of foundation system. The change was made to reflect statutory changes made by SB 279. Section 70.71 was amended to delete subsection (e) concerning buildings not designed to be placed on a permanent foundation to reflect statutory changes made by SB 279.

Section 70.73(b) was amended to clarify that site inspections are performed in accordance with the rules and procedures established by the Council and to clarify that certain types of unoccupied buildings do not require site inspections. Section 70.73 was also amended to add the word "building" just before codes or code to reflect a change in SB 279 that refers "mandatory building codes" rather than construction codes or state codes.

Section 70.74 was completely rewritten to add requirements and procedures for altering industrialized housing or buildings. These changes were made to reflect statutory changes made by SB 279 that requires industrialized buildings that are altered to comply with the mandatory building codes.

Section 70.75(a) was amended to clarify that manufacturers must provide the industrialized builder or installation permit holder a set of approved buildings for the house or building in accordance with §70.70 and provide the builder or permit holder the name, mailing address, and telephone number of the department for filing complaints.

Section 70.75(b) was amended to clarify that industrialized builders must provide their customers a complete set of approved plans and specifications in accordance with §70.70 and in accordance with §70.74 and also provide the customer with the name, mailing address, and telephone number of the department for filing complaints.

Section 70.80(h) was revised to clarify that the fee for decals insignia is based on the gross floor area of the module or gross surface area or floor area of the modular component. Section 70.80(l) was added to set the fee for alteration decals used to certify that altered industrialized buildings comply with the mandatory state codes.

Section 70.102(a) was revised to clarify industrialized housing and buildings must comply with the mandatory building codes in effect at the time of construction, that installations must comply with the mandatory buildings codes, and that alterations must comply with the mandatory building codes and §70.74. Section 70.102(b) was deleted because there are no longer 2 code groups since ICBO and SBCCI have merged to form the ICC. Section 70.102(c) was revised to replace "the Act" with "Chapter 1202" to reflect the codification of the Industrialized Housing and Buildings Statute by HB 3507.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be that the rules will be more accurate in references to rules and statutes, will include new statutory requirements, and will be concise and clear.

There will be a cost to large, small, or microbusinesses. There will be an economic cost to industrialized builders who are required to comply with the new regulations on alterations. However this cost should be offset by the benefit to the builders of being able to use altered buildings instead of new buildings.

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

The amendments are proposed under Texas Occupations Code, Chapter 1202 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 1202 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§70.10. Definitions.

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

(1) Alteration--Any construction, other than repair of the house or building, to an existing industrialized house or building after affixing of the decal by the manufacturer. Industrialized housing or buildings that have not been maintained shall be considered altered.

(2) Alteration decal--The approved form of certification issued by the department to an industrialized builder to be permanently affixed to a module indicating that alterations to the industrialized building module have been constructed to meet or exceed the code requirements and in compliance with this chapter.

[~~(1) Act--Texas Civil Statutes, Article 5221f-1.~~]

(3) [~~(2)~~] Building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(4) [~~(3)~~] Building system--The design and/or method of assembly of modules or modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(5) Chapter 1202--Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

(6) [~~(4)~~] Closed construction--That condition where any industrialized housing or building, modular component, or portion thereof is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(7) [~~(5)~~] Commercial structure--An industrialized building classified by the mandatory building codes [~~applicable model code~~] for occupancy and use groups other than residential for one or more families. The term shall not include a structure that is not installed on a permanent foundation and either is not open to the public or is less than 1,500 square feet in total area and not used as a school or place of religious worship.

[(6) Commissioner's designee--A person appointed by the commissioner to act in a capacity of authority.]

(8) [(7)] Compliance Control Program--The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with Chapter 1202 [the Act] and this chapter.

(9) [(8)] Component--A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(10) [(9)] Decal--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the module indicating that it has been constructed to meet or exceed the code requirements and in compliance with this chapter [these sections].

(11) [(10)] Design package--The aggregate of all plans, designs, specifications, and documentation required by these sections to be submitted by the manufacturer to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package except as expressly set forth in §70.74 [of this title (relating to Alterations and Deviations)].

(12) [(11)] Design review agency--An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to these sections evidenced by affixing the council's stamp. Chapter 1202 [The Act] designates the department as a design review agency.

(13) [(12)] ICC--International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.

[(13) ICBO--International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601.]

(14) Industrialized builder--A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer for sale or lease to the public; a subcontractor of an industrialized builder is not a builder for purposes of this chapter [these sections].

(15) Insignia--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(16) Installation--On-site construction (see paragraph (26) [(32)] of this section).

(17) Installation permit--A registration [license] issued by the department to a person who purchases an industrialized house or building for his/her own use and who assumes responsibility for the installation of the industrialized house or building. A person who applies for an installation permit may not be engaged in the purchase of industrialized housing or buildings or of modules or modular components for sale or lease to the public. A subcontractor of an installation permit holder is not an industrialized builder for the purposes of this chapter. [is not registered as an industrialized builder, but who is responsible for the installation of industrialized housing or buildings or of modules or modular components and who is not engaged in the purchase of industrialized housing or buildings or of modules or modular components for sale or lease to the public.]

(18) Lease, or offer to lease--A contract or other instrument by which a person grants to another the right to possess and use industrialized housing or buildings for a specified period of time in exchange for payment of a stipulated price.

(19) Local building official--The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(20) Manufacturer--A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(21) Manufacturing facility--The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(22) Model--A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(23) Module--A three dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(24) NFPA--National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(25) Nonsite specific building--An industrialized house or building for which the permanent site location is unknown at the time of construction.

(26) On-site construction--Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(27) Open construction--That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(28) Permanent foundation system--A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §§70.100 , 70.101, [of this title (relating to Mandatory State Codes)] and [§] 70.102 [of this title (relating to Use and Construction of Codes)].

(29) Permanent industrialized building--An industrialized building that is not designed to be transported from one commercial site to another commercial site.

(30) [(29)] Person--An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(31) [~~(30)~~] Price--The quantity of an item that is exchanged or demanded in the sale or lease for another.

(32) [~~(31)~~] Public--The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(33) [~~(32)~~] Registrant--A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, builder, design review agency, third party inspection agency, or third party inspector.

(34) [~~(33)~~] Residential structure--Industrialized housing designed for occupancy and use as a residence by one or more families.

(35) [~~(34)~~] Sale, sell, offer to sell, or offer for sale--Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property [~~for an established price~~].

[~~(35) SBCCI--Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.~~]

(36) Site or building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(37) Special conditions and/or limitations--On-site construction documentation which alerts the local building official of items, such as handicapped accessibility or placement of the building on the property, which may need to be verified by the local building official for conformance to the mandatory building [~~state~~] codes.

(38) Structure--An industrialized house or building that [~~which~~] results from the complete assemblage of the modules or modular components [~~, modular components, or components~~] designed to be used together to form a completed unit.

(39) Third party inspector--An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural [~~,~~] and the plural means the singular.

(c) Where terms are not defined in this section or in other sections in this chapter and are defined in the mandatory building codes as referenced in §70.100, such terms shall have the meanings ascribed to them in these codes unless the context as the term is used clearly indicates otherwise. Where terms are not defined in this section or other sections in this title or in the mandatory building codes, such terms shall have ordinarily accepted meanings such as the context implies.

§70.20. Registration of Manufacturers and Industrialized Builders.

Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the officer of a corporation. The application must be accompanied by the fee set forth in §70.80 [~~70.70~~].

(2) The industrialized builder shall verify under oath at the time of registration that the alteration, foundation and installation of all units installed under this registration shall be constructed in accordance with the mandatory building codes, the engineered plans, and department rules, and shall be inspected in accordance with the inspection procedures established by the Texas Industrialized Building Code Council.

(3) A person who purchases an industrialized house or building, or modular component, for his/her own use and who assumes responsibility for the installation of the industrialized house or building may file for an installation permit in lieu of registering as an industrialized builder. A person who purchases an industrialized housing or buildings, or modular components, for sale or lease to the public may not file for an installation permit. The application shall be submitted on a form supplied by the department and shall contain such information as may be required by the department. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components. The application must be accompanied by the fee set forth in §70.80.

(4) The registration of a manufacturer or industrialized builder shall be valid for 12 months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property that is contiguous to a registered manufacturing facility. An industrialized builder must register each separate sales office but is not required to register each job location.

(5) A registered manufacturer or industrialized builder shall notify the department in writing within 10 days if:

(A) the corporate or firm name is changed;

(B) the main address of the registrant is changed;

(C) there is a change in 25% or more of the ownership interest of the company within a 12-month period;

(D) the location of any manufacturing facility is changed;

(E) a new manufacturing facility is established;

(F) there are changes in principal officers of the firm; or

(G) an industrialized builder transfers a module or modular component to another industrialized builder.

(6) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of Chapter 1202, the rules and regulations in this chapter or administrative orders of the department, or the instructions and determinations of the council in accordance with §70.90 and §70.91.

§70.30. Exemptions.

(a) The scope of [~~the sections in~~] this chapter is limited by Chapter 1202 [~~the Industrialized Housing and Buildings Act~~]; accordingly, it does [~~they do~~] not apply to:

(1) mobile homes or HUD-code manufactured homes as defined in Texas Occupations Code, Chapter 1201 [~~Texas Civil Statutes, Article 5221f~~];

(2) housing constructed of sectional or panelized systems not utilizing modular components;

(3) ready-built homes which are constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location, provided that modular components are not used in the construction of the ready-built home;

(4) any residential or commercial structure which is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the entrance of the structure to the peak of the roof;

(5) buildings that are specifically referenced in the mandatory building codes as exempt from permits;

[~~(5) temporary structures which are specifically referenced in the mandatory codes;~~]

(6) construction site office buildings; or

[~~(6) a structure designated by a manufacturer as not being designed to be placed on a permanent foundation. Structures so designated by the manufacturer shall have a seal attached by the manufacturer stating that the structure is not designed for placement on a permanent foundation. A municipality with the authority to regulate structures may require a Texas decal on any structure which is placed within its jurisdiction; or~~]

(7) any open construction.

(b) The installation of an industrialized house or a permanent industrialized building that is moved from the first installation site to a new installation site is subject to the permitting and approval requirements of the local authorities.

§70.50. Manufacturer's and Builder's Monthly Reports.

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components that were constructed and to which decals and insignia were applied during the month. The manufacturer shall keep a copy of the monthly report on file for a minimum of five years. Any corrections to reports previously filed shall clearly indicate the corrections to be made and the month and date of the report that is being corrected. The report shall contain:

(1) the serial or identification number of the units;

(2) the decal or insignia number assigned to each identified unit;

(3) the name and registration number of the industrialized builder (as assigned by the department), or the installation permit number (as assigned by the department) of the person, to whom the units were sold, consigned, and shipped. The requirements contained in §70.20(2) [~~(relating to Registration of Manufacturers and Industrialized Builders)~~] shall apply when an installation permit is reported in lieu of the registration number of an industrialized builder;

(4) the date the decal or insignia was affixed (physically attached or applied) to the unit;

(5) an identification of the type of structure for which the units are to be used, e.g., single family residence, duplex, restaurant, equipment shelter, bank building, hazardous storage building, etc.;

(6) any other information the department may require; and

(7) an indication of zero units if there was not activity for the reporting month.

(b) Each industrialized builder shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed. These records shall be kept for a minimum of five years from the date of sale, lease, or installation and shall be made available to the department for review upon request. An annual audit of units sold, leased, or installed by the builders shall be conducted by the Department. The audit will identify the modules or modular components by the name and Texas registration number of the manufacturer of each unit and the assigned Texas decal or insignia numbers and the corresponding identification, or serial numbers as assigned by the manufacturer. The builders shall report or provide the following information to the Department for each unit identified in the audit within the timeframe set by the audit:

(1) evidence of compliance with §70.75 [~~of this title (relating to Responsibilities of Registrants- Permit/Owner Information)~~];

(2) the address where each unit was installed. If the builder is not responsible for the installation, then the address to where each unit was delivered . If the unit has not been installed, then the address where the unit is stored;

(3) the occupancy use of each building containing modules or modular components, i.e., classroom, restaurant, bank, equipment shelter, etc; and

[~~(4) identification of the type of foundation system, either permanent or temporary, on which each unit was installed, in accordance with the following.~~]

(4) [~~(A)~~] if [~~If~~] the builder is responsible for the installation and site work, then the builder:

(A) [~~(i)~~] shall, for units installed outside the jurisdiction of a municipality, keep a copy of the foundation plans and [~~, for units installed on a permanent foundation,~~] keep a copy of the site inspection report in accordance with §70.73 [~~of this title (relating to Responsibilities of the Registrants--Building Site Inspections)~~]. A copy of these documents shall be made available to the department upon request; or

(B) [~~(ii)~~] shall, if installed within the jurisdiction of a municipality, provide the name of the city responsible for the site inspection ; or [~~.~~]

(5) [~~(B)~~] if [~~If~~] the builder is not responsible for the installation and site work, or if the builder has transferred the ownership of the unit to another person, then the builder shall provide identification of the installation permit number, assigned by the Department, or builder registration number, assigned by the Department, of the person responsible.

(c) The manufacturer's monthly reports must be filed with the department no later than the 10th day of the following month.

§70.71. Responsibilities of the Registrants--Manufacturer's Data Plate.

(a) The manufacturer will attach a data plate to each dwelling unit of a residential structure containing industrialized housing and buildings modules and to each appropriate unit of a commercial structure containing industrialized housing and buildings modules. The data plate must be made of a material that will not deteriorate over time and be permanently placed so that it cannot be removed without destruction. The data plate shall be placed in an easily accessible location as designated on the floor plan or on the cover or title sheet for each model or project. The data plate shall not be located on any readily removable item such as a cabinet door or similar component. Location of the data plate on the cover of the electrical distribution panel is acceptable.

(b) The data plate must contain, as a minimum, the following information:

(1) the manufacturer's name, registration number, and address;

(2) the serial or identification number of the unit;

(3) the State decal numbers;

(4) the name and date of applicable codes;

(5) an identification of permissible type of gas for appliances;

(6) the maximum snow load (roof) (psf);

(7) the maximum wind speed (mph) and exposure;

(8) the seismic design criteria;

(9) the occupancy/use group type;

(10) the construction type; and

(11) special conditions and/or limitations.

(c) All modular components shall be marked with, or otherwise have permanently affixed, a data plate containing the following information:

(1) the manufacturer's name, registration number, and address;

(2) the serial or identification number of the component or components;

(3) the State insignia number or numbers;

(4) the name and date of applicable codes;

(5) the design loads for the component; and

(6) any special conditions of use for the component.

(d) The information required in subsection (c) of this section may be placed in the crate in which the component or components are shipped or on a tag attached to the crate or to the component if the component is such that the information may not be marked or permanently affixed to the component.

[~~(e) Structures designated by the manufacturer as not being designed for placement on a permanent foundation shall have a manufacturer's seal permanently attached inside the door of the electrical panel or near the entrance door if the unit does not have an electrical panel. The seal shall not be smaller than 2 by 1 - 1/2 inches and shall be constructed of a metallic alloy. The seal must contain the following capitalized statement: THIS STRUCTURE IS NOT DESIGNED FOR PLACEMENT ON A PERMANENT FOUNDATION AND DOES NOT MEET THE REQUIREMENTS OF TEXAS CIVIL STATUTES, ARTICLE 5221f-1, INDUSTRIALIZED HOUSING AND BUILDINGS.~~]

§70.73. Responsibilities of the Registrants--Building Site Inspections.

(a) When the building site is within a municipality that has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the permanent foundation to assure completion and attachment in accordance with the design package, the on-site construction documentation, and any unique foundation system or on-site detailed drawings.

(b) When the building site is outside a municipality, or within a municipality that has no building department or agency, a third party inspector will perform the required inspections in accordance with this section and the inspection procedures established by the Texas Industrialized Building Code Council. The on-site inspection is normally accomplished in three phases: foundation inspection [~~site preparation~~], set inspection, and final inspection. Site inspections are not required for the installation, on permanent foundations, of unoccupied industrialized buildings not open to the public with a gross area of less than or equal to 400 square feet, such as communication equipment shelters, that are not also classified as a hazardous occupancy by the mandatory building code. The builder, or installation permit holder, is responsible for scheduling each phase of the inspection with the third party inspector. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. The industrialized builder, or installation permit holder, may utilize a different third party inspector for different projects, but may not change the inspector for a project once started without the written approval of the department. The inspector shall provide the builder or permit holder a copy of the site inspection report and shall keep a copy for a minimum of five years. The report may be in whatever format the inspector desires as long as the following information is included on the inspection report:

(1) dates of all inspections;

(2) the name, Texas registration number or license number, and signature of the inspector who performed the inspection;

(3) the name and Texas industrialized builder registration number, or the installation permit number, of the person responsible for the foundation and installation. Installation permit numbers are assigned by the Department in accordance with §70.20 [~~of this title (relating to Registration of Manufacturers and Industrialized Builders)~~];

(4) the name and Texas registration number of the manufacturer of the modules or modular components inspected;

(5) the name and address of the owner of the building or buildings inspected;

(6) the complete site address of the modules or modular components inspected;

(7) the Texas decal or insignia numbers and manufacturer's identification or serial numbers of the modules or modular components inspected;

(8) the building codes the modules or modular components were designed to meet in accordance with the data plate on the building;

(9) the occupancy group and the building construction type of the building in accordance with the data plate on the building;

(10) a record of all system testing observed; and

(11) the date and description of any deviations to the approved plans, unique site completion documentation, or mandatory building codes and the corrective action, including the date of the corrective action, taken by the industrialized builder, or installation permit holder. If no deviations were observed, then this shall be noted on the report. The inspector shall notify the department of any deviations that cannot be corrected or that the builder, or installation permit holder, refuses to correct.

(c) Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory building code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

(d) If an inspector finds a structure, or any part thereof, at the building site to be in violation of the approved design package and/or the unique on-site plans and specifications, the inspector shall immediately post a deviation notice and notify the industrialized builder or installation permit holder. The industrialized builder, or installation permit holder, is responsible for assuring that all deviations are corrected and inspected prior to occupation of the building.

(e) The industrialized builder, or installation permit holder, shall not permit occupancy of a structure until a successful final inspection has been completed and a certificate of occupancy issued by the local authorities. The industrialized builder, or installation

permit holder, shall keep a copy of the inspection report for the site inspection in the files for a minimum of five years.

§70.74. Responsibilities of the Registrations--Alterations [~~or Deviations~~].

(a) The manufacturer [~~or industrialized builder~~] shall not alter construction of the industrialized house or building [~~or deviate~~] from the approved design package [~~and on-site construction documentation~~]. Industrialized builders or installation permit holders shall not alter construction performed at the installation site from the approved on-site construction documentation except in accordance with this section or [~~Unique foundation drawings and on-site details are subject to~~] §70.70(e) . Alterations of industrialized housing or buildings shall be as specified in this section [~~of this title (relating to Unique On-Site Details)~~].

(b) An alteration of an industrialized house or building prior to, or during installation, that [~~which~~] results in a structure that does not comply with the mandatory building codes [~~state code~~] is prohibited. An alteration after installation of an industrialized building that is designed to be moved from one commercial site to another commercial site that does not comply with the mandatory building codes is prohibited. Alterations after installation of industrialized housing or permanent industrialized buildings shall be in accordance with the requirements of the local building code authorities.

(c) Repairs and work exempt from permit requirements as specified in the mandatory building codes referenced in §70.100 shall not be considered alterations.

[~~(c) A complete set of plans and specifications describing a proposed alteration of an industrialized house or building shall be submitted to a design review agency for approval prior to construction. All work must be performed in accordance with the approved plans and specifications. The person performing the alteration shall notify the department in writing at least 10 days in advance of the work. The department may inspect the work performed to ensure conformance to the approved plans by utilizing department or third party inspectors. An alteration to an industrialized house or building resulting in a change in the principal use of the structure shall require a reclassification of the structure to the appropriate occupancy group defined in the mandatory state code.~~]

(d) Alteration decals are used to certify alterations of industrialized buildings. Each decal is assigned to a specific module or modular component. The control of the decals shall remain with the department. The department will issue alteration decals to the third party inspection agency responsible for the inspections of the alterations upon application and payment of the fee for the decal by the industrialized builder. By affixing the decal the industrialized builder and third party inspection agency certify that the module has been altered and inspected in accordance with the mandatory building codes and this section. The third party inspector shall not affix the decal to any module where inspection reveals that the alteration does not comply with the approved alteration plans and specifications or the mandatory building codes.

(e) Alterations of industrialized housing and permanent industrialized buildings.

(1) Prior to, or during, installation outside the jurisdiction of a municipality. The industrialized builder, or installation permit holder, shall submit the original approved plans and specifications for the house or building, as reference, along with a complete set of plans and specifications describing a proposed alteration to a design review agency for approval prior to construction in accordance with the procedures established by the Texas Industrialized Building Code Council. Alterations on the house or building shall not begin prior to approval of the plans and specifications and shall be performed only by persons licensed to perform this work. Inspections of alterations shall be performed by a third party inspector in accordance with procedures established by the Texas Industrialized Building Code Council. The third party inspection agency responsible for inspections for a project may not be changed without the written approval of the department. An alteration data plate shall be affixed to any house or building where the alteration results in a reclassification of the occupancy group or construction type, a change in the permissible type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations. The data plate shall contain such information as specified in subsection (g). All records pertinent to the alteration, including a copy of the alteration data plate, shall be retained by the industrialized builder or installation permit holder for a minimum of 5 years and be made available to the department upon request;

(2) Prior to installation within the jurisdiction of a municipality. Alterations prior to installation within a jurisdiction shall be in accordance with paragraph (1) of this subsection;

(3) During, or after, installation within the jurisdiction of a municipality. Approval of plans and inspection of alterations shall be in accordance with the permitting and inspection procedures of the municipality.

(f) Alterations of industrialized buildings designed to be moved from one commercial site to another commercial site. An industrialized building designed to be moved from one commercial site to another commercial site, that is altered, may be recertified.

(1) To recertify the building the industrialized builder shall:

(A) provide the design review agency the current value of the building and a cost estimate for the alteration. With knowledge of the penalties for false statements the industrialized builder shall certify that the current value of the building and the cost estimate are true and accurate;

(B) submit a copy of the original approved construction documents for the building to the design review agency for reference purposes;

(C) submit a copy of the plans and specifications for alteration of the building to the design review agency for review and approval in accordance with the requirements established by the Texas Industrialized Building Code Council. The plans and specifications shall include the serial number assigned by the manufacturer and the Texas decal number or insignia number of each module or modular component;

(D) not begin the alteration of the building prior to the approval of the alteration plans and specifications by the design review agency. The alteration shall be performed only by persons licensed to perform this work;

(E) have the alteration inspected by a third-party inspector in accordance with the procedures established by the Texas Industrialized Building Code Council. The industrialized builder may not change the third party inspector for a project once started without the written approval of the department. A minimum of one rough in inspection and a final inspection of the alteration construction shall be required;

(F) maintain all records pertinent to the alteration and make these records available to the Department upon request; and

(G) purchase a decal from the Department to affix to each module. The alteration decal shall be released only to the third party inspection agency responsible for the alteration inspections.

(2) The third party inspector shall affix the alteration decal to the each industrialized building module or modular component upon completion of the construction and successful completion of all required inspections. The decal shall be affixed in the vicinity of the original decal or insignia on the module or modular component.

(3) An alteration data plate shall be affixed to any building, in the vicinity of the original data plate on the building, where the alteration results in a reclassification of the occupancy group or construction type, a change in the type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations. The data plate shall contain such information as specified in subsection (g) of this section. A copy of the data plate shall be retained by the industrialized builder and be made available to the Department upon request.

(g) An alteration data plate shall be placed by the third party inspector on each altered house or building as required by this section. The data plate shall be supplied by the industrialized builder or installation permit holder. An alteration data plate shall be made of a material that will not deteriorate over time and shall be permanently placed so that it cannot be removed without destruction. The data plate shall be placed adjacent to the original data plate in an easily accessible location as designated in the alteration plans, but shall not be located on any readily removable item such as a cabinet door or similar component. Location of the data plate on the cover of the electrical distribution panel is acceptable. An alteration data plate shall contain, as a minimum, the information required on a manufacturer's data plate as required by §70.71(b)(2-11) plus the following information:

(1) the name, address, and registration number assigned by the department of the industrialized builder, or the name, address, and installation permit number assigned by the department of the owner of the house or building; and

(2) the Texas alteration decal numbers.

§70.75. Responsibilities of the Registrants--Permit/Owner Information.

(a) The manufacturer shall provide the industrialized builder, or a person who has obtained an installation permit in accordance with §70.20 [of this title (relating to Registration of Manufacturers and Industrialized Builders)], with the following information:

(1) the name, Texas registration number, and address of the manufacturer of the building;

(2) the location of the decal(s) or insignia on the modules or modular components;

(3) a description of the location of the data plate and explanation of the information thereon;

(4) a set of approved plans , in accordance with §70.70, as necessary to obtain a building permit;

(5) the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems for the owner of the building; [and]

(6) a completed signed copy of the energy compliance checklist (reference subsection [subparagraph](c)(8)(C) of §70.70 ; and [of this title (relating to Responsibilities of the Registrants-Manufacturer's Design Package).]

(7) the information required by §70.78(b).

(b) The industrialized builder shall provide the purchaser (owner) of any industrialized house or building the following information:

(1) the name, Texas registration number, and address of the manufacturer and industrialized builder;

(2) a description of the location of the data plate and explanation of the information thereon;

(3) the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems;

(4) a complete set of approved plans and specifications in accordance with §70.70, including all records pertinent to alterations of the house or building in accordance with §70.74;

(5) [(4)] the location of the decal(s) or insignia on the module or modular components;

(6) [(5)] a site plan showing the on-site location of all utilities and utility taps;

(7) [(6)] a completed signed copy of the energy compliance checklist (reference subsection [paragraph] (a)(6) of this section) ; and [.]

(8) the information required by §70.78(b).

(c) The manufacturer must have written proof that the information in subsection (a) of this section was delivered to the industrialized builder or installation permit holder and keep this proof in the manufacturer's files for a minimum of five [two] years.

(d) The builder must have written proof that the information in subsection (b) of this section was delivered to the purchaser (owner) and keep this proof in the industrialized builder's files for a minimum of five [two] years.

§70.80. Commission Fees.

(a) The manufacturer's registration fee is $750 annually.

(b) The industrialized builder's registration fee is $375 annually.

(c) The design review agency's registration fee is $300 annually.

(d) The third party inspection agency's registration fee is $150 per firm and $100 per inspector annually.

(e) The registration fee shall be paid before the certificate of registration is issued and annually thereafter.

(f) The fee for department personnel for certification inspections at a manufacturing facility shall be $40 per hour. Travel and per diem costs shall be reimbursed by the manufacturer in accordance with the current rate as established in the current Appropriations Act. The department shall present a billing statement to the manufacturer at the completion of the inspection that is payable upon receipt.

(g) When the department acts as a design review agency, the fee for such services is $40 per hour. The manufacturer for whom the services are performed shall pay the fee before approval of the designs, plans, specifications, compliance control documents, and installation manuals and before the release of the documents to the manufacturer. Travel and per diem costs shall be reimbursed by the manufacturer in accordance with the current rate as established in the current Appropriations Act.

(h) The fees for issuing decals and insignia are:

(1) modules (decals): $.07 per square foot of gross floor area, with a minimum of $25 for each decal; and

(2) modular component (insignia): $.02 per square foot of gross surface area with a minimum of $.60 for each insignia or $.07 per square foot of gross floor area with a minimum of $15 for each insignia.

(i) The fee for department personnel for special inspections shall be $40 per hour. A special inspection is any inspection for industrialized housing and buildings that is not covered by other fees. The Department will present a billing statement at the conclusion of the inspection that is payable upon receipt. Travel and per diem costs shall be reimbursed in accordance with the current rate as established in the current Appropriation Act.

(j) The fee for department monitoring of design review agencies and third party inspection agencies outside headquarters shall be $40 per monitor hour. Travel and per diem costs shall be reimbursed in accordance with the current rate as established in the current Appropriations Act. The department will present the agency or manufacturer a statement at the conclusion of the monitoring trip, and it is payable upon receipt.

(k) The fee for an installation permit shall be $75 for each building containing industrialized housing and buildings modules or modular components. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components.

(l) The fee for issuing an alteration decal is $50 for each decal.

§70.102. Use and Construction of Codes.

(a) Industrialized [~~The local building official shall advise the department in writing as to whether the municipality bases its code on the ICBO codes or the SBCCI codes. Any industrialized~~] housing or buildings shall [~~building, module, or modular component to be located within the jurisdiction of the municipality must~~] be constructed to meet or exceed the mandatory building [~~model~~] code standards and requirements in effect at the time of construction. Industrialized housing and buildings shall be installed in accordance with the mandatory building code standards and requirements referenced in §70.100 [~~of this title (relating to Mandatory State Codes)~~] and §70.101. Alterations of industrialized housing and buildings shall be in accordance with the mandatory building code standards and requirements referenced in §§70.100 and 70.101 and in accordance with §70.74 [~~for the codes used by the municipality~~].

[~~(b) If the industrialized house or building, module, or modular component, is located either outside a municipality or in a municipality that does not base its code on the SBCCI or ICBO codes, then the manufacturer may choose which of the two code groups with which the construction must comply. The manufacturer shall specify which of the two model code groups is applicable to the design package.~~]

(b) [~~(c)~~] The codes adopted in §70.100 [~~of this title (relating to Mandatory State Codes)~~] shall be construed to conform to the intent of Chapter 1202 [~~the Industrialized Housing and Buildings Act (the Act)~~] and these rules and regulations. For example, where reference is made in any of the codes to the building official, the plumbing or mechanical official, or the administrative authority or enforcement official, such reference shall be construed pursuant to Chapter 1202 [~~the Act~~] and the sections in this chapter to mean, where applicable, the council, the local building official, or the department.

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 January 23, 2004.

TRD-200400483
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-7348

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PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 103. GENERAL RULES

16 TAC §103.2

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes new §103.2. This new rule will govern the licensure of separately located and franchised warranty repair facilities. The previously published version of §103.2, published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10010) is withdrawn and simultaneously republished for consideration with changes as the result of comments submitted to the Board in response to the prior version of §103.2.

Proposed new §103.2 requires that franchised dealers obtain licenses for separate locations operating as service-only repair facilities pursuant to §2301.251 and §2301.264(a)(2)(G) of the Texas Occupations Code. The proposed new rule defines "service-only facility" and provides clarification that franchised dealers may contract with other independent repair facilities to perform warranty service on vehicles the dealer would ordinarily perform. The revised version of §103.2 adds language in subsection (d) that clarifies that a manufacturer or distributor may require its prior written approval before a franchised dealer can contract with a third-party provider for warranty work the dealer would ordinarily perform. However, the rule also states that the manufacturer or distributor may not unreasonably withhold approval. Furthermore, the rule establishes that persons who are not authorized to sell the line of new motor vehicles to be serviced are not eligible to be licensed as service-only repair facilities. The Board intends that this rule should not preclude independent repair facilities from providing consumers with non-warranty repair service, nor should it prevent such individuals or companies from entering into contracts with franchised dealers to perform warranty service on behalf of the dealer as authorized by this rule.

Some written comments received by the Board regarding the previous publication of §103.2 offered non-substantive grammatical changes. Other comments expressed concern that the earlier published version would allow dealers to contract with third parties to perform warranty work without manufacturer or distributor approval, in contravention of franchise agreements and industry custom. The new version of §103.2 addresses these comments, adding language to clarify that a manufacturer or distributor may require a dealer to seek prior written approval before it engages a third party to perform warranty work on its behalf. The Board does not intend the rule to absolutely require prior written approval in each instance where a franchised dealer contracts with a particular third-party provider. Instead, the rule is intended to allow the manufacturer or distributor to indicate when prior written approval is necessary, or to allow the course of conduct between the dealer and the manufacturer/distributor

to indicate when it is required. The rule also states that a manufacturer or distributor may not unreasonably withhold approval from a franchised dealer who seeks to contract with a third party to perform warranty work.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the proposed new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bray has also determined that for each year of the first five years the new section is in effect the anticipated public benefit will be increased availability of warranty work, and increased clarity amongst dealer licensees regarding the parameters for establishing a service-only facility location. There will be an indeterminate positive impact on small businesses, and an anticipated small economic cost to franchised dealers required to comply with the new rule as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the section.

Comments may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768-2293, (512) 416-4899. The Motor Vehicle Board will consider adoption of this proposed new rule at its meeting on March 25, 2004. The deadline for receipt of comments on the proposed new rule is 5:00 p.m. on Monday, March 8, 2004.

The new rule is proposed under the Texas Occupations Code §2301.155, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Texas Occupations Code §§2301.002(8), 2301.251, 2301.264(a)(2)(G), and 2301.652 are affected by the proposed new rule.

§103.2. Service-Only Facility.

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, non-contiguous site, from the dealer's new vehicle sales and service or sales only location, where the dealer will only perform warranty and non-warranty repair services.

(b) A franchised dealer must obtain a license to operate a service-only facility. The dealer may not obtain a service-only facility license to service a particular line of new motor vehicles, unless the dealer is franchised and licensed to sell that line.

(c) A service-only facility is considered a dealership under Texas Occupations Code §2301.002(8), and is therefore subject to protest under Texas Occupations Code §2301.652.

(d) Upon the manufacturer's or distributor's prior written approval, which cannot be unreasonably withheld, a franchised dealer may contract with another person to perform warranty repair services the dealer is authorized to perform under a franchise agreement with a manufacturer or distributor.

(e) A person with whom a franchised dealer contracts, as described in subsection (d) of this section, to perform warranty repair services is not eligible to obtain a service-only facility license and may not advertise to the public the performance of warranty repair services in any manner.

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 January 22, 2004.

TRD-200400442
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: March 25, 2004
For further information, please call: (512) 416-4899

CHAPTER 107. WARRANTY PERFORMANCE OBLIGATIONS

16 TAC §107.6

The Texas Motor Vehicle Board proposes an amendment to 16 TAC §107.6, Hearings.

The proposed amendment adds a new paragraph authorizing hearings to be held by written submission only or by telephone when agreed to by the parties and approved by the hearing officer. The proposed amendment also provides that renumbered paragraphs 107.6(8), pertaining to each party being questioned by the other party, and 107.6(11), pertaining to all hearings being recorded on tape by the hearing officer, will not apply when hearings are conducted by written submissions only. In addition, the amendment makes non-substantive changes by correcting outdated references due to the codification of the former Texas Motor Vehicle Commission Code, Article 4413(36), Texas Revised Civil Statutes as Chapter 2301 of the Texas Occupations Code.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bray has also determined that for each year of the first five-year period the amendment is in effect the anticipated public benefit will be a streamlining of the hearing process by eliminating the mandatory requirement for the parties to attend hearings in-person, which will result in a travel and resource cost savings.

There will be no effect on small or large businesses. There will be no impact on local economies or overall employment as a result of the amendment.

Comments, in 16 copies, may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P. O. Box 2293, Austin, TX 78768, 512-416-4899. The Motor Vehicle Board will consider adoption of the proposed amendment at its meeting on March 25, 2004. The deadline for receipt of comments on the proposed amendment is 5:00 p.m. on March 8, 2004.

The amendment is proposed under the Texas Occupations Code §2301.155 which provides the Motor Vehicle Board with the authority to adopt rules as necessary and convenient to administer Chapter 2301 and to govern practice and procedure before the Board.

Texas Occupations Code §2301.204 and §§2301.601 - 2301.613 are affected by the proposed amendment.

§107.6. Hearings.

Complaints which satisfy the jurisdictional requirements of the Texas Occupations Code §2301.204 and §§2301.601 - 2301.613 [~~Texas Motor Vehicle Commission Code, §3.08(i) or §6.07~~], will be set for hearing and notification of the date, time, and place of the hearing will be given to all parties by certified mail.

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

(7) By agreement of the parties and with the approval of the hearing officer, the hearing may be conducted by written submissions only or by telephone.

(8) [~~(7)~~] Except for hearings conducted by written submission only, each [~~Each~~] party will be subject to being questioned by the other party, within limits to be governed by the hearing officer.

(9) [~~(8)~~] Except for hearings conducted by written submissions only or by telephone, the [~~The~~] complainant will be required to bring the vehicle in question to the hearing for the purpose of having the vehicle inspected and test driven, unless otherwise ordered by the hearing officer upon a showing of good cause as to why the complainant should not be required to bring the vehicle to the hearing.

(10) [~~(9)~~] The Board may have the vehicle in question inspected prior to the hearing by an expert, where the opinion of such expert will be of assistance to the hearing officer and the Board in arriving at a decision. Any such inspection shall be made upon prior notice to all parties who shall have the right to be present at such inspection, and copies of any findings or report resulting from such inspection will be provided to all parties prior to, or at, the hearing.

(11) [~~(10)~~] Except for hearings conducted by written submissions only, all [~~All~~] hearings will be recorded on tape by the hearing officer. Copies of the tape recordings of a hearing will be provided to any party upon request and upon payment as provided by law.

(12) [~~(11)~~] All hearings will be conducted expeditiously. However, if a Board hearing officer has not issued a decision within 150 days after the Texas Occupations Code §§2301.601 - 2301.613 [~~Texas Motor Vehicle Commission Code §6.07~~] complaint and filing-fee were received, Board staff shall notify the parties by certified mail that complainant has a right to file a civil action in state district court to pursue rights under §§2301.601 - 2301.613 [~~§6.07~~]. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant. The notice will inform the complainant of the right to elect to continue the lemon law complaint through the Board.

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 January 23, 2004.

TRD-200400470
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: March 25, 2004
For further information, please call: (512) 416-4899

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TITLE 19. EDUCATION

PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.2

The Windham School District Board of Trustees proposes new §300.2, concerning Windham School District Board of Trustees Operating Procedures.

The purpose of the new rule is to establish operating procedures for the Windham School District Board of Trustees to conduct business.

David McNutt, Chief Financial Officer for the Windham School District, has determined that for the first five years the new rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. McNutt has also determined that there will be no economic impact on persons required to comply with the new rule. There will be no effect on small and micro-businesses.

The anticipated public benefit as a result of enforcing the new rule will be to enhance public safety.

Comments should be directed to Dr. Ron Bradford, Superintendent, Windham School District, P.O. Box 40, Huntsville, Texas 77342-0040, superintendent@wsd.tx.org. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under Texas Education Code, §§19.001, et seq.

Cross Reference to Statutes: Texas Education Code, §19.001.

§300.2. Windham School District Board of Trustees Operating Procedures.

(a) General. This section establishes operating procedures for the Windham School District (WSD) Board of Trustees to conduct business.

(b) Organization.

(1) The Texas Board of Criminal Justice (TBCJ) serves as the Board of Trustees for the Windham School District (WSD Board), pursuant to Chapter 19, Texas Education Code. The TBCJ is a nine (9) member body appointed by the Governor to oversee the Texas Department of Criminal Justice (TDCJ). The Chairman of the TBCJ is designated by and serves at the pleasure of the Governor (Section 492.005, Texas Government Code).

(2) The WSD Board operates utilizing the same officers and structure established by the TBCJ.

(3) The TBCJ Education Committee provides WSD a reporting avenue to the WSD Board. By appointment to this committee (in accordance with TBCJ practices), members will be designated to become particularly familiar with various WSD issues, and to bring forward consensus recommendations or a candid report on any disagreements to the full WSD Board.

(4) The Chair of the Education Committee, appointed by the Chairman, may appoint non-members to sit on the committee in an advisory capacity; however, advisory members are non-voting members and cannot be reimbursed for expenses incurred in this capacity.

(5) For employment decisions made specifically by the WSD Board, a limited-purpose committee shall be appointed by the Chairman as deemed necessary to formulate recommendations for full WSD Board consideration.

(c) Meetings.

(1) The WSD Board shall hold its regular meetings in conjunction with those of the TBCJ. Special called meetings of the WSD Board can be held at the discretion of the Chairman.

(2) The TBCJ attempts to hold regular meeting at least every odd-numbered month of the year, but shall meet at least once each quarter of the calendar year. These meetings shall be held in Austin, Texas, or under exceptional circumstances in Huntsville, Texas (Section 492.006, Texas Government Code and the General Appropriations Act). If the TBCJ uses videoconference technology to convene a meeting, at least three (3) members must convene at the Austin videoconference site, or under exceptional circumstances, the Huntsville videoconference site. The other members may convene using the technology from remote sites.

(3) The agenda for the meetings of the WSD Board shall be set by the Chairman, after consultation with members of the WSD Board and the WSD Superintendent.

(4) A meeting of the TBCJ Education Committee shall be held at a site chosen by the Chairman of the committee. The Chairman of the committee shall set the agenda for the meeting in consultation with the WSD Superintendent. If the committee uses videoconference technology to convene a meeting, at least a majority of a quorum of the committee, such as, two (2) members of a four (4) member committee, must convene in one location, and the other members may convene using the technology from remote sites.

(5) A majority of the WSD Board or the Education Committee constitutes a quorum for the convening of, and transaction of business at, any meeting. A quorum of a committee with two (2) members is two (2).

(6) A quorum of a committee cannot depend on the presence of an advisory member. A non-unanimous vote on an action by a committee cannot be decided by an advisory member.

(7) Meetings of the WSD Board and its committees shall be conducted according to standard parliamentary procedures.

(8) Meetings of the WSD Board and its committees are governed by the Texas Open Meetings Act (Chapter 551, Texas Government Code).

(9) The WSD Superintendent, in coordination with appropriate TDCJ staff, shall ensure that members are provided with materials necessary to conduct the business of the WSD Board well in advance of any meeting.

(10) The WSD Superintendent, in coordination with appropriate TDCJ staff, shall ensure that minutes of each meeting are prepared, retained, filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the WSD Board.

(11) Requests by the public to make presentations to the WSD Board are governed by WSD Board Rule, §300.1 of this title.

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

Filed with the Office of the Secretary of State on January 16, 2004.

TRD-200400386

Carl Reynolds
General Counsel
Windham School District
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-0422

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TITLE 22. EXAMINING BOARDS

PART 4. TEXAS COSMETOLOGY COMMISSION

CHAPTER 89. GENERAL RULES AND REGULATIONS

22 TAC §89.57

The Texas Cosmetology Commission proposes amendments to §89.57 of the Commission's rules. Section 89.57 requires that, upon the filing of a complaint with the commission charging a licensee or certificate holder with violating certain provisions of Chapter 1602 of the Texas Occupations Code, the commission shall provide all parties with an opportunity for hearing after reasonable notice of not less than ten days prior to the hearing. The commission proposes to amend §89.57 to clarify that this rule applies to any and all charges of alleged violations of any provision of Chapter 1602 of the Texas Occupations Code or a rule adopted pursuant to that chapter. The commission further proposes to add additional subsections to this rule which require the respondent in such a proceeding to file an answer informing the commission of the respondent's desire to either consent to the recommended penalty or request a contested case hearing. Additionally, the proposed amendments require that the notice of hearing be delivered by registered or certified mail as well as regular mail and require the notice to contain certain specific language informing the respondent of the consequences of a failure to timely file an answer to the charges filed by the commission. Finally, the proposed amendments contain provisions allowing for an administrative law judge of the State Office of Administrative Hearings to enter a default judgment against the respondent in instances where a timely answer is not filed, and allows for the commission in such instances to assess against the respondent the costs associated with preparing for and attending the administrative hearing in an amount not to exceed two hundred dollars.

Antoinette Humphrey, Executive Director, has determined that for the first five-year period that the amendments are in effect there will be no additional fiscal implications for state or local governments as a result of enforcing or administering the amendments to subsection (a) specifying that this rule also applies to alleged violations written pursuant to §1602.501 of the Texas Occupations Code. This specific amendment does not represent a substantive change of commission policy or practice, but merely clarifies the rule in order to codify what has been the general understanding of the commission for years with respect to the reach of the hearing requirements contained in that rule.

With respect to new subsection (b) requiring the commission to deliver the Complaint and Notice of Hearing by both regular and certified mail, Ms. Humphrey has determined that for the first five-year period that the new subsection is in effect, the additional fiscal implications for state or local governments as a result of enforcing or administering the subsection will be the additional costs associated with postage and materials for the notice sent

by regular mail. (The agency already delivers such notices by certified mail.) This cost is estimated to amount to $20,000.00.

With respect to added subsection (c) and subsection (d) requiring a respondent to submit an answer in order to secure a contested case hearing, Ms. Humphrey has determined that for the first five-year period that the new subsections are in effect, there will be no additional fiscal implications for state or local governments as a result of enforcing or administering the subsections. Though the proposed subsections are expected to enable the commission and its legal representatives to operate more efficiently and prepare more effectively for contested case hearings, it is not expected that these changes will translate into a specific fiscal impact on the commission. Rather, such changes will simply enable the commission to more efficiently utilize the staff and resources already appropriated to the commission so that the agency can more effectively execute its responsibilities to regulate and monitor its industry and more speedily process proposed administrative penalties before the State Office of Administrative Hearings.

With respect to added subsection (e) allowing the commission to assess costs against the respondent in instances where a default judgment is issued due to the respondents failure to timely file an answer to the complaint, Ms. Humphrey has determined that for the first five-year period that the subsection is in effect, the additional fiscal implications for state or local governments as a result of enforcing or administering the subsection will be to enable the agency to collect an estimated $20,000.00 in additional funds as a result of such costs being assessed.

Ms. Humphrey, has determined that for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will first be to make clear that service to the last known address of a licensee as shown in the records of the commission is sufficient to prove notice of hearing, thus enabling the commission to efficiently obtain default judgments against respondents where the respondent has failed to comply with current regulations of the commission which require licensees to inform the agency of changes to their address. Second, the provisions in the proposed amendments requiring respondents to file an answer in order to preserve their opportunity for a contested case hearing will enable the commission and its legal representatives to operate more efficiently and prepare more effectively for hearings related to charges of alleged violations of commission laws and rules. Due to the large numbers of violations issued by the commission, the agency is required to schedule numerous cases for hearing on the same day. In the overwhelming majority of such cases, the respondents never appear to contest the charges against them. By requiring respondents to file an answer to the notice of hearing expressing their intent to either consent to the proposed penalty or request a contested case hearing, the agency and its legal representatives will be better informed of which cases will require additional preparation, thus enabling them to operate more efficiently and effectively with state resources. In addition, requiring such answers by the respondent will reduce the number of instances where a witness wastes their time and resources traveling to Austin or otherwise remaining available to testify when no hearing will actually take place due to the non-appearance of the respondent at the hearing. Finally, the amendments will reduce the number of instances where the respondent wastes their time and resources to appear at the hearing to contest the charges, only to have the case reset to another date in order to give the agency more time to procure a necessary witness.

The economic cost to persons who are required to comply with the amendment involves the minimal cost of postage and paper necessary to file an answer with the commission. In addition, in instances where a default judgment is granted against a person who fails to comply with the amendment, costs incurred by the commission for preparing and attending the administrative hearing may be assessed against that person in an amount not to exceed two hundred dollars.

The amendments will have no impact on small businesses.

Comments may be submitted to Virgil Seals, Texas Cosmetology Commission, P.O. Box 26700, Austin, Texas 78755-0700, (512) 380-7600. Comments may also be submitted electronically to virgil.seals@txcc.state.tx.us or faxed to (512) 454-0309.

The amendments to §89.57 are proposed pursuant to §1601.151 of the Texas Occupations Code which authorizes the Commission to adopt rules consistent with Chapter 1602 in order to implement the provisions of that chapter. Specifically, pursuant to §1602.504 and §1602.505 of the Texas Occupations Code, the commission is required to provide those alleged to have violated the laws or rules of the commission with an opportunity for a hearing to contest the charges. Pursuant to §1602.407 of the Texas Occupations Code, the commission is required to provide a hearing when seeking to suspend or revoke a license. Section 1602.511 also contains provisions governing proceedings where the commission seeks to impose an administrative penalty.

There are no other statutes affected by these amendments.

§89.57. Disciplinary Hearings, Notice and Service, Default, Costs.

(a) Upon the filing of a complaint with the commission charging an individual licensee or an institutional licensee and/or certificate holder with any violation of the [~~actions specified in~~] the Cosmetology Act, Texas Occupations Code §1602.407 or §1602.501 [~~§36~~] as grounds for disciplinary action, the Commission shall provide an opportunity for a hearing on [~~of~~] the charges. [~~All parties must be afforded an opportunity for hearing after reasonable notice of not less than ten days prior to the hearing.~~]

(b) Notice. The Complaint and Notice of Hearing shall be given by regular mail and by registered or certified mail, addressed to the respondent at his or her most recent address as shown in the records of the Commission. Service of the Complaint and Notice of Hearing shall be complete at the time the notice is deposited, postage-paid and properly addressed in a post office or official depository of the United States Postal Service.

(c) Answer Required.

(1) In order to preserve the right to a contested case hearing, the respondent must file an answer either consenting to the penalty recommended by the executive director in the complaint, or requesting a contested case hearing. An answer must be filed not later than 20 days from service of the complaint.

(2) The answer described in paragraph (1) of this subsection may be in any form that references the cause number of the complaint and indicates the respondent's intent to either consent to the recommended penalty or request a contested case hearing.

(3) The notice of hearing provided to a respondent in a contested case shall include the following language in capital letters in bold face twelve point type: YOUR FAILURE TO FILE A TIMELY APPEARANCE IN PERSON OR THROUGH AN ANSWER OR OTHER RESPONSIVE PLEADING TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT WITHIN TWENTY (20) DAYS OF THE DATE OF THE NOTICE WAS MAILED SHALL

ENTITLE THE TEXAS COSMETOLOGY COMMISSION TO A DEFAULT JUDGEMENT AGAINST YOU. FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU BEING ADMITTED AS TRUE AND THE RELIEF REQUESTED MAY BE GRANTED BY DEFAULT.

(d) Default Hearings.

(1) If a respondent fails to file a timely answer, the Administrative Law Judge, upon motion by the Commission, shall issue a Proposal For Decision against the respondent in which the factual allegations against the respondent contained in the Complaint and Notice of Hearing shall be admitted as prima facie evidence, and deemed admitted as true, without any requirements for additional proof to be submitted by the Commission.

(2) Any default judgment granted under this section shall be entered on the basis of the factual allegations contained in the Complaint and Notice of Hearing, and upon proof of proper notice to the defaulting respondent. For purposes of this section proper notice means notice sufficient to meet the provisions of the Government Code §§2001.051, 2001.052, and 2001.054.

(e) Costs. In administrative hearings brought before the State Office of Administrative Hearings (SOAH), in the event a default judgment is granted against the respondent, the Commission has the authority to assess against the respondent, in addition to the penalty imposed, the actual cost of the preparing for and attending the administrative hearing in an amount not to exceed two hundred ($200.00) dollars.

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 January 26, 2004.

TRD-200400503
Frank Knapp
Assistant Attorney General
Texas Cosmetology Commission
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 380-7600

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

The Texas General Land Office proposes amendments §9.51 of Title 31, Part 1, Chapter 9, Subchapter D of the Texas Administrative Code, relating to Royalty and Reporting Obligations to the State and §9.93 of Title 31, Part 1, Chapter 9, Subchapter F of the Texas Administrative Code, relating to Assignments. The proposed change to §9.51(a) corrects an inexplicable spelling and punctuation error. The proposed changes to §9.51(b)(2)(N) relate to the State's first lien on oil, gas, proceeds from the production of oil and gas, and all equipment that may be used in the production and processing of oil and gas. The proposed changes to §9.51(b)(3)(A) relate to the basis for calculating penalties on delinquent royalty payments. The proposed changes to §9.93(e) relate to the liabilities of assignors of state leases and allow the commissioner to require assurance of financial responsibility of transferees. The amendments conforms the rule to amendments to Texas Natural Resources Code §52.136 by Acts 1997, 75th Leg., ch. 1324, §2, eff. Jan. 1, 1998, to Texas Natural Resources Code §52.131(e) by Acts 1993, 73rd Leg., ch. 897, §30, eff. Sept. 1, 1993, and to Texas Natural Resources Code §52.026 by Acts 1999, 76th Leg., ch. 1125, §1, eff. Sept. 1, 1999. The changes are being made pursuant to §2001.039 (Agency Review of Existing Rules) of the Government Code in order to conform agency rules to statutory changes.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendments as proposed will be in effect, there will be no negative fiscal impact to state or local government as a result of administering the sections as amended.

Marshall Enquist, Attorney with the Energy Section, has determined that the amendment to §9.51(a) will have a negligible effect as to public benefit or cost. The amendment to §9.51(b)(2)(N) will improve the State's lien position and may result in enhanced recovery of unpaid royalty amounts, resulting in a benefit to the Permanent School Fund. The amendment to §9.51(b)(3)(A) simply makes it clear that the term "market value" refers to the value of production, not the value of royalty, and will have a negligible impact, if any, as either a public cost or benefit. The amendment to §9.93(e) will result in an improvement in the state's ability to recover its costs of plugging abandoned wells, removing old platforms and pipelines, and cleaning up oilfield contamination, resulting in a substantial public benefit.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no impact on local employment.

Comments may be submitted to Melinda Tracy, Legal Services, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78711 or by fax at (512) 463-6311, no later than 30 days after publication.

SUBCHAPTER D. PAYING ROYALTY TO THE STATE

31 TAC §9.51

The amendments to these sections are proposed under Texas Natural Resources Code §31.051, which authorizes the Commissioner of the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendments affect Sections 52.136, 52.131(e) and 52.026 of the Texas Natural Resources Code.

§9.51. Royalty and Reporting Obligations to the State.

(a) In-kind royalties and reports. Producers meeting their royalty obligations by delivering the state's royalty in-kind shall contact the General Land Office (GLO) for specific instructions for making and reporting in-kind royalties. Purchasers of the state's oil or gas in-kind must make the payment for this oil or gas separately from any payment of monetary royalty.[~~royaltie~~]

(b) Monetary royalties and reports.

(1) Basis for computing royalties.

(A) Gross proceeds. Lessees shall compute and pay oil and gas royalties due under each lease on the gross proceeds received by the seller, including amounts collected to reimburse the seller for

severance taxes and production-related costs. Lessees shall not deduct production or severance taxes, or the cost of producing, processing, transporting, and otherwise making the oil, gas, and other products produced from the premises ready for sale or use.

(B) Volume subject to royalty.

(i) General. Royalties are due and payable by all lessees on 100% of each lease's gross production of oil and gas unless the lease contains language expressly exempting certain dispositions of oil and/or gas from state royalties.

(ii) Oil sales and stocks. As a matter of convenience, during periods of regular sales, the GLO will permit lessees to pay monthly oil royalties based on the number of barrels sold (or otherwise disposed of) in a given month rather than on the gross production as may be required by the lease. Unless the lessee is otherwise notified by the GLO, no royalties are payable on lease stocks until such stocks are disposed of either by sale or otherwise. The GLO reserves the right to require at any time, or from time to time, that lessees pay royalties on gross production rather than on barrels sold. The GLO requires that lessees pay royalties on existing stocks when there have been no sales from such stocks for several months.

(C) Plant products. Lessees shall calculate the volume and value of plant products subject to state royalty in accordance with the lease under which the gas is produced and processed and this volume and value shall never be less than the minimum percentage specified in the lease. In cases where the lease does not specify the manner in which lessees are to calculate plant product royalties, then the volume and value of plant products subject to state royalty shall be that volume and value for which settlement is being made to the producer, under a gas contract prudently negotiated between the producer and processor. When gas is processed for the recovery of liquid hydrocarbons or other products, lessees shall pay royalties on residue gas and plant products in an amount not less than the royalties which would have been due had the gas not been processed.

(D) Market value. Nothing in this subsection shall limit or waive the right of the state to receive its royalties based on market value of the oil and gas produced, if authorized by the lease, unit agreement, judgment, or other contract authorized by law.

(E) Determination of market value.

(i) For the purpose of computing and paying royalties to the state based on market value, the market value shall be presumed to be the gross proceeds received pursuant to a bona fide contract entered into at arm's length between nonaffiliated parties of adverse economic interests.

(ii) If a contract is not negotiated at arm's length, or was between affiliated parties, the presumption that market value is equal to gross proceeds shall not apply. In this situation, the lessee has the burden to establish that royalties paid to the state are based on market value.

(iii) The commissioner may overcome the presumption established under clause (i) of this subparagraph and assess additional royalties due by establishing a different price based on other sales in the general area which are comparable in time, quality, volume, and legal characteristics. If some of this information is not available to the commissioner, an assessment will be based on the best information available.

(iv) A lessee may challenge an assessment of additional royalties due by submitting information which establishes the prices used for comparison by the commissioner involve products of significantly different quality; were based on contracts to deliver significantly different volumes or for different terms; were not from a relevant market; were derived from an area in which deliverability is significantly different; or by presenting any other information which could establish a more accurate market price. However, under no circumstances will the state's royalty be computed on less than gross proceeds received, including reimbursements received for severance taxes and production-related costs.

(v) Parties are affiliated under this subsection if they are related by blood, marriage, or common business enterprise, are members of a corporate affiliated group, or where one party owns a 10% or greater interest in the other.

(vi) The term "general area," as used in this subsection, means the smallest geographical area which contains sufficient data to establish a market price. Examples include a unit, a field, a county, or the applicable RRC district.

(vii) For the purpose of computing and paying oil royalties to the state based upon a market value determined by the highest posted price, that phrase is defined as the greater of:

(I) the highest price available to the producer; or

(II) the gross price posted by the purchaser of the oil, less a reasonable transportation allowance after sale and delivery if the price bulletin reflects on its face that the purchaser will deduct a marketing or transportation allowance, and a transportation allowance is actually deducted by the purchaser from its gross price.

(viii) For the purposes of clause (vii)(I) of this subparagraph, a price will be presumed to be available to the producer if it is offered in the field where the lease is located at the time of sale. A producer may overcome the presumption by submitting evidence that the price is not actually available to the producer. The terms "available" and "actually available," as used in this subsection, mean that a price is being offered to nonaffiliated parties by posting, contract listing or amendment, or otherwise and that if a producer presented a barrel of oil to an entity offering said price, assuming all quality specifications for the price were met, that producer would, in fact, receive that offered price.

(ix) Clause (vii) of this subparagraph shall not be construed to allow the lessee, when calculating royalties to the state, to make any deductions for the cost of producing, processing, or transporting the oil prior to its sale and delivery.

(2) Royalty payments and reports.

(A) Mode of payment. Except as provided in subsection (a) of this section, relating to payments made in-kind, and subject to clauses (i)-(vi) of this subparagraph, relating to mandatory electronic funds transfer, lessees may pay royalties and other monies due by cash or check, money order, or sight draft made payable to the commissioner. Lessees may also pay by electronic funds transfer or in any manner that may be lawfully made to the state comptroller. Information regarding alternative payment methods may be obtained from the GLO Royalty Management Division. Payors are required to make payments by electronic funds transfer in compliance with 34 Texas Administrative Code Chapter 15 in the circumstances outlined:

(i) For leases executed or amended after May 11, 1989, but before September 1, 1991, payors that have made over $500,000 in a category of payments, defined in clause (iv) below, to the GLO during the preceding state fiscal year shall make payments of $10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(ii) For leases executed or amended after August 30, 1991, but before June 9, 1995, payors that have made over $250,000 in a category of payments, defined in clause (iv) below, to the GLO during the preceding state fiscal year shall make payments of $10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(iii) For leases executed or amended on or after June 9, 1995, payors that have made over $25,000 in a category of payments, defined in clause (iv) below, to the GLO during the preceding state fiscal year shall make all payments in the current fiscal year for those leases and in that category by electronic funds transfer.

(iv) For purposes of clauses (i)-(iii) of this subparagraph, each of the following is a separate category of payments:

(I) royalties (including shut-in and minimum royalties);

(II) penalties;

(III) other payments to the state agency, excluding interest and extraordinary payments such as payments made in settlement of litigation.

(v) The GLO anticipates that those payors that have exceeded the threshold sums set out in clauses (i)-(iii) of this subparagraph in the preceding state fiscal year will also exceed those sums in the current state fiscal year. The application of clauses (i)-(iii) to a specific payor may be waived at the commissioner's discretion to the extent allowed by law, upon a showing that a payor will not exceed the threshold sums set out in clauses (i)-(iii) in the current fiscal year, or for other good cause.

(vi) The GLO will notify each payor to whom this subparagraph applies in compliance with 34 Texas Administrative Code Chapter 15.

(B) Information required with royalty payments. Lessees shall submit all royalty payments in a manner which identifies the assigned GLO lease number, the annual submission certification number, if any, and the amount of oil and gas royalty being paid. Royalty payments not identified by the lease number and the annual submission certification number, if any, shall be considered delinquent and shall be subject to the delinquency provisions of paragraph (3) of this subsection.

(C) Required reports. Lessees shall provide, in the form and manner prescribed by the GLO, production/royalty reports (Form GLO-1 for oil and condensate and Form GLO-2 for gas), other required reporting documents for gas or oil and condensate, and other supporting documents required by GLO to verify gross production, disposition, and market value of the oil and condensate, gas, and other products produced therefrom. Reporters for leases which the GLO has approved for annual royalty payments may submit such reports on an annual basis as well after receipt of an annual royalty certification number. Parties approved for annual reporting or payment shall notify the GLO in writing within ten business days of a complete release, forfeiture, termination, assignment, or change of operator or payor of a lease approved for annual reporting and payment. Failure to comply with the statutes and the reporting requirements of this chapter may subject a lease to forfeiture, delinquency penalties, or both.

(D) Timely receipt of royalty payments and reports.

(i) For the purpose of this subsection, the GLO will consider a report timely received if the report:

(I) arrives postpaid and properly addressed; and

(II) is deposited with the United States Postal Service or any parcel delivery service at least one day before it is due and such deposit is evidenced by a postmark, a postal meter stamp, or a receipt.

(ii) For the purpose of this subsection, the GLO will consider a royalty payment timely made if:

(I) the payment is received by electronic funds transfer, it is received on or before the date it is due (please be advised that delivery of payment to the state comptroller's office does not satisfy this requirement. Due to the time required by the comptroller's office to process a payment and forward it to the GLO, payors are strongly encouraged to submit payments to the comptroller's office before 6:00 p.m. CST on the business day preceding the business day on which the payment is due).

(II) the payment is not made by electronic funds transfer, it arrives postpaid and properly addressed and it is deposited with the United States Postal Service or any parcel delivery service at least one day before it is due and such deposit is evidenced by a postmark, a postal meter stamp, or a receipt.

(iii) If a royalty payment or report is due on a Sunday or a legal state or federal holiday, then lessees shall ensure that such payment or report is either received by the GLO on the next calendar day which is not a Sunday or a holiday, or postmarked or stamped prior to the next calendar day which is not a Sunday or a holiday.

(E) Oil and condensate royalties--due date.

(i) Lessees shall ensure that all oil and condensate royalties, except royalties approved by GLO to be paid on an annual basis, are timely received by the GLO on or before the fifth day of the second month following the month of production.

(ii) Upon application to and written approval by the GLO, future royalties attributable to leases for which oil, condensate, and gas royalty due for the immediately preceding September 1 to August 31 period equaled $3, 000 or less may be paid on an annual, rather than monthly, basis. A party who is both a payor and a reporter for a lease shall submit both payments and reports on a monthly or, if the GLO grants approval, an annual, basis.

(I) The applicant shall designate the payor who will submit the annual royalty payments and, if there are multiple payors for a lease, the share of royalty the designated payors will submit. Upon approval, GLO staff will assign an annual submission certification number to the designated payor and the GLO will authorize the designated payor to submit the designated share of royalty payments on an annual basis. The applicant shall notify the GLO in writing of any change in the payor designation within ten business days of its effective date.

(II) Payors, after approval, shall pay annual royalties for the following January 1 to December 31 annual production periods.

(III) Payors, after approval, shall continue to make payments on a monthly basis until the commencement of the next annual production period.

(IV) Each year, payors shall ensure that all annual oil and condensate royalties are timely received by the GLO on or before the fifth day of February following each annual production period. Each year, payors shall ensure that all annual gas royalties are timely received by the GLO on or before the 15th day of February following each annual production period.

(V) After the payor receives GLO approval for annual royalty payments, if the total annual oil, condensate, and gas royalty due under a lease exceeds $3,000 for any annual production period, payors shall resume making monthly royalty payments starting with the January production month immediately following that annual production period.

(VI) For any royalty approved to be paid on an annual basis, payors shall ensure that the total royalties that have accrued as of the date of a complete lease forfeiture, release, termination, assignment, or any change of designated payor, are timely received by the GLO on or before 75 calendar days after that date. If a change of payor occurs for a lease with multiple payors, only the changing payor shall pay the accrued royalties for which he is designated as being responsible on or before 75 calendar days after the change.

(VII) Any forfeiture, release, termination, assignment, or change of operator or payor, does not affect the approved annual royalty payment status, subject to subclause (VI) of this clause. However, as provided in §9.93(l) of this title (relating to Assignment), an assignee or successor in interest is liable for all unsatisfied royalty requirements of the assignor or predecessor in interest.

(VIII) The GLO may prescribe further specific forms and instructions applicable to this subparagraph.

(IX) The GLO has the sole discretion to approve annual royalty payments. Approval does not affect the state's right to take its royalty in-kind, nor does it constitute a finding that a lease has been maintained in force and effect or otherwise ratify or revive any lease. GLO approval does not abrogate the lessee's responsibility to submit timely royalty payments and reports to the GLO as provided in subparagraphs (L) and (M) of this paragraph.

(X) Determination of royalty due for purposes of clause (ii) of this subparagraph is not an official GLO determination of royalty due under a lease. The GLO may audit any lease to determine if royalty was properly paid and may pursue its rights and remedies through an administrative hearing or litigation.

(F) Gas royalties--due date.

(i) Lessee shall ensure that all gas royalties, except royalties approved by GLO to be paid on an annual basis, are timely received by the GLO on or before the 15th day of the second month following the month of production.

(ii) The provisions of subparagraph (E)(ii)(I)-(X) of this paragraph apply to the payment of gas royalties.

(G) Required reports--due date.

(i) Lessees shall ensure that all required production/royalty reports and other required documents (hereafter "reports" in subparagraph (G) of this paragraph), in whatever format submitted, for gas or oil and condensate are timely received by the GLO on or before the due date of the corresponding monthly royalty payment.

(ii) Upon application to and written approval by the GLO, future reports for leases for which oil, condensate, and gas royalty due for the immediately preceding September 1 to August 31 period equaled $3,000 or less may be submitted on an annual, rather than monthly, basis. A party who is both a payor and a reporter for a lease shall submit both payments and reports on a monthly or, if the GLO grants approval, an annual, basis.

(I) The applicant shall designate the reporter who will submit the annual reports and, if there are multiple reporters for a lease, the information the designated reporter will submit. Upon approval, GLO staff will assign an annual submission certification number to the designated reporter and the GLO will authorize the designated reporter to submit the designated reports on an annual basis. The applicant shall notify GLO in writing of any change in the reporter designation within ten business days of its effective date.

(II) Reporters, after approval, shall submit annual reports for the following January 1 to December 31 annual production periods.

(III) Reporters, after approval, shall continue to submit reports on a monthly basis until the commencement of the next annual production period. Unless the GLO expressly approves otherwise in writing, reporters shall submit unit production/royalty reports on a monthly basis regardless of the annual reporting status of individual leases within the unit.

(IV) Each year, reporters shall ensure that all annual reports concerning oil and condensate are timely received by the GLO on or before the fifth day of February following each annual production period. Each year, reporters shall ensure that all annual reports concerning gas are timely received by the GLO on or before the 15th day of February following each annual production period.

(V) After the reporter receives GLO approval for annual reporting, if the total annual oil, condensate, and gas royalty due under a lease exceeds $3,000 for any annual production period, reporters shall resume making monthly reports starting with the January production month immediately following that annual production period.

(VI) Reporters shall ensure that all reports approved by the GLO for submission on an annual basis are timely received by the GLO on or before 75 calendar days after a complete lease forfeiture, release, termination, assignment, or any change of designated reporter. If a change of reporter occurs for a lease with multiple reporters, only the changing reporter shall submit the reports for which he is designated as being responsible on or before 75 calendar days after the change.

(VII) Any forfeiture, release, termination, assignment, or change of operator or reporter does not affect the approved annual reporting status, subject to subclause (VI) of this clause. However, as provided in §9.93(l) of this title (relating to Assignment), an assignee or successor in interest is liable for all unsatisfied reporting requirements of the assignor or predecessor in interest.

(VIII) The GLO may prescribe further specific forms and instructions applicable to this subparagraph.

(IX) The GLO has the sole discretion to approve annual reporting. Approval does not affect the state's right to take its royalty in-kind, nor does it constitute a finding that a lease has been maintained in force and effect or otherwise ratify or revive any lease. GLO approval does not abrogate the lessee's responsibility to submit timely royalty payments and reports to the GLO as provided in subparagraphs (L) and (M) of this paragraph.

(X) Determination of royalty due for purposes of clause (ii) of this subparagraph is not an official GLO determination of royalty due under a lease. The GLO may audit any lease to determine if royalty was properly paid and may pursue its rights and remedies through an administrative hearing or litigation.

(iii) Lessees shall identify the relevant GLO lease numbers and annual submission certification numbers, if any, on all required reports. Reports that fail to identify these numbers shall be

considered delinquent and shall be subject to the delinquency provisions of subsection (b)(3) of this section.

(H) Gas contracts. Lessees shall file with the GLO a copy of all contracts under which gas is sold or processed and all subsequent agreements or amendments to such contracts within 30 days of entering into or making such contracts, agreements, or amendments. Such contracts, agreements, and amendments, when received by the GLO will be held in confidence by the GLO unless otherwise authorized by lessee.

(I) Gas contract brief (Form GLO-5).

(i) Each gas contract, agreement, or contract amendment must be accompanied by a gas contract brief (Form GLO-5) completed in the form and manner prescribed by GLO. The GLO-5 must be submitted even if GLO is taking its royalty in-kind from the leases subject to the contract or agreement. The GLO-5 shall be submitted to the GLO within 30 days of executing a contract, agreement, or contract amendment. While the lessee is responsible for the preparation and filing of the GLO-5 and supplements, the lessee is not required to submit the GLO-5 or supplements for royalty volumes which the state is taking in kind. Rather, the lessee must submit the GLO-5 and supplements for other volumes produced from the lease or leases.

(ii) A gas contract brief supplement (GLO-5(s)) may be filed for sales of gas on the spot or other markets in which price changes occur monthly. A GLO-5(s) should be submitted to the GLO within 30 days of the completion of each six-month period of sales. A GLO-5 does not have to be submitted as long as other contract provisions remain unchanged.

(iii) For spot or similar sales situations in which supplements will be submitted, the GLO-5 is due within 30 days of the completion of the first six-month sales period.

(iv) Gas contract briefs and supplements should be directed to: General Land Office, Energy Resources Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701-1465, Attention: Gas Contracts Administrator.

(J) Settlements and judgments. Lessee shall file with the GLO a copy of each settlement reached or judgment rendered in a dispute between the lessee and a purchaser regarding production from, and/or contracts relating to, state lands. Lessee shall file these documents with the GLO within 30 days of entering into any such settlement or within 30 days of the rendering of such judgment.

(K) Other records. At any time, or from time to time, the GLO may require any additional records relating to any aspect of lease operations and accounting.

(L) Responsibility of lessee to file royalty payments and required reports. Parties other than the lessee may remit royalties to the state on the lessee's behalf. This practice does not relieve the lessee of any statutory or contractual obligation to pay royalty or file reports and supporting documents. The lessee bears full responsibility for paying royalties and for filing reports and supporting documents as required in this chapter.

(M) Cooperation of operators, purchasers, payors, reporters, and lessees. The GLO recognizes that lessees may often delegate various lease obligations to third parties. However, such a delegation does not relieve a lessee of these obligations. Lessees must be aware that the acts and omissions of these third parties regarding these obligations may subject a lease to a delinquency penalty or forfeiture. Therefore, these parties must cooperate to responsibly discharge their obligations to each other and to the state.

(N) State's lien. The state has a statutory first lien on all oil and gas produced from the leased area to secure the payment of all unpaid royalty or other sums of money that may become due. Acceptance of an oil and gas lease from the state grants to the state a contractual first lien on and security interest in all oil and gas extracted from the lease area, all proceeds that may accrue to the lessee, and all fixtures on and improvements to the area covered by the lease that may be used in the production or processing of oil and gas.

(O) Certification of sufficient royalties. The GLO will not be responsible for certifying, prior to the rental anniversary date, that sufficient royalty has been received to obviate the necessity of paying rentals or minimum royalties as may be required by lease. Lessees should maintain adequate records relating to lease royalty and rental status to determine if additional liability exists. If there is uncertainty concerning whether or not rental or minimum royalties are due, a lessee may maintain a lease in effect by remitting the annual amount required under each lease. The GLO will refund or grant credit to lessees for payments received in this manner that are later found to have not been due.

(P) Partial payments. The GLO will apply a lessee's partial payment of amounts assessed (delinquent royalties, penalty, and interest) first to unpaid penalty and interest and then to delinquent royalties. Penalty and interest will continue to accrue until the delinquent royalties are fully paid.

(3) Penalties and interest.

(A) Penalties on delinquencies. Any royalty not paid when due, or any required report or document not submitted when due, is delinquent and penalties as provided in this subsection shall be added. Royalty payments or any required reports or documents that do not identify GLO lease numbers and annual submission certification numbers, if any, and any royalty payments not accompanied by any required reports or documents are also delinquent. The penalties on delinquent royalties specified in this subsection shall not be assessed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as the market value of the production[~~to fair market value~~].

(i) For royalties and reports due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985, the GLO shall add:

(I) a penalty of 5.0% of the delinquent amount or $25, whichever is greater, to any royalty which is delinquent 30 days or less;

(II) a penalty of 10% of the delinquent amount or $25, whichever is greater, to any royalty which is more than 30 days delinquent;

(III) at its discretion, a penalty of $10 per document for each 30-day period that each report, affidavit, or other document is delinquent. The GLO shall impose this penalty of $10 per document only after the commissioner or a designated representative has notified the lessee in writing that reports, affidavits, or documents are not being filed correctly and that the GLO will assess the penalty on subsequent reporting errors.

(ii) For royalties and reports due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985, the GLO shall add:

(I) a penalty of 1.0% of the delinquent amount or $5.00, whichever is greater, for each 30-day period that any royalty is delinquent;

(II) a penalty of $5.00 per document for each 30-day period that each report, affidavit, or other document is delinquent.

(iii) For royalties and reports due before September 1, 1975, including those for oil and gas produced prior to August 1, 1975, the GLO shall impose no penalty for delinquent royalties or delinquent reports.

(B) Interest on delinquencies. Any royalty not paid when due is delinquent and shall accrue interest as provided in this subsection.

(i) For royalties due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 12% per year (simple interest) pursuant to the Texas Natural Resources Code, §52.131(g);

(II) interest shall begin to accrue 60 days after the due date.

(ii) For royalties due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 6.0% per year compounded daily pursuant to Texas Civil Statutes, Article 5069-1.03;

(II) interest shall begin to accrue 30 days after the date due.

(C) Penalties for fraud. The commissioner shall add a penalty of 25% of the delinquent amount if any part of the delinquency is due to fraud or an attempt to evade the provisions of statutes or rules governing payment of royalty. The GLO shall apply this penalty in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to the fair market value. The GLO shall apply this penalty in addition to any other penalty assessed.

(D) Forfeiture. The state's power to forfeit a lease is not affected by the assessment or payment of any delinquency, penalty, or interest as provided in this subsection. Specifically, the lessee's failure to pay royalties and other sums of money within 30 days of the due date or the failure to file reports completed in the form and manner prescribed by this section shall subject a lease to forfeiture under §9.95 of this title (relating to Forfeiture).

(E) Reduction of penalty and/or interest. The SLB may reduce penalties and/or interest assessed under Texas Natural Resources Code, §52.131, and/or any other penalties or interest relating to delinquent or unpaid royalties that have been assessed by the commissioner in the following circumstances:

(i) when a lessee brings a deficiency to the GLO's attention voluntarily; and/or

(ii) when a lessee and the GLO have reached an agreement regarding the reduction as part of a resolution of an outstanding audit issue.

(4) Corrections and adjustments to royalty payments and reports.

(A) Nonroutine corrections and/or adjustments, as used in this subsection, are defined as those corrections and adjustments by which someone seeks to change, on a lease basis, the originally reported royalty due for oil or the originally reported royalty due for gas by at least $25,000 or 25%.

(B) The GLO Royalty Management Division must receive at least 30 days advance written notice of the lessee's intention to take a nonroutine correction and/or adjustment which will result in a credit with written documentation explaining and supporting the requested credit. The credit may be taken 30 days after that GLO division receives such notice if by that date, the GLO has not, in writing, denied lessee permission to take the credit. If the GLO denies permission, the GLO will set forth its reasons for such denial. Any nonroutine credit improperly taken may not be used to offset royalty due on current reports. The improper application of credits will result in a current month delinquency and the assessment of associated penalties and interest.

(C) Effective with the production month of March 1989, all prior month adjustments must be submitted on GLO-1 and GLO-2 report documents separate from the reports containing the current month royalty activity. The GLO-1 or GLO-2 containing prior month adjustments must be labeled as "Amended Reports" (underlined).

(5) Temporary reduction of gas royalty rates.

(A) Prerequisites. Application for a temporary reduction of the royalty rates established may be considered by SLB if:

(i) the lease covers any of the state lands described in §9.21 of this title (relating to Leasing Guide)

(ii) state land was leased by SLB on the basis of a royalty bid and at a royalty rate exceeding 25%; and

(iii) the lease has not been pooled or unitized with other leases.

(B) Amount of reduction. If the value of gas from such lands is at or below $3.00 for each 1,000 cubic feet of gas, the board may reduce the royalty rate for gas produced from such lands for any term set by SLB, such term to be set after September 1, 1987, and before September 1, 1990, as follows:

(i) for gas valued as $1.50 or less per Mcf of gas, the board may reduce a royalty rate to 25%;

(ii) for gas valued from $1.51 to $2.00 per Mcf of gas, the board may reduce a royalty rate to 30%;

(iii) for gas valued from $2.01 to $2.50 per Mcf of gas, the board may reduce a royalty rate to 35%;

(iv) for gas valued from $2.51 to $3.00 per Mcf of gas, the board may reduce a royalty rate to 40%.

(C) Definition of value. For purposes of this paragraph, the value of the gas is defined as the highest market price paid or offered for gas of comparable quality in the general area where produced and when run, or the gross price paid is offered to the producer, whichever is greater.

(D) Request for reduction. A lessee seeking the approval of SLB for a temporary reduction in gas royalty rates must make written request for an application to the Minerals Leasing Division, General Land Office, 1700 North Congress Avenue, Room 640, Austin, Texas 78701-1495. The application should be completed and returned to the Minerals Leasing Division of the GLO.

(i) The applicant must submit an affidavit and documentation in support of its request for a temporary reduction of gas royalty rates. The affidavit will attest to the fact that the requirements set out in this paragraph have been satisfied. The accompanying documentation will contain pertinent lease data, production and reserve data, gas price data, development data, and any other information which may be

required to support the application, including the reason for requesting a royalty reduction.

(ii) SLB will consider the request for temporary reduction in gas royalty rates based upon lessee's affidavit, documents in support thereof, and the recommendation of the Minerals Leasing Division.

(iii) SLB may reevaluate the temporary reduction in gas royalty rates at any time.

(E) Verification of gas valuation. The gas valuation information submitted by the lessee will be subject to verification by the Royalty Audit Division.

(F) Effective dates for reduced royalty rates. The reduced royalty rates shall be effective beginning the first day of the next month following approval by SLB. Royalty rates on gas produced after September 1, 1990, will not be subject to reduction under this section.

(G) No retroactive effect. The reduced royalty rates will not be applied retroactively for previous months' production.

(c) Marginal Properties Royalty Incentive Program.

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

(A) Active well--Any well on the qualifying property as defined in subparagraph (H) of this paragraph in actual use either as a producing well or an injection well as defined in subparagraph (D) of this paragraph during at least six months of the qualifying period as defined in subparagraph (G) of this paragraph.

(B) Average daily per well production--

(i) Un-pooled leases: For a given reservoir, the total oil, condensate, and/or natural gas production from the lease for the qualifying period, in BOE as defined in subparagraph (C) of this paragraph, divided by the product of 365 and the number of the reservoir's active wells on the lease. Average daily per well production is calculated in BOE/day and is rounded down to the next whole number.

(ii) Pooled leases: For a given reservoir, the total oil, condensate, and/or natural gas production from the unit for the qualifying period, in BOE, divided by the product of 365 and the number of the reservoir's active wells in the unit. Average daily per well production is calculated in BOE/day and is rounded down to the next whole number.

(C) Barrel of oil equivalent (BOE)--One 42-gallon barrel of crude oil, or the greater of 6,000 cubic feet (6 Mcf) of natural gas available for sale off the lease or unit or a volume of natural gas available for sale off the lease or unit with a minimum heating value of 6,000,000 British thermal units (6,000 MBtu).

(D) Injection well--Any well approved by the RRC for use in the injection of gas or fluids in a secondary or tertiary enhanced recovery or pressure maintenance operation, excluding disposal wells.

(E) Mcf--Thousand cubic feet.

(F) Price--The five-day average spot price of West Texas Intermediate crude oil at the Midland, Texas, oil terminal as reported in The Oil Daily.

(G) Qualifying period--The 12-month period immediately preceding the most recent month of production.

(H) Qualifying property--Land subject to a State of Texas oil and gas lease issued pursuant to Texas Natural Resources Code, Chapter 32, Chapter 51, Subchapter E, or Chapter 52. Land subject to a free royalty reserved by the state under Texas Natural Resources Code, §51.054 or its predecessor statutes cannot be qualifying property.

(I) Qualifying Gulf of Mexico property--Land described in Texas Natural Resources Code, §52.011(2), that is subject to a State of Texas oil and gas lease issued pursuant to Texas Natural Resources Code, Chapter 52, Subchapter B.

(J) Qualifying reservoir--A reservoir underlying a qualifying property or a reservoir within a pooled unit that includes qualifying property, having average daily per well production during the qualifying period equal to or less than 15 BOE/day. Unless specified or unless the context clearly requires a different interpretation, the term "qualifying reservoir" includes a "qualifying Gulf of Mexico reservoir."

(K) Qualifying Gulf of Mexico (GOM) reservoir--A reservoir underlying a qualifying GOM property or a reservoir within a pooled unit that includes qualifying GOM property, having average daily per well production during the qualifying period equal to or less than 50 BOE/day.

(L) Reservoir--A "common reservoir" as defined in Texas Natural Resources Code, Chapter 86, Subchapter A, §86.002.

(2) Qualification for Royalty Reduction.

(A) The SLB may consider a lease for a royalty reduction if:

(i) the average of the daily price of oil during the qualifying period was equal to or less than $25 per barrel; and

(ii) the applicant submits a sworn application to the SLB which includes:

(I) proof that the applicant is the lease operator as shown by the most current RRC records;

(II) proof that the land is qualifying property;

(III) proof that the reservoir is a qualifying reservoir, including proof of the reservoir's volume of oil, condensate, and/or natural gas produced from, or attributable to, the lease during the qualifying period;

(IV) a representation that the lease is in force and effect; and

(V) such additional information as may be required upon written request by GLO staff.

(B) GLO staff will review the application and submit it and a recommendation to the SLB. The staff shall include in the recommendation information regarding any other royalty interests in the tract, including royalty interests held by owners of the soil (or their successors in interest) of Relinquishment Act lands, as defined in §9.1 of this title (relating to Definitions). Thereafter, if the SLB finds that all requirements under subparagraph (A) of this paragraph are met, the SLB may approve the application or may condition approval on specified requirements. In determining whether to grant a reduction in the royalty rate, the SLB may consider whether the qualifying property or qualifying Gulf of Mexico property is being operated efficiently, including whether the property is pooled or has reasonable potential for the application of secondary or tertiary recovery techniques. If a qualifying reservoir for which a royalty rate reduction is sought under this section is included in a unit subject to SLB authority, the SLB may modify the terms and conditions for the unit as a condition of approving the requested reduction in the royalty rate. The SLB has the sole discretion to grant final approval. SLB approval of a reduced royalty

applies only to the qualifying reservoir. The effective date of the royalty rate reduction is the first day of the month following SLB approval of the application. A reduced royalty under this incentive program is available only for a lease issued or approved by the state that is in effect on, or takes effect on or after, the effective date of this subsection.

(C) The approval of an application shall not constitute a finding that a lease has been maintained in force and effect or otherwise ratify or revive any lease.

(3) Royalty Rate. After the SLB approves an application:

(A) the SLB will determine the qualifying reservoir's applicable royalty rate according to the published reduced royalty schedules. The SLB may not set the royalty at a rate less than the lowest rate provided by statute for the category of property for which application is made.
Figure: 31 TAC §9.51(c)(3)(A) (No change)

(B) Except as provided in subparagraph (C) of this paragraph, the royalty rate may not be reduced to less than 6.25% of 100% (one-sixteenth of eight-eighths).

(C) Royalty rate under specific types of leases:

(i) The royalty rate owed to the state under a lease issued under Texas Natural Resources Code, Chapter 52, Subchapter F (Relinquishment Act leases) or §51.195(c)(2) or (d) may not be reduced under this subsection to less than 3.125% of 100% (one thirty-second of eight-eighths). The state's royalty rate may not be reduced under this clause only if the aggregate royalty rate for the owner(s) of the soil is reduced in the same proportion. Only royalty payable by the lessee to the commissioner may be reduced by the SLB pursuant to this rule.

(ii) The royalty rate under a lease issued under Texas Natural Resources Code, Chapter 52, Subchapter C (riverbed leases), may not be reduced to a rate lower than the rate under a lease of land that:

(I) adjoins the land leased under Subchapter C; and

(II) is held or operated by, or is under the significant control of, the state's lessee.

(iii) The royalty rate under a lease issued under Texas Natural Resources Code, Chapter 32, Subchapter F (highway leases), may not be reduced to a rate that is lower than the rate under a lease of land that adjoins the land leased under Subchapter F.

(D) The qualifying reservoir's reduced royalty rate applies for two years from the effective date of the royalty rate reduction. The SLB may extend the reduced rate for additional periods not to exceed two years each. An operator may apply for a two-year extension by filing an affidavit that the conditions that existed at the time that the original royalty rate reduction was granted have not changed materially. The GLO or the SLB may require an operator to submit additional information in support of an application for extension. An operator may apply for further royalty reduction to a qualified reservoir during the anniversary month of the effective date of the current royalty rate reduction.

(E) Except as provided in subparagraph (F) of this paragraph, a reservoir that has not produced during the preceding 12 months and is located under, or is attributable to, a lease with a royalty reduction under this program, may be granted the lowest royalty rate currently allowed by the SLB for any other reservoir under, or attributable to, that lease. Such rate applies for two years from the month production from the newly productive reservoir commences. An operator must request and obtain written approval from the GLO for reduced royalty under this subparagraph.

(F) On leases with a royalty reduction under this program, a reservoir below the stratigraphic equivalent of any producing qualifying reservoir under, or attributable to, that lease may be granted the lowest royalty rate currently allowed by the SLB for any other reservoir under, or attributable to, that lease. To qualify for such reduced royalty, the deeper reservoir production cannot exceed 15 BOE per day per well (50 BOE for Gulf of Mexico properties), as shown by well tests and/or other appropriate data. If the deeper reservoir production exceeds 15 BOE per day per well (50 BOE for Gulf of Mexico properties), the royalty rate for such production is the rate specified in the lease. A royalty reduced under this subparagraph applies for one year from the month production from the deeper reservoir commences, after which the reduction terminates unless the operator by application seeks and obtains SLB approval for the reduction for that deeper reservoir.

(G) If the minimum annual royalty payment provided for in the lease exceeds the SLB-approved reduced royalty, the reduced royalty is the amount due from the lessee as the minimum annual royalty payment.

(H) If over a consecutive six-month period the average of the daily price of oil exceeds $25 per barrel, the SLB may terminate all previously granted royalty rate reductions upon 60 calendar days notice in writing to the operators of the leases for which royalty reduction 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 January 21, 2004.

TRD-200400429
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 305-9129

SUBCHAPTER F. DISCONTINUING THE LEASEHOLD RELATIONSHIP

31 TAC §9.93

The amendments to these sections are proposed under Texas Natural Resources Code §31.051, which authorizes the Commissioner of the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendments affect Sections 52.136, 52.131(e) and 52.026 of the Texas Natural Resources Code.

§9.93. Assignments.

(a) Assignment of a state oil and gas lease. All or part of a state oil and gas leasehold interest may be assigned at any time, except as prohibited by statute, administrative rule, or common law. All assignments, including assignments of overriding royalty interests on Relinquishment Act lands, must be recorded in each county in which all or part of the original acreage covered by the lease is located. The original recorded assignment or a certified copy thereof shall be filed in the GLO within 90 days of its execution. For purposes of this paragraph, the last execution date shown on the instrument shall be deemed

to be the date of execution. The following must accompany each assignment required to be filed and every counterpart so filed in the GLO under this subsection:

(1) a list clearly designating each state lease, as identified by its mineral file number, affected by the assignment;

(2) the payment of the filing fee required by §1.3 of this title, (relating to Fees) for each state lease, as identified by its mineral file number, affected by the assignment;

(3) an adequate legal description of the premises assigned, including the survey name, block, township, county, and any other descriptive information requested by the GLO;

(4) in cases of vertical severance, partial assignments of state oil and gas leases shall be filed in the same manner as complete assignments are filed, and must include a metes and bounds description of the area so assigned, including relevant plats, unless the area assigned can be and is accurately described as a part of the section; and

(5) in cases of horizontal severance, partial releases of state oil and gas leases shall be filed in the GLO, and shall include a description of all relevant depths and formations.

(b) Any assignment not accompanied by the required information or fees shall not be accepted for filing. If an assignment is not properly filed within 90 days of its execution, the filing fee due shall be double the usual fee.

(c) In-lieu assignments will not be accepted or filed in the records of the GLO.

(d) An assignee cannot use a failure to comply with the requirements in this section to avoid its liability to the state.

(e) The liability of an assignor of any state oil and gas lease to properly discharge its obligations under the lease, including properly plugging abandoned wells, removing platforms or pipelines, or remediation of contamination at drill sites shall pass to the assignee upon proper written consent of the commissioner. The commissioner may not withhold the consent unreasonably. The commissioner may require the transferee to demonstrate that it has the financial responsibility to properly discharge its obligations under the lease and may require the transferee to post a bond or provide other security to secure those obligations if the tranferee is unable to demonstrate such financial responsibility to the satisfaction of the commissioner. [~~The assignor of any state oil and gas lease will remain liable to the state in the event of a breach of any covenant and/or condition of the lease.~~]

(f) If an assignment has not been properly filed, the commissioner may forfeit the lease at his discretion.

(g) The current holder of a lease or of any interest therein shall be responsible for proper filing with the GLO of any assignments not previously filed by any predecessor in interest.

(h) The heir, devisee, executor, or administrator, as the case may be, of the estate of an assignee may file a statement of the parties entitled to hold the interest of the assignee in the lease. Such statement should include a list by mineral file number of all leases affected. No filing fee shall be required.

(i) Should an assignee formally change names, a notice of name change, accompanied by a list of file numbers of all leases affected, shall be submitted to the GLO. No filing fee shall be required.

(j) A corporate merger shall be considered an assignment under this section. A certified copy of the certificate of merger shall be furnished to the GLO not later than 90 days after it is accepted for filing by the Secretary of the State of Texas. A list of each state lease affected by the merger shall accompany the certified copy of the certificate of merger. Leases held by the surviving corporation prior to the merger need not be listed, unless the name of the surviving corporation is changed, in which event subsection (i) of this section shall apply.

(k) A deed of trust, mortgage or other security agreement shall be considered an assignment under this subsection. If a state lease is subject to a deed of trust, mortgage or other security agreement, a memorandum of such instrument shall be furnished to the GLO in accordance with this section.

(l) Upon complete compliance with this subsection, the assignee will:

(1) succeed to all rights and be subject to all liabilities, obligations, penalties, and the like incurred by any prior lessee, including any liability to the state for unpaid royalty; and

(2) assume all obligations, liabilities, and consequences arising from all covenants, conditions, and terms (whether express or implied) of the lease.

(m) Assignments of Relinquishment Act lease to surface owner. A surface owner may acquire by assignment a lease which he or she executed on land subject to the Relinquishment Act only by complying with Texas Natural Resources Code, §52.188, and any other relevant laws or regulations. See also §9.22(2) of this title, (relating to Leasing Procedures).

(n) Acceptance of an assignment by the GLO does not waive any claim the agency may have against a party relating to that assignment.

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 January 21, 2004.

TRD-200400430
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 305-9129

CHAPTER 10. EXPLORATION AND DEVELOPMENT OF STATE MINERALS OTHER THAN OIL AND GAS

31 TAC §§10.1, 10.2, 10.5, 10.8, 10.9

The Texas General Land Office proposes amendments to Texas Administrative Code, Title 31, Part 1, Chapter 10, §10.1 relating to the Definitions; Exploration and Development Guide, §10.2 relating to Prospect Permits on State Lands; §10.5 relating to Mining Leases on Relinquishment Act Lands; §10.8 relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements; and §10.9 relating to Mineral Awards and Patents. The proposed changes to §10.1(a) add two definitions to the section at §10.1(a)(1) and §10.1(a)(12). New §10.1(a)(1) conforms the rule to an amendment to Texas Natural Resources Code §53.001 by Acts 1993, 73rd Leg., ch. 897, §45, eff. Sept. 1, 1993. New §10.1(a)(12) conforms the rule to an amendment to Texas Natural Resources Code §53.001 by Acts

1999, 76th Leg., ch. 1483, §3, eff. Aug. 30, 1999. The proposed change to §10.2(b)(1) makes clear that it is the commissioner's duty to prepare an application form for prospect permits and conforms the rule to an amendment to Texas Natural Resources Code §53.012(c) by Acts 1993, 73rd Leg., ch. 897, §46, eff. Sept. 1, 1993. The proposed change to §10.5(b)(1)(F) limits the scope of self-dealing violations among family members to those within the second degree of consanguinity or affinity and conforms the rule to Texas Natural Resources Code §53.074(a)(2), added by Acts 1995, 74th Leg., ch. 937, §4, eff. Sept. 1, 1995; the proposed change to §10.5(e)(1)(C) changes the division of lease benefits for a defined class of minerals for certain leases let after September 1, 1999. and conforms the rule to Texas Natural Resources Code §53.065(c), added by Acts 1999, 76th Leg., ch. 1483, §4, eff. Aug. 30, 1999; the proposed change to §10.8(a)(1) requires that lease transfers and assignments comply with TNRC §52.026 and conforms the rule to an amendment to Texas Natural Resources Code §53.020 by Acts 1993, 73rd Leg., ch. 897, §50, eff. Sept. 1, 1993; the proposed change to §10.8(b)(4)(D)(ii) requires that leases issued under TNRC Chapter 53, Subchapter B be subject to penalty and interest assessments as described in TNRC §52.131(e)-(j) and conforms the rule to an amendment to Texas Natural Resources Code §53.024 by Acts 1993, 73rd Leg., ch. 897, §51, eff. Sept. 1, 1993; and the proposed changes to §10.8(c)(3) and §10.9(f)(3) requires that contracts and agreements requested for inspection by the GLO be held confidential and conforms the rule to Texas Natural Resources Code §53.027, added by Acts 1993, 73rd Leg., ch. 897, §52, eff. Sept. 1, 1993. The proposed amendments are being made pursuant to §2001.039 (Agency Review of Existing Rules) of the Government Code. The rule review was adopted and published in the August 22, 2003, edition of the *Texas Register* (28 TexReg 6958).

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the proposed amendments will be in effect, there will be no negative fiscal impact to state or local government as a result of administering the proposed sections as amended. There may be a slight positive fiscal impact to the state as a result of collecting both penalties and interest under §10.8(b)(4)(D)(ii) as amended.

Marshall Enquist, Attorney with the Energy Section, has determined that the amendments to 31 TAC §10.1(a), §10.2(b)(1) and §10.5(b)(1)(F) will be neutral in their effect on public benefits and/or costs. The amendment to 31 TAC §10.5(e)(1)(C) may have a slight negative impact to the state by reducing the state's share of lease benefits, but this may be offset by an increased willingness on the part of RAL owners to actively seek leases on the state's minerals. The amendment to 31 TAC §10.8(a)(1) will reduce the state's cost of removing abandoned equipment and remediating mine sites, resulting in a substantial public benefit. The amendment to 31 TAC §10.8(b)(4)(D)(ii) may result in a slight public benefit in allowing the state to collect interest on delinquent payments under hard mineral leases. The amendments to 31 TAC §10.8(c)(3) and §10.9(f)(3) will be neutral in their effect on public benefits and/or costs.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendments as proposed will be in effect, there will be no impact on local employment.

Comments may be submitted to Melinda Tracy, Legal Services, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78711 or by fax at (512) 463-6311, no later than 30 days after publication.

The amendments to these sections are proposed under Texas Natural Resources Code §31.051, which authorizes the Commissioner of the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendments affect §§53.001, 53.012, 53.074, 53.065, 53.020, 53.024 and 53.027 of the Texas Natural Resources Code.

§10.1. Definitions; Exploration and Development Guide.

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

(1) Board--The School Land Board.

(2) [~~(1)~~] Commissioner--The commissioner of the General Land Office.

(3) [~~(2)~~] GLO--The General Land Office.

(4) [~~(3)~~] Land trade lands--Lands, the surface of which have been sold or traded with mineral rights and leasing rights retained by the state.

(5) [~~(4)~~] Person--Any individual, partnership, corporation, association, or other legal entity.

(6) [~~(5)~~] PSF--The Permanent School Fund.

(7) [~~(6)~~] PUF--The Public University Fund.

(8) [~~(7)~~] Relinquishment Act lands--Any public free school or asylum lands, whether surveyed or unsurveyed, sold with a mineral classification or reservation between September 1, 1895, and August 21, 1931. For the purposes of this chapter and for convenience, the term "Relinquishment Act lands" shall encompass any other lands, including vacancy lands, patented with all minerals reserved to the state and expressly made subject to the leasing terms and procedures governing Relinquishment Act lands.

(9) [~~(8)~~] Relinquishment Act leases--Leases issued under the Texas Natural Resources Code, Chapter 53, Subchapter C, and §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands).

(10) [~~(9)~~] RRC--The Texas Railroad Commission.

(11) [~~(10)~~] SLB--The School Land Board.

(12) Surface mining--The mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed. The term does not include in situ mining activities.

(13) [~~(11)~~] TDC--The Texas Department of Corrections.

(14) [~~(12)~~] TPWD--The Texas Parks and Wildlife Department.

(b) Exploration and development guide. For exploration and development for oil and gas, see Chapter 9 of this title (relating to Exploration and Development). Minerals, other than oil and gas, underlying state lands are explored and leased in the following ways, depending upon the type of mineral and the type of land.

(1) PSF lands, upland.

(A) Coal, lignite, sulphur, salt, and potash: leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter

53, Subchapter E and I, and §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(B) All other minerals, and shell, sand, and gravel: explored and mined under prospect permits and leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(2) PSF lands, submerged, and state-owned riverbeds and channels.

(A) Coal, lignite, sulphur, salt, and potash: subject to exploration under §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid). Leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 53, Subchapter E; §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(B) Marl, shell, sand, gravel, and mudshell: mined under permit issued by the TPWD. See the Texas Parks and Wildlife Code, Chapter 86.

(C) All other minerals: subject to exploration under §10.2 of this title (relating to Prospect Permits on State Lands). Mined under leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(3) Relinquishment Act lands. All minerals: leased by surface owner as agent for the state. See the Texas Natural Resources Code, Chapter 53, Subchapter C; §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands).

(4) Land trade lands.

(A) Coal, lignite, sulphur, salt, and potash: leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 53, Subchapter E; §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(B) All other minerals: explored and mined under prospect permits and/or leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(5) State agency lands (except TPWD and TDC lands). All minerals: leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 32, Subchapters D and E; Chapter 153 of this title (relating to Exploration and Development).

(6) TDC and TPWD lands. All minerals: leased by sealed bid by the appropriate board for lease. See the Texas Natural Resources Code, Chapter 34; §§201.5-201.8 of this title (relating to Land for Lease; Excluded Land; Lease Sale; and Nominations of Tracts for Lease).

(7) PUF lands. All minerals: lease or otherwise develop as decided by the board of regents. See the Texas Education Code, §66.44.

§10.2. Prospect Permits on State Lands.

(a) Lands and minerals subject to prospecting. See §10.1 of this title (relating to Definitions; Exploration and Development Guide) to determine which lands and minerals are subject to prospect permit procedures. Generally, minerals other than coal, lignite, sulphur, salt, and potash, on PSF fee lands and land trade lands are subject to prospecting under this section.

(b) Application requirements and procedures.

(1) Any person, firm, or corporation desiring to apply for a prospect permit shall make written application upon the form prescribed by the commissioner and furnished by the GLO. The application to prospect shall include:

(A) a description of the tract of land which identifies it by the section number, part of section or survey to be prospected, township number, and/or certificate number, if applicable, survey name, block number, number of acres to be prospected, and county or counties in which the land lies and, if land trade lands, the name and address of surface owner of record in the tax assessor's office; and

(B) the name, address, phone number, and taxpayer ID number of the applicant. If the applicant is a corporation, the corporate name, address, phone number, taxpayer ID number, the name of the officer authorized to execute applications for permits and leases, and written evidence confirming that it is not delinquent in paying its franchise taxes.

(2) The application to prospect shall be for an area not in excess of 640 acres with a 10% tolerance for tracts, sections, and surveys that contain more than 640 acres.

(3) The application to prospect may be for a part of a section if the part is described by field notes of record in the GLO or if the part can accurately be described as a part of the section such as the NE/4.

(4) The application to prospect shall be accompanied by the filing fee prescribed by §1.3 of this title (relating to Fees) and, except as otherwise provided in §10.5(g)(7) of this title (relating to Mining Leases on Relinquishment Act Lands) the first year's rental payment of $.50 per acre.

(5) Within 10 days of receipt of an application for permit on lands whose surface is owned or leased by TPWD or is subject to a conservation easement in favor of TPWD, the GLO shall notify the executive director of the TPWD that an application for permit has been received.

(6) Permits or immediate leases issued under §10.3(b)(1) of this title (relating to Mining Leases on Properties Subject to Prospect) will be issued on the basis of the order in which applications to prospect are received. An application will be determined to be received on the date and time receipt is acknowledged by the mailroom staff of the GLO.

(7) If an application to prospect is received for a tract of land encumbered by a previously received application or by a valid prospect permit, the application will be rejected and the applicant will be notified and all monies tendered will be refunded.

(8) An applicant may request that the application to prospect be withdrawn. If the request is received prior to processing of the prospect permit, all monies tendered will be refunded.

(9) An applicant may be requested to supplement the application with information in order that the land office may determine whether prospecting will be conducted in good faith and in an orderly and environmentally responsible manner.

(c) Prospect permit issuance and requirements.

(1) After the application requirements have been satisfied, a prospect permit will be issued on a form prescribed and furnished by the GLO.

(2) The prospect permit will be for a term of one year from the date of application and, except as otherwise provided in §10.5(g)(7)

of this title (relating to Mining Leases on Relinquishment Act Lands), will require an advance annual rental payment of $.50 per acre.

(3) On the same day a permit is issued under this section on land whose surface is owned or leased by TPWD or is subject to a conservation easement in favor of TPWD, the GLO will notify TPWD of the issuance of the permit. The permit issued on such land will state that the surface of such land is owned or leased by TPWD or is subject to a conservation easement in favor of TPWD. Such permit will also state the name of the TPWD park or area manager responsible for the surface of such land.

(4) On land trade lands, the GLO will notify the surface owner that a permit has been issued if the surface owner requests such notice in writing by furnishing the GLO with a current mailing address and a legal description of each tract on which he desires such notice. Notice will also be sent to the surface owner at the address supplied on the application form. Failure to receive notice will not affect the validity of a permit issued under this section.

(d) Prospect permit renewal.

(1) Permittee may request a renewal of a permit by tendering the appropriate rental payment and filing fee before the expiration date of the current permit. Prospect permit renewals, if granted, will be issued on a form prescribed and furnished by the GLO and shall extend the term of the permit for one year from the expiration date.

(2) Subject to the discretion of the commissioner, a prospect permit may be renewed up to and including four times, allowing the holder to retain the permit for five consecutive years from the date of issuance of the original prospect permit. At the time a permittee requests renewal of a permit, a determination of whether the permittee has exhibited good faith in prospecting and whether the permittee has complied with all GLO rules and regulations will be considered in the decision to grant or deny a renewal.

(3) If the holder of a prospect permit allows the permit to expire without filing for renewal, a new application must be submitted. Priority of competing applications are governed by subsection (b)(7) of this section.

(e) Assignments and releases. Prospect permits may be assigned or released in accordance with §10.8 of this title (relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements). The assignment or release must be filed with GLO and must be accompanied by the filing fee prescribed by §1.3 of this title (relating to Fees).

(f) Reports and inspections.

(1) Permittee must comply with all requirements of §10.7 of this title (relating to Conduct of Exploration and Mining Operations) and §10.8 of this title (relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements).

(2) All prospecting operations shall be subject at any time to inspection by the commissioner or an authorized representative. Information or data pertaining to prospecting operations shall be furnished to the commissioner or an authorized representative upon request.

§10.5. Mining Leases on Relinquishment Act Lands.

(a) Lands and minerals subject to lease.

(1) Any survey or portion of a survey of the Relinquishment Act land, as this term is uniquely defined in §10.1(a)(7) of this title (relating to Definitions; Exploration and Development Guide), is subject to lease under this section.

(2) All minerals are subject to lease by the surface owner as agent for the state. For purposes of this section, minerals include all substances commonly classified as minerals even though they may be extracted by methods which destroy the surface. Minerals other than oil and gas may be leased together or separately. Oil and gas must be leased under the terms of Chapter 9 of this title (relating to Exploration and Development).

(b) Authority and duties of agent.

(1) Prohibition against self-dealing. A surface owner may not lease to himself, herself, or itself, either directly or indirectly. A surface owner may not acquire by assignment a lease executed by the surface owner. A surface owner will be considered to have engaged in self-dealing if the surface owner leases to the following persons or entities or if the lease executed by the surface owner is assigned to the following persons or entities:

(A) a nominee;

(B) any corporation or subsidiary in which the surface owner is a principal stockholder, or an employee of such a corporation or subsidiary;

(C) a partnership in which the surface owner is a partner, or an employee of such a partnership;

(D) if the surface owner is a corporation or a partnership, a principal stockholder of the corporation or a partner of the partnership, or any employee of the corporation or partnership;

(E) a fiduciary representing the surface owner, including, but not limited to, a guardian, trustee, executor, administrator, receiver, or conservator; or

(F) a family member or to anyone related to the surface owner by marriage, blood, or adoption[.] within and including the second degree of consanguinity or affinity.

(2) Fiduciary duty of agent. A surface owner is the state's agent and owes the state a fiduciary duty and a duty of utmost good faith. A surface owner must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the surface owner. In addition to these specific duties, the surface owner owes the state all the common-law duties of a holder of executive rights.

(3) Consequences of a breach of the surface owner's fiduciary duty or a violation of the prohibition against self-dealing. When a surface owner breaches any duties or obligations owed to the state by law, any suit relating to such breach shall be filed in a district court in Travis County. Such a suit may seek removal of the owner of the soil's agency rights in addition to any other remedies authorized by statute or by common-law.

(4) Penalty assessment for breach of the surface owner's fiduciary duty. A penalty of 10% shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10% penalty imposed by this subsection.

(c) Lease negotiation procedure.

(1) The surface owner is authorized to act as the state's leasing agent with any person, firm, or corporation desiring to develop the permanent school fund's minerals.

(2) The lease shall be negotiated by the surface owner and the prospective lessee on a form prepared and furnished by the GLO, which will incorporate the terms and conditions prescribed by the SLB.

(3) The proposed lease shall be submitted to the GLO for approval prior to recording the lease in the county records.

(d) Approval and filing of lease.

(1) The commissioner may reject or refuse for filing any lease deemed not in the best interest of the state.

(2) Upon rejection of a proposed lease by the commissioner, the prospective lessee will be given written notice which will specify the reasons for the rejection and any changes, deletions, or additions which would render the lease acceptable. The prospective lessee may request reconsideration or appeal a rejection of a lease under the hearings procedures set out in Chapter 4 of this title (relating to General Rules of Practice and Procedure).

(3) Upon receipt of approval of the lease, the prospective lessee shall finalize the lease and have the lease recorded in the county or counties in which the land lies and shall file a certified copy of the lease with the GLO. Leases are not effective until approved and filed in the GLO.

(4) The state's share of the approved bonus payment and the filing fee prescribed by §1.3 of this title (relating to Fees) shall be submitted along with the certified copy of the lease. Any lease is void unless it recites the actual consideration paid or promised for the lease.

(5) A surface owner, as the state's agent, owes the state a fiduciary duty. See subsection (b) of this section. This fiduciary responsibility must be of paramount concern when a surface owner enters lease negotiations.

(e) Lease terms and conditions.

(1) Lessee shall pay bonus, rentals, royalties, and other lease considerations as follows.

(A) On leases filed before September 1, 1987, lessee shall pay to the state 60% of all bonuses, rentals, and royalties and other considerations agreed upon. Lessee shall pay to the surface owner 40% of all consideration agreed upon.

(B) On leases filed on or after September 1, 1987, lessee shall pay to the state 80% of all consideration agreed upon. Lessee shall pay to the surface owner 20% of all bonuses, rentals, and royalties.

(C) On leases filed after September 1, 1999, for the exploration and production by surface mining of coal, lignite, potash, sulphur, thorium or uranium, lessee shall pay to the state 60% of all bonus, rentals, royalties and other considerations agreed upon. Lessee shall pay to the surface owner 40% of all consideration agreed upon.

(2) In the event of production, the state must receive not less than one-sixteenth of the value of the minerals produced. The combined royalty payable to the surface owner and the state will be expressly provided for in the lease negotiated by the surface owner.

(3) All royalties and other payments accruing to the state shall be paid to the state through the commissioner at Austin, and shall be deposited to the PSF.

(f) Reports, assignments, releases, inspection, forfeitures, and reinstatements. Leases issued under this section will be governed by all general provisions found in §10.7 of this title (relating to Conduct of Exploration and Mining Operations) and §10.8 of this title (relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements). However, a lease issued under this section cannot be assigned to the surface owner who executed the lease. See subsection (b)(1) of this section.

(g) Waiver of agency rights.

(1) The surface owner may waive the surface owner's right to act as the state's agent for leasing all the state's minerals except oil and gas. Such a waiver must cover all the state's minerals except oil and gas and must be on the GLO waiver form. The waiver must be filed for record in each county where any portion of the land is situated. Before such waiver can be effective, a certified copy of each recorded waiver must be filed in the GLO along with a title opinion showing that he is a surface owner of the relevant land.

(2) If agency rights are waived under this subsection, the minerals will be subject to prospect permit and lease under §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(3) A surface owner who waives agency rights under this subsection, or an assignee, heir, or anyone else succeeding to all or part of the surface owner's interest in the tract will not be the state's agent and will not receive compensation under a prospect permit or lease for as long as a prospect permit or lease issued under §10.2 of this title (relating to Prospect Permits on State Lands) or §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect) remains in effect.

(4) Upon expiration, termination, or forfeiture of a lease or permit, the agency rights of the surface owner shall be ipso facto reinstated.

(5) If the surface owner conveys the surface owner's interest in the tract after waiving agency rights, but before any prospect permit or lease has been issued, the succeeding surface owner will be entitled to act as the state's agent for leasing the state's minerals.

(6) A waiver executed under this subsection may be revoked if there is no prospect permit or lease in effect at the time the waiver is revoked and if, while the waiver was in effect, the surface owner did not act in a manner that compromises the surface owner's ability to resume all duties and responsibilities as the state's agent. Such revocation must be in writing and filed for record in each county in which any portion of the land is located. A certified copy of the recorded revocation instrument must be filed in the GLO before it is effective.

(7) The fee for a prospect permit issued under this subsection will be set by the commissioner. This fee will be based on the fair market value of the bonus and annual rental customarily paid for leasing similar minerals in the area, prorated for the one-year term of the permit. The terms of a lease subsequently issued under this subsection will be negotiated. These terms will be based on the results of exploration activities and other appropriate data.

(8) In exceptional circumstances the commissioner may allow the waiver of agency rights under this subsection as to less than all the state's minerals except oil and gas. For the commissioner to allow a more limited waiver of agency rights, a showing that such a limited waiver is in the best interests of the state will be required.

(h) Leasing procedure when agent cannot be located. If a potential lessee cannot locate a surface owner, such lessee can follow the procedures set out in the Texas Natural Resources Code, §52.186. Once these procedures have been followed, Relinquishment Act land will be leased for minerals other than oil and gas through the prospect permit and leasing procedures found in §10.2 of this title (relating to

Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect). The state will receive all the consideration paid under such a lease.

(i) Leasing procedure when agent's rights are forfeited.

(1) When a surface owner's agency rights have been forfeited under subsection (b)(3) of this section, the land shall be subject to lease for minerals other than oil and gas under the procedures set out in §10.1 of this title (relating to Definitions; Exploration and Development Guide) and §10.2 of this title (relating to Prospect Permits on State Lands).

(2) When a new lease is executed under subsection (i)(1) of this section, the surface owner shall not be entitled to any share of the revenue generated by such lease, but the surface owner's agency rights will be ipso facto reinstated upon expiration of the new lease.

(3) If no new lease is executed within one year of the date of the forfeiture of the agency rights, the commissioner may, in his discretion and for the best interests of the PSF, reinstate the surface owner's agency rights.

§10.8. Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements.

(a) Assignments and releases.

(1) A lease or permit issued under this chapter may be assigned at any time in the manner provided for by TNRC §52.026. The liability of the transferor to properly discharge its obligations under the lease shall pass to the transferee upon prior written consent of the commissioner. The commissioner may require the transferee to demonstrate that it has the financial responsibility to properly discharge its obligations under the lease, and may require the transferee to post a bond or provide other security to secure those obligations. [~~After obtaining written approval of the commissioner, a lease or permit issued under this chapter, except a state agency lease or a Relinquishment Act lease may be assigned in quantities of not less than 40 acres. If, however, less than 40 acres remain of the tract originally leased, then the entire remaining acreage may be assigned. Assignments shall be recorded in each county in which the state tract is located. State agency leases and Relinquishment Act leases are not subject to these restrictions and may be assigned at any time.~~]

(2) After recordation, lessee or permittee shall obtain a certified copy from the county clerk of each recorded assignment covering the state lease or permit. Lessee or permittee shall send such certified copies to GLO within 90 days of the date of recordation, accompanied by the filing fee prescribed in §1.3 of this title (relating to Fees).

(3) An assignment of any lease except a state agency or a Relinquishment Act lease is not effective until a certified copy of such assignment has been filed by the GLO. Failure to file a certified copy of an assignment of any lease, including a state agency or a Relinquishment Act lease, shall subject the lease to forfeiture. An assignment shall not have the effect of releasing the assignor from any liability incurred or claim previously accrued in favor of the state.

(4) The lessee or permittee may release the lease or permit back to the state at any time. To release a lease or permit, a lessee or permittee must record the release in each county where the state tract is located and mail a certified copy of each recorded release to GLO accompanied by the filing fee prescribed in §1.3 of this title (relating to Fees).

(5) A release is not effective until a certified copy of the release is filed by the GLO. A release shall not have the effect of releasing lessee or permittee from any liability incurred or claim previously accrued in favor of the state.

(b) Reports and payment of royalties.

(1) A log, sample analysis, or other information obtained from each test drilled on the area covered by the lease or permit shall be filed with the GLO upon request. Lessee or permittee shall furnish annually on the anniversary date of the lease or permit a map or plat showing all activities on the state lease or permit. In addition, an evaluation map or plat shall be filed in the GLO within 90 days after any drilling program shall have been completed or abandoned, and the correctness of such map shall be sworn to by lessee or permittee or his representative. The map or plat shall show geologic formations penetrated, the depth, thickness, grade, and mineral character of all ore bodies, the water-bearing strata, the elevation and location of all test holes, and other pertinent information.

(2) Unless the lease provides otherwise, on or before the last day of the month after the month when production started, the lessee shall file a production and royalty report showing production and royalty for the calendar month when production started. Subsequently, a production and royalty report shall be filed before the last day of each month for production from the preceding calendar month. Such report shall be on a form prescribed and furnished by the GLO and shall show:

(A) the type and amount of each mineral produced during the preceding month;

(B) if any leased mineral has been sold during the preceding month, then:

(i) the type and amount of each mineral sold;

(ii) the purchaser for each type of mineral sold and if the purchaser is in any way related to the lessee, the details of such relationship or affiliation;

(iii) the selling price of each mineral as shown by copies of smelter, mint, mill, or refinery, returns, sale receipts, invoices, or other sale documents attached thereto; and

(iv) the method and figures used by lessee to calculate the value of each mineral sold as shown by any relevant documents, records, or schedules;

(C) if any leased mineral has been used as permitted under the terms of the lease during the preceding month, then:

(i) the type and amount of each mineral used; and

(ii) the method and figures used by lessee to calculate the value of each mineral used as shown by any relevant documents, records, or schedules.

(3) Unless otherwise provided by the lease, royalty payments are to be received in the GLO on or before the last day of the month following the month in which leased minerals are produced. However, for the purposes of this paragraph only, "produced" shall mean actually sold or used by lessee. Upon termination, forfeiture, or release of the lease, unpaid royalty for any stockpiled leased minerals shall be due and payable within one month of the effective date of said termination, forfeiture, or release.

(4) Except when royalty is taken in-kind, and subject to subparagraphs (A)-(F) of this paragraph, relating to electronic funds transfer, lessees may pay royalties and other monies due by cash or check, money order, or sight draft made payable to the commissioner. Lessees may also pay by electronic funds transfer or in any manner that may be lawfully made to the state comptroller. Information regarding alternative payment methods may be obtained from the GLO Royalty

Management Division. Payors are required to make payments by electronic funds transfer in compliance with 34 Texas Administrative Code Chapter 15 in the following circumstances:

(A) For leases executed or amended after May 11, 1989, but before September 1, 1991, payors that have made over $500,000 in a category of payments, defined in subparagraph (D) of this paragraph, to the GLO during the preceding state fiscal year shall make payments of $10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(B) For leases executed or amended after August 30, 1991, but before June 9, 1995, payors that have made over $250,000 in a category of payments, defined in subparagraph (D) of this paragraph, to the GLO during the preceding state fiscal year shall make payments of $10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(C) For leases executed or amended on or after June 9, 1995, payors that have made over $25,000 in a category of payments, defined in subparagraph (D) of this paragraph, to the GLO during the preceding state fiscal year shall make all payments in the current fiscal year for those leases and in that category by electronic funds transfer.

(D) For purposes of subparagraphs (A)-(C) of this paragraph, each of the following is a separate category of payments:

(i) royalties (including shut-in and minimum royalties);

(ii) penalties and interest (A lease issued under TNRC Chapter 53, Subchapter C, shall be subject to penalties and interest as described in TNRC §52.131(e)-(j));

(iii) other payments to the state agency, excluding interest and extraordinary payments such as payments made in settlement of litigation.

(E) The GLO anticipates that those payors that have exceeded the threshold sums set out in subparagraphs (A)-(C) of this paragraph in the preceding state fiscal year will also exceed those sums in the current state fiscal year. The application of subparagraphs (A)-(C) to a specific payor may be waived at the commissioner's discretion to the extent allowed by law, upon a showing that a payor will not exceed the threshold sums set out in subparagraphs (A)-(C) in the current fiscal year, or for other good cause.

(F) The GLO will notify each payor to whom this paragraph applies in compliance with 34 Texas Administrative Code Chapter 15.

(c) Inspections.

(1) The books, accounts, records, contracts, and other documents pertaining to production, transportation, sale, and marketing of minerals leased shall at all times be subject to inspection and examination by the commissioner, or his authorized representative, and copies of such records shall be furnished to the commissioner upon request.

(2) All mining, milling, and processing operations shall be subject at any time to inspection by the commissioner or his authorized representative and copies of records or other documents pertaining to these operations shall be furnished to the commissioner upon written request.

(3) A contract, agreement or amendment filed in the land office shall be treated as confidential unless otherwise authorized by the lessee.

(d) Forfeiture and reinstatement.

(1) If the owner of a lease or permit shall fail or refuse to make payment of any sum due, or if the owner or his authorized agent should knowingly make any false return or false report concerning the lease or permit, or if the owner or his agent should refuse the commissioner or his authorized representative access to the records or other data pertaining to operations under the lease or permit, or if any of the material terms of the lease or permit should be violated, the lease or permit shall be subject to forfeiture by the commissioner.

(2) A lease or permit shall be considered forfeited when it has been endorsed "forfeited" and the endorsement signed by the commissioner.

(3) Upon forfeiture, the commissioner will give written notice to the lessee or permittee stating the date of forfeiture and the reasons for the forfeiture. The notice of forfeiture will be sufficient if mailed to the last last known address of the lessee or assignee shown of record in the GLO.

(4) A forfeiture may be set aside and all rights under a lease or permit may be reinstated before the rights of another party intervene, upon satisfactory evidence to the commissioner of future compliance with the provisions of the law, of the lease or permit, and of any rules adopted relative to the lease or permit, and any conditions placed upon the reinstatement. Lessee or permittee shall offer the evidence required for reinstatement within 30 days after the date the notice of forfeiture was mailed and after such 30 days shall have no future right of reinstatement. If a lease or permit issued under §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands) is not reinstated within the 30-day period, the surface owner is entitled to act as the state's agent for leasing the minerals.

(e) Reduction of penalty and/or interest. The School Land Board may reduce penalties and/or interest assessed under the Texas Natural Resources Code, §52.131, and/or any other penalties or interest relating to delinquent or unpaid royalties that have been assessed by the commissioner in the following circumstances:

(1) when a lessee brings a deficiency to the General Land Office's attention voluntarily; and/or

(2) when a lessee and the General Land Office have reached an agreement regarding the reduction as part of a resolution of an outstanding audit issue.

§10.9. Mineral Awards and Patents.

(a) General. Anyone who was issued a mineral award prior to March 15, 1967, under former Texas Civil Statutes, Articles 5388-5403, may patent the mineral award upon proper compliance with the statutory requirements and the rules promulgated by the GLO.

(b) Lands and minerals subject to patent.

(1) All valuable mineral-bearing deposits, placers, veins, lodes, and rock carrying metallic or nonmetallic substances of value except oil, natural gas, coal, and lignite, shall be subject to patenting.

(2) Only those lands which are presently encumbered by a mineral award are subject to patenting.

(c) Maintaining a mineral award; annual assessment work.

(1) The owner of an award shall have the exclusive right to the possession and use of the minerals within the area of the claim so long as he continues to do or causes to be done the annual assessment work for each claim.

(2) The annual assessment work shall consist of an excavation in the form of a shaft or tunnel or an open cut to the extent of 10 feet in depth or length and at least four feet by five feet for the other dimensions. In the event the mineral sought is usually and customarily

produced from drilling holes by means of machinery, except such minerals as oil, natural gas, coal, or lignite, then the drilling of a hole to such depth or length in lieu of the digging of a shaft or tunnel or open cut shall constitute the annual assessment work required.

(3) During the month of January, the owner of a mineral award shall file an annual assessment affidavit on a form prescribed and furnished by the GLO. The affidavit shall be signed and notarized and shall describe the assessment work which was completed during the previous year. If the assessment work accomplished is deemed insufficient or if the form is improperly completed, the owner of the mineral award will be notified.

(4) The annual assessment work for a contiguous group of mineral awards may be done on one mineral award.

(d) Rental payments.

(1) The owner of a mineral award shall pay annually $.50 per acre. This annual rental payment shall be due during the month of January of each year succeeding the year the mineral award was issued.

(2) Annual rental payments will be applied to the purchase price of the mineral patent.

(e) Royalty payments.

(1) In addition to rental payments, the owner of a mineral award shall pay a royalty of 6.25% of the value of the production of the minerals upon such award as shown by the net smelter, mill, mint, or refinery returns or of the gross sums arising from the sale of the ore or products from the award and received by the owner.

(2) Royalty payments arising from the sale of ores, minerals, or other products shall be due quarterly in January, April, July, and October for the quarters preceding.

(3) Royalty payments shall be accompanied by a production and royalty report filed on a form prescribed and furnished by the GLO.

(f) Inspection.

(1) The books, accounts, records, and contracts pertaining to production, transportation, sale, and marketing of minerals awarded will at all times be subject to inspection and examination by the commissioner, or his authorized representative, and copies of such records shall be furnished to the commissioner upon request.

(2) All mining, milling, and processing operations shall be subject at any time to inspection by the commissioner or his authorized representative and copies of records pertaining to these operations shall be furnished to the commissioner upon written request.

(3) A contract, agreement, or other amendment filed in the land office shall be treated as confidential unless otherwise authorized by the lessee.

(g) Forfeiture of mineral award.

(1) If the owner of a mineral award shall fail or refuse to make payment of any sum within 30 days after it becomes due, or if the owner or his authorized agent should knowingly make any false return or false report concerning production, mining, or development, or if the owner should fail or refuse the proper authority access to the records pertaining to the operations, or if the owner or authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to submit to the GLO all correct reports required by statute, the rights acquired under the award shall be subject to forfeiture by the commissioner.

(2) Upon forfeiture of a mineral award, notice shall be mailed to the person, firm, or corporation shown by the records of the GLO to be the owner of the mineral award.

(3) Upon satisfactory evidence of future compliance with the law and with the GLO rules and regulations, the forfeiture may be set aside and all rights thereto reinstated.

(4) If a mineral award is forfeited and not reinstated, the land covered by the mineral award is not subject to being claimed or patented.

(h) Patenting a mineral award.

(1) At any time after five years from the date of a mineral award, the owner of the award may pay the balance due on the purchase price of the award and request a patent thereto.

(2) The owner of the mineral award shall make written request that the award be patented. The request shall be accompanied by three separate remittances: the balance of the purchase price, a patenting fee, and a recording fee. The appropriate patenting and recording fees are found in §1.3 of this title (relating to Fees).

(3) The purchase price of the mineral patent shall be $10 per acre, and the annual payments of $.50 per acre on the mineral award shall be applied to the purchase price.

(i) Mineral patent requirements.

(1) After the issuance of a mineral patent, no further assessment work will be required.

(2) The royalty due the state on a mineral patent shall be perpetual and shall be 6.25% of the value of the production of the minerals as shown by the net smelter, mill, mint, or refinery returns or of the gross sum, arising from the sale of the ore or products from the mineral patent and received by the owner.

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 January 21, 2004.

TRD-200400428
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 305-9129

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS
SUBCHAPTER K. SMALL COMMUNITY HARDSHIP PROGRAM

31 TAC §§363.1101 - 363.1107

The Texas Water Development Board (board) proposes amendments to 31 TAC Chapter 363, concerning Financial Assistance Programs, to create a new subchapter, Subchapter K, relating to

the Small Community Hardship Program, and proposes new 31 TAC §§363.1101 - 363.1107. Proposed new 31 TAC §§363.1101 - 363.1107 creates a new program by which the board may provide political subdivisions with grants for projects that provide adequate water and sewer service to economically distressed areas.

The board proposes new §363.1101, Scope and Purpose of Subchapter, to identify the purpose of the new rules. This proposed new section also identifies the source of funds for the program because the use of payments from the Texas Water Resources Finance Authority creates limitations in the use of these funds.

The board proposes new §363.1102, Definitions of Terms, which provides definitions applicable to this proposed new subchapter. It first proposes to use definitions in Water Code Chapters 15, 16 and 17, unless expressly defined in this proposed new section. Proposed new §363.1102(1) defines adjusted median household income as household income identified in the most recent U.S. Census multiplied by the current Texas Consumer Price Index divided by the most recent decennial Texas Consumer Price Index. Annual median household income directly relates to the economic conditions of potential applicants and its ability to repay loans. The board proposes using a household income as the economic factor to identify areas as economically distressed and therefore eligible for assistance under this proposed new subchapter because it is common and easily identifiable by using the federal census data and accurately reflects the current economics of the area. The board is proposing that the median household income that is identified by the latest federal census be adjusted using the current Consumer Price Index, so that the census figures reflect present levels of income. This will more closely reflect the applicant's current economic situation when comparing current rates to income level. Proposed new §363.1102(2) defines applicant as a political subdivision that requests financial assistance from the board so that the rule will easily identify the requirements of the proposed new subchapter as applicable only to those entities that request funding. Proposed new §363.1102(3) and (4) define the term average yearly sewer and water bill, respectively, which are used in defining disadvantaged community. The average yearly water bill is calculated by applying the community's rate structure to the average number of gallons of water used in-house per year by the average occupied household. Identification of the rate on a per gallon basis accounts for the different usage rates between water systems thereby creating a common measure when analyzing the percentage of the water or combined water and sewer bill to the adjusted median household income. The number identified as the average gallons used in an individual residence for sewer and water in proposed new §363.1102(3) and (4) is the estimated state-wide average of domestic water that enters a household and returns via the sewer system, based on data submitted by political subdivisions and compiled by the Texas Commission on Environmental Quality (TCEQ). These proposed new subsections also propose to include taxes, surcharges or other fees as part of the annual bill by including the average annual amount per household of the fee in calculating the average yearly sewer or water bill if such fees are used to subsidize the sewer or water service systems. Proposed new §363.1102(5) and (8) define combined household cost factor and household cost factor, respectively. Household affordability factors are used in proposed new §363.1102(6) to define disadvantaged area because these factors measure whether a project is affordable to the customers of the system. The household affordability factors indicate the capacity of the customers to support the cost of water and/or sewer service, including debt service, through user charges. If the water or combined water and sewer bill exceeds a certain percentage of the adjusted median household income, then the project would not be affordable to the community without assistance from this program. The percentage of the average water or combined water and sewer bill to annual median household income, which is defined in proposed new §363.1102(1) is a methodology used in other board programs and by other states in developing affordability guidelines as well as the federal government in determining affordability of projects. The 1.0% for water rates used in proposed new §363.1102(6)(B)(i) is the percentage used by the Environmental Protection Agency in its User Manual for the Municipality's Ability to Pay Computer Model. The 2.0% for water and sewer rates in proposed new §363.1102(6)(B)(ii) was used because it is recognized that the additional cost of sewer services impacts the ability of customers to pay for a new project and is used by the board in other programs as well as another state in developing its affordability guidelines. Proposed new §363.1102(5) defines combined household cost factor as a combination of the average yearly water bill with the average yearly sewer bill and divides the total by the average median household income while proposed new §363.1102(8) defines household cost factor as the number that is derived by dividing the average yearly water bill by the adjusted median household income. Proposed new §363.1102(6) uses three criteria to define a disadvantaged community: permanent residential population; adjusted median household income; and household affordability factors. Population is used because the board believes that the smaller the service population for a utility provider, the harder it is to obtain the capital necessary to complete infrastructure projects. A population of less than 5,000 is proposed because 93% of the 616 Texas communities identified as lacking adequate water or sewer service have a population of 5,000 or less. The adjusted median household income is a measure of the income levels of residents of the area. Similar income criteria are used in the Drinking Water State Revolving Fund (DWSRF) and the Economically Distressed Areas Program (EDAP), both of which are administered by the board, so that its use fosters consistency between board programs. The board proposes using an income threshold of 75% of the median state household income because it is the measure already used by the board to establish eligibility for the EDAP as required by Water Code §16.341(1). The household cost factors are discussed in the preceding paragraph. Relying on the definition of a disadvantaged area, economically distressed area is defined in proposed new §363.1102(7) as an area that not only lacks financial resources as identified in the definition of disadvantaged area but also as an area with inadequate water or wastewater service. In this manner, the board has defined an economically distressed area consistent with the statutory intent to direct this grant assistance to areas not meeting the statewide standard for service and that also lack the financial resources to address that need. Proposed new §363.1102(9) and (10) define inadequate water service and inadequate sewer services, respectively, by relying on TCEQ regulations because these standards set statewide standards for adequate sewer and water services. Proposed new §363.1102(11) defines political subdivision as defined in Water Code §15.001 but excludes an interstate compact commission since that would not be a viable potential service provider.

The board proposes new §363.1103(a) to state that the board may provide grants to a political subdivision for projects that provide adequate water or sewer service to areas that do not currently have adequate service. The board is providing grants because there have been indications that some small communities have difficulty accessing board loan programs due to the interest costs associated with a loan. Further, due to federal tax law, it is advisable to use the funds provided for this program by the Texas Water Resources Finance Authority in this manner. The board proposes new §363.1103(b) to identify eligible uses of the fund as the planning, designing, or construction of a new water or sewer service system or improvements to an existing system in an economically distressed area, the purchase of a inadequate system so that it can be consolidated with another system that can provide adequate service, reduction of the interest rates loans or reduction or elimination of outstanding indebtedness to finance a project identified in proposed new paragraphs (1), (2), or (3) of this subsection, provided however that the loan is not from the board or other state agency. The board may not use these funds for interest rate reduction or refinancing of state indebtedness due to federal tax considerations. The board proposes new §363.1103(c) to identify that the board may provide assistance through a written agreement with the political subdivision.

The board proposes new §363.1104 to identify the information that must be provided in an application for assistance under this proposed new subchapter. The elements identified in this proposed new section are either required by Water Code §15.103 or are similar to the requirements for applications in other board programs and have proven to be the essential elements for the board to consider prior to providing assistance. Proposed new §363.1104(1) provides that an application must include a resolution from the applicant's governing body requesting assistance, stating the amount of the request, and designating a representative as the point of contact for the application. Proposed new §363.1104(2) requires that the designated representative provide an affidavit that states the decision to request financial assistance was made in an open meeting, states the information in the application is true and correct, warrants compliance with the application representations, and states the applicant will comply with all applicable federal and state laws. Proposed new §363.1104(3) requires copies of the consultant services contracts be provided with the application. Proposed new §363.1104(4) requires that the application provide the citation to the legal authority of the applicant. Proposed new §363.1104(5) requires data from the federal census or a survey of the residents to establish the eligibility of the area as disadvantaged. Proposed new §363.1104(6), (7) and (8) requires an engineering feasibility report that includes that the water or sewer service for the area is inadequate, a preliminary environmental information, and a water conservation plan, respectively, all of which comply with referenced rules of the board applicable to other board programs. Proposed new §363.1104(9) provides that if an applicant is receiving or providing water or sewer service to another entity then a copy of the service agreement must be provided with the application.

The board proposes new §363.1105 to identify the considerations and findings that the board must make prior to approving an application as required by Water Code §15.105. Proposed new §363.1105(a) provides that prior to application approval, the board shall consider the needs of and benefits to the project area in relation to other areas in the state, revenue available to the applicant for project costs, overall statewide needs, the applicant's ability to pay for the project without this assistance; and the county's efforts to control the construction of subdivisions that lack basic utility services. Proposed new §363.1105(b) provides that after considering these factors, the board can approve the application if it finds that the public interest requires state participation in the project and the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision. These considerations and findings are required by statute. Proposed new §363.1105(c) acknowledges that the resolution approving the application may include any condition that the board deems appropriate including a requirement that the applicant adopt a water conservation plan in compliance with board rules and state statute.

The board proposes new §363.1106 to identify the amount of the grant assistance that will be provided. Proposed new §363.1106(a)(1) provides that when the adjusted median household income for the project area is between 75% and 60% of the median state household income, the grant will be 50% of the amount of the financial assistance requested in the application. Proposed new §363.1106(a)(2) provides that when the adjusted median household is less than or equal to 60% but greater than 50% of the median state household income, the grant will be 75% of the amount of the financial assistance requested in the application. Proposed new §363.1106(a)(3) provides that when the adjusted median household income is less than or equal to 50% of the median state household income, the grant will be for 90% of the amount of the financial assistance requested in the application. The graduated scale of grant assistance is intended to create a means to direct the largest grants to the communities most in need based on an analysis of the residents' ability to pay. Proposed new §363.1106(b) provides that the amount of the financial assistance requested in the application that is not provided as a grant shall be provided by a loan from another board program. By this proposed new subsection, the board proposes to require that a grant recipient under this proposed new subchapter also receive a board loan. In this manner, the board is assured that the community is contributing to the long-term success of the project. This proposed new subsection also provides the board the means to monitor the ongoing viability of the utility and insure the best use of these limited funds. Proposed new §363.1106(c) provides that the maximum amount of grant funds made available to a single applicant is $1 million. The board proposes this subsection in order to insure that multiple communities may access these limited funds. Proposed new §363.1106(d) provides that if the applicant will be providing the remaining portion of the project costs from sources other than board programs, then the availability of the additional funds must be established prior to the release of funds provided under this proposed new subchapter.

The board proposes new §363.1107 to provide that the release of funds, the construction phase, and the post-construction responsibilities for projects funded under this proposed new subchapter will be governed by the provisions of Division 4, Division 5, Division 6 of Subchapter A of this chapter. In this manner, the board will manage the expenditure of these funds in the same manner as other board programs.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the new sections, as proposed, are in effect there will be potential fiscal implications for local governments that apply for funding under the program. These fiscal implications would be in the form of savings on

loans for water projects. However, at this time, no reliable estimates may be made of the amount of the potential savings.

Ms. Callahan has also determined that, for the first five years the new sections, as proposed, are in effect the public benefit anticipated as a result of enforcing the new sections will be that the new program will provide an additional funding source to rural political subdivisions for developing water resources of the state. Ms. Callahan has determined there will not be economic costs to the State, to small businesses or individuals required to comply with the new sections as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, General Counsel's Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §§6.101, 15.001(11), 15.011, and 15.103.

Cross reference to statute: Water Code, Chapter 15, Subchapter C.

§363.1101. Scope and Purpose of Subchapter.

(a) This subchapter shall govern the use of funds deposited in the Water Loan Assistance Fund for the purpose of the Small Community Hardship Program from payments made by the Texas Water Resources Finance Authority to the board, as well as such other funds that may be made available for such program.

(b) The purpose of the use of the funds by the board is to provide financial assistance to economically distressed areas as provided in Water Code, Chapter 15 and as further specified in this subchapter.

§363.1102. Definitions of Terms.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Unless defined in this subchapter, words defined in the Texas Water Code, Chapters 15, 16, or 17 shall have the meanings provided therein.

(1) Adjusted median household income -- The annual median household income identified in the most recent U.S. Census from the closest applicable census tract multiplied by the current Texas Consumer Price Index divided by the most recent decennial Texas Consumer Price Index.

(2) Applicant -- A political subdivision that requests financial assistance from the board.

(3) Average yearly sewer bill -- The number that is derived by multiplying the average number of persons per occupied household in the service area of the applicant by 1,279 gallons multiplied by the monthly sewer rate of the applicant multiplied by 12. The proposed monthly sewer rate shall include the cost of the proposed project. If taxes, surcharges or other fees are used to subsidize the sewer system, the average annual amount per household may be included in calculating the average yearly sewer bill.

(4) Average yearly water bill -- The number that is derived by multiplying the average number of persons per occupied household in the service area of the applicant by 2,325 gallons multiplied by the proposed monthly water rate multiplied by 12. The proposed monthly water rate shall include the cost of the proposed project. If taxes, surcharges or other fees are used to subsidize the water system, the average annual amount per household may be included in calculating the average yearly water bill.

(5) Combined household cost factor -- The number that is derived by adding the average yearly water bill with the average yearly sewer bill and dividing by the adjusted median household income.

(6) Disadvantaged area -- An area that:

(A) has a permanent residential population of 5,000 or less; and

(B) has an adjusted median household income which is no more than 75% of the median state household income for the most recent year for which statistics are available; and

(i) if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to 1.0%; or

(ii) if the service area is charged for water and sewer services, has a combined household cost factor for water and sewer rates that is greater than or equal to 2.0%.

(7) Economically distressed area -- An area which is a disadvantaged area and in which inadequate water or sewer services exist.

(8) Household cost factor -- The number that is derived by dividing the average yearly water bill by the adjusted median household income.

(9) Inadequate water service -- Water supply services which:

(A) from a community water system, do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC §§290.1 - 290.26, 30 TAC §§290.38 - 290.51, and any applicable standards of any governmental unit with jurisdiction over such area;

(B) from individual wells, after treatment, do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC §§290.3, 290.4, 290.10, and 290.13, and any applicable standards of any governmental unit with jurisdiction over such area; or

(C) do not exist or are not provided.

(10) Inadequate sewer service -- Sewer services which:

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 305;

(B) for on-site sewerage facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 285 and 313; or

(C) do not exist or are not provided.

(11) Political subdivision -- A city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, and any nonprofit water supply corporation created and operating under Water Code, Chapter 67.

§363.1103. Financial Assistance Available.

(a) The board may provide financial assistance from the Water Loan Assistance Fund to a political subdivision for a water supply or sewer service project that provides adequate water or sewer service to an economically distressed area.

(b) The board may provide financial assistance by grants for up to 90% of the amount of the financial assistance requested in the application to:

(1) plan, design, or construct a new water or sewer service system in an economically distressed area, including land costs or replacement of septic systems;

(2) plan, design, or construct improvements to an existing water or sewer service system in an economically distressed area, including land costs or replacement of septic systems;

(3) purchase or consolidate water or sewer service systems that results in providing adequate water or sewer service to an economically distressed area;

(4) reduce the interest rates on loans to finance a project identified in paragraphs (1), (2), or (3) of this subsection, provided however that the loan is not from the board or other state agency; or

(5) reduce or eliminate outstanding indebtedness of the project area if the effect assists in obtaining financial assistance for a project identified in paragraphs (1), (2), or (3) of this subsection, provided however that the indebtedness is not from the board or other state agency.

(c) The board may provide the financial assistance through a written agreement executed by the executive administrator and the designated representative of the political subdivision.

§363.1104. Application.

An application shall be in the form and numbers prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

(1) a resolution from its governing body which shall:

(A) request financial assistance and identify the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the board on behalf of the applicant, and submit such other documentation as may be required by the executive administrator or the board;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, §551.001, et seq.) and after providing all such notice as required by such Act as is applicable to the applicant or, for a corporation, that the decision to request financial assistance from the board was made in a meeting open to all customers and after providing all customers written notice at least 72 hours prior to such meeting that a decision to request public assistance would be made during such meeting;

(B) the information submitted in the application is true and correct according to the best knowledge and belief of the representative;

(C) the applicant warrants compliance with the representations made in the application in the event that the board provides the financial assistance; and

(D) the applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(3) copies of any proposed or existing contracts for consultant financial advisory, engineering, and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(4) a citation to the legal authority in the Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the applicant as may be deemed necessary by the executive administrator;

(5) data from the most recent federal census for the most applicable census tract or tracts or a survey approved by the executive administrator of a statistically acceptable sampling of the customers in the service area completed within the last 12 months that demonstrates that the area meets the adjusted median household income level to qualify it as a disadvantaged area;

(6) an engineering feasibility report in compliance with §363.13 of this title (relating to Engineering Feasibility data) and including information satisfactory to the executive administrator that the water or sewer service for which assistance is requested is inadequate as defined herein;

(7) preliminary environmental information in compliance with §363.14 of this title (relating to Environmental Assessment);

(8) a water conservation plan prepared in compliance with §363.15 of this title (relating to Required Water Conservation Plan) or a statement identifying the applicable statutory exemption from preparation and adoption of the water conservation program; and

(9) if the applicant provides or will provide water supply or treatment, or sewer treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing.

§363.1105. Board Consideration of Applications.

(a) Prior to approval of the application submitted of an applicant, the board shall consider:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the applicant from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs;

(4) the ability of the applicant to finance the project without state assistance; and

(5) the regulatory efforts by the county in which the project is located to control the construction of subdivisions that lack basic utility services.

(b) After consideration of the factors identified in subsection (a) of this section, the board may pass a resolution approving the application of an eligible applicant if the board finds that:

(1) the public interest requires state participation in the project; and

(2) the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision.

(c) The resolution approving the application of an eligible applicant may include any condition that the board deems appropriate including a requirement that the applicant adopt a water conservation plan in compliance with §363.15 of this title (relating to Required Water Conservation Plan).

§363.1106. Grant Assistance.

(a) To the extent funds are available, the amount of financial assistance provided by the board under this subchapter will be determined as follows:

(1) if the adjusted median household income for the project area is less than or equal to 75% but greater than 60% of the median state household income, the financial assistance provided by the board will be a grant for 50% of the amount of the financial assistance requested in the application;

(2) if the adjusted median household income for the project area is less than or equal to 60% but greater than 50% of the median state household income, the financial assistance provided by the board will be a grant for 75% of the amount of the financial assistance requested in the application; and

(3) if the adjusted median household income for the service area is less than or equal to 50% of the median state household income, the financial assistance provided by the board will be a grant for 90% of the amount of the financial assistance requested in the application.

(b) The remaining portion of the amount of the financial assistance requested in the application not provided as a grant shall be provided by a loan from another board program.

(c) The amount of grant funds provided to an applicant pursuant to this subchapter shall not exceed one million dollars.

(d) If the applicant will be providing the remaining portion of the project costs from sources other than board programs, then the applicant shall provide evidence satisfactory to the executive administrator that the applicant has secured the additional funds prior to the release of funds provided under this subchapter.

§363.1107. Release of Funds and Construction Activity.

To the extent not in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) that govern the release of funds (Division 4), construction phase (Division 5), and Post-Construction Responsibilities (Division 6) shall apply to financial assistance provided in this subchapter.

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

Filed with the Office of the Secretary of State on January 21, 2004.

TRD-200400420
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: April 21, 2004
For further information, please call: (512) 475-2052

CHAPTER 384. RURAL WATER ASSISTANCE FUND

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §384.3

The Texas Water Development Board (board) proposes amendments to 31 TAC §384.3 concerning the Rural Water Assistance Fund.

Amendments to §384.3, Use of Funds, are proposed to implement recent legislative changes to the Water Code that facilitate the use of the Rural Water Assistance Fund for wastewater projects.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that, for the first five-year period this section is in effect, there will be potential fiscal implications for local governments that apply for funding under the program. These fiscal implications would be in the form of savings on loans for wastewater projects. However, at this time, no reliable estimates may be made of the amount of the potential savings.

Ms. Callahan has also determined that, for the first five years this section as proposed is in effect, the public benefit anticipated as a result of enforcing this section will be an additional funding source to rural political subdivisions for developing wastewater resources of the state. Ms. Callahan has determined there will not be economic costs to the State, to small businesses or individuals required to comply with the section as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Attorney, General Counsel's Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §6.101 and Chapter 15, Subchapter P.

Cross reference to statute: Water Code, Chapter 15, Subchapter P.

§384.3. Use of Funds.

The fund may be used:

(1) to provide low-interest loans to rural political subdivisions for water or water-related projects and for water quality enhancement projects, including the purchase of well fields, the purchase or lease of rights to produce groundwater, on-site or wetland wastewater treatment facilities, and interim financing of construction projects;

(2) to enable a rural political subdivision to obtain water or wastewater service supplied by a larger political subdivision or to finance the consolidation or regionalization of neighboring political subdivisions, or both; or

(3) as a source of revenue for the repayment of principal and interest on water financial assistance bonds issued by the board if the proceeds of the sale of these bonds will be deposited into the fund.

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 January 21, 2004.

TRD-200400419
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: April 21, 2004
For further information, please call: (512) 475-2052

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.3

The Texas Board of Criminal Justice proposes new §151.3, concerning Texas Board of Criminal Justice Operating Procedures.

The purpose of the new rule is to establish operating procedures for the Texas Board of Criminal Justice ("TBCJ") to conduct business.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the new rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the new rule. There will be no effect on small and micro-businesses.

The anticipated public benefit as a result of enforcing the new rule will be to enhance public safety.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under Texas Government Code, §492.013.

Cross Reference to Statutes: Texas Government Code, §492.013.

§151.3. Texas Board of Criminal Justice Operating Procedures.

(a) General. This section establishes operating procedures for the Texas Board of Criminal Justice ("TBCJ") to conduct business.

(b) Organization.

(1) The TBCJ is a nine (9) member body appointed by the Governor to oversee the Texas Department of Criminal Justice ("TDCJ" or "Board"). The Chairman of the TBCJ is designated by and serves at the pleasure of the Governor pursuant to Government Code, §492.005.

(2) The TBCJ shall elect a Vice-Chairman and a Secretary each odd-numbered year. The Vice-Chairman shall preside over meetings in the Chairman's absence, and the secretary shall provide any necessary execution of documents.

(3) The Chairman, on behalf of the TBCJ, is empowered to appoint members of the TBCJ to be members or chairs of standing or limited-purpose committees, or to serve as liaisons to the TBCJ on particular subject areas or divisions within TDCJ's jurisdiction, or both. The purpose for a committee, if appointed, is to have certain members of the Board become particularly familiar with various issues, and to bring forward consensus recommendations, or a candid report on any disagreements, to the full Board.

(4) A member who chairs a committee appointed by the Chairman may appoint non-members to sit on the committee in an advisory capacity; however, advisory members are non-voting members (subsection (c)(5) of this section) and cannot be reimbursed for expenses incurred in this capacity.

(5) For employment decisions made specifically by the TBCJ, a limited-purpose committee shall be appointed by the Chairman as deemed necessary to formulate recommendations for full Board consideration.

(c) Meetings.

(1) The TBCJ attempts to hold a regular meeting at least every odd-numbered month of the year, but shall meet at least once each quarter of the calendar year. Special called meetings can be held at the discretion of the Chairman.

(2) TBCJ meetings shall be held in Austin, Texas, or under exceptional circumstances in Huntsville, Texas pursuant to Government Code, §492.006 and the General Appropriations Act. If the TBCJ uses videoconference technology to convene a meeting, at least three (3) members must convene at the Austin videoconference site, or under exceptional circumstances, the Huntsville videoconference site. The other members may convene using the technology from remote sites.

(3) The agenda for the meetings of the TBCJ shall be set by the Chairman, after consultation with members of the TBCJ and the TDCJ Executive Director.

(4) A meeting of a committee of the TBCJ shall be held at a site chosen by the Chairman of the committee. The Chairman of the committee shall set the agenda for the meeting in consultation with the committee's Lead Staff. If the TBCJ committee uses videoconference technology to convene a meeting, at least a quorum of the committee, such as, three (3) members of a four (4) member committee, must convene in one location, and the other members may convene using the technology from remote sites.

(5) A majority of the TBCJ or of a committee of the TBCJ constitutes a quorum for the convening of, and transaction of business at, any meeting. A quorum of a committee with two (2) members is two (2).

(6) A quorum of a committee cannot depend on the presence of an advisory member. A non-unanimous vote on an action by a committee cannot be decided by an advisory member.

(7) Meetings of the TBCJ and its committees shall be conducted according to standard parliamentary procedures.

(8) Meetings of the TBCJ and its committees are governed by the Texas Open Meetings Act, Government Code, Chapter 551.

(9) The TDCJ Executive Director shall ensure that members are provided with materials necessary to conduct the business of Board and committee meetings well in advance of the meeting.

(10) The Executive Director shall ensure that minutes of each meeting are prepared, retained, filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the TBCJ.

(11) Requests by the public to make presentations to the TBCJ are governed by §151.4 of this title, pursuant to Government Code, §492.007 and §551.042.

(12) The TBCJ shall approve meeting minutes for any committees that are deleted, renamed, or for which their limited-purpose has concluded.

(13) The agenda of each meeting shall include an opportunity for:

(A) The Presiding Officer of the Board of Pardons and Paroles or a designee to present any items relating to the operation of the parole system determined by the Presiding Officer to require the Board's consideration; and

(B) The Chairman of the Judicial Advisory Council (JAC) to the Community Justice Assistance Division (CJAD) to present to the Board any item relating to the operations of the community justice system determined by the Chairman to require the Board's consideration.

(14) At least twice a year or at the discretion of the Chairman, the agenda will include a report by the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, pursuant to §151.8 of this title and Health and Safety Code, Chapter 614.

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 January 16, 2004.

TRD-200400384
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-0422

37 TAC §151.75

The Texas Board of Criminal Justice proposes new §151.75, concerning Standards of Conduct for Financial Advisors.

The purpose of the new rule concerns the standards of conduct and disclosure requirements applicable to financial advisors or service providers who provide financial services or advise the Texas Department of Criminal Justice in connection with the management or investment of state funds. This new rule is proposed pursuant Chapter 2263, Texas Government Code, as enacted by Senate Bill 1059, 78th Legislature, Regular Session, 2003. Senate Bill 1059, 78th Legislature, Regular Session, adopts Government Code, new Chapter 2263, regarding ethics and disclosure requirements for outside financial advisors and service providers. New Government Code, §2263.004, requires the governing body of a state governmental entity by rule to adopt standards of conduct applicable to financial advisors or service providers who provide financial services to the state governmental body or advise the state governmental body in connection with the management or investment of state funds. These provisions of Senate Bill 1059 were effective September 1, 2003.

Proposed new §151.75(a) outlines the definitions applicable to this section. Proposed new §151.75(b) addresses the applicability of the section to financial advisors or service providers who render important investment or funds management advice to the comptroller with respect to state funds. Proposed new §151.75(c) outlines disclosure requirements for financial advisors or service providers, including a requirement to file an annual statement with TDCJ and the state auditor. Proposed new §151.75(d) outlines standards of conduct for financial advisors or service providers, which are in addition to any standards required by any contracts or service agreements. Finally, proposed new §151.75(e) provides that a contract is voidable by TDCJ if a financial advisor or service provider violates a standard of conduct outlined in this section.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the new rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the new rule. There will be no effect on small and micro-businesses.

The anticipated public benefit as a result of enforcing the new rule will be to provide additional information to affected entities regarding new legislative requirements with respect to standards of conduct and required disclosures applicable to financial advisors or service providers who provide financial services to TDCJ or advise TDCJ in connection with the management or investment of state funds.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under Texas Government Code, §2263.004.

Cross Reference to Statutes: Texas Government Code §2263.004.

§151.75. Standards of Conduct for Financial Advisors.

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

(1) TDCJ--The Texas Department of Criminal Justice, and any division or entity within TDCJ or managed by TDCJ.

(2) Financial advisor or service provider--Includes a person or business entity who acts as a financial advisor, financial consultant, money manager, investment manager, or broker.

(b) Applicability.

(1) This section applies in connection with the management or investment of any state funds managed or invested by TDCJ under the Texas Constitution or other law, including Government Code, Chapters 404 and 2256, without regard to whether the funds are held in the state treasury.

(2) This section applies to financial advisors or service providers who are not employees of TDCJ, who provide financial services to or advise TDCJ in connection with the management or investment of state funds, and who:

(A) may reasonably be expected to receive, directly or indirectly, more than $10,000 in compensation from TDCJ during a fiscal year; or

(B) render important investment or funds management advice to TDCJ.

(3) The standards adopted in this section are intended to identify professional and ethical standards by which all financial advisors or service providers must abide in addition to the professional and ethical standards that may already be imposed on financial advisors or service providers under any contracts or service agreements with TDCJ.

(c) Disclosure Requirements.

(1) A financial advisor or service provider shall disclose in writing to TDCJ and to the state auditor:

(A) any relationship the financial advisor has with any party to a transaction with TDCJ, other than a relationship necessary to the investment or fund management services that the financial advisor performs for TDCJ, if the relationship could reasonably be expected to diminish the financial advisor's independence of judgment in the performance of the person's responsibilities to TDCJ; and

(B) all direct or indirect pecuniary interests the financial advisor has in any party to a transaction with TDCJ, if the transaction is connected with any financial advice or service the financial advisor provides to TDCJ in connection with the management or investment of state funds.

(2) The financial advisor or service provider shall disclose a relationship described by paragraph (1) of this subsection without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

(3) A financial advisor or service provider shall file annually a statement with TDCJ and with the state auditor. The statement must disclose each relationship and pecuniary interest described by paragraph (1) of this subsection or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

(4) The annual statement must be filed not later than April 15 on a form prescribed by TDCJ. The statement must cover the reporting period of the previous calendar year.

(5) The financial advisor or service provider shall promptly file a new or amended statement with TDCJ and with the state auditor whenever there is new information to report under paragraph (1) of this subsection.

(d) Standards of Conduct.

(1) Compliance.

(A) These standards are intended to be in addition to, and not in lieu of, a financial advisor's or service provider's obligations under its contract or service agreement with TDCJ. In the event of a conflict between a financial advisor's obligations under these standards and under its contract or services agreement, the standard that imposes a stricter ethics or disclosure requirement controls.

(B) A financial advisor or service provider shall be knowledgeable about these standards, keep current with revisions to these standards, and abide by the provisions set forth in these standards.

(C) In all professional activities a financial advisor or service provider shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities, including TDCJ, and in accordance with any established policies of TDCJ.

(2) Qualification Standards.

(A) A financial advisor or service provider shall render opinions or advice, or perform professional services only in those areas in which the financial advisor has competence based on education, training or experience. In areas where a financial advisor is not qualified, the financial advisor shall seek the counsel of qualified individuals or refer TDCJ to such persons.

(B) A financial advisor or service provider shall keep informed of developments in the field of financial planning and investments and participate in continuing education throughout the financial advisor's relationship with TDCJ in order to improve professional competence in all areas in which the financial advisor is engaged.

(3) Integrity.

(A) A financial advisor or service provider has an obligation to observe standards of professional conduct in the course of providing advice, recommendations and other services performed for TDCJ. A financial advisor shall perform professional services with honesty, integrity, skill, and care. In the course of professional activities, a financial advisor shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental, or other regulatory body or official, or any other person or entity.

(B) A financial advisor or service provider's relationship with a third party shall not be used to obtain illegal or improper treatment from such third party on behalf of TDCJ.

(4) Objectivity. A financial advisor or service provider will maintain objectivity and be free of conflicts of interest in discharging its responsibilities. A financial advisor will remain independent in fact and appearance when providing financial planning and investment advisory services to TDCJ.

(5) Prudence. A financial advisor or service provider shall exercise reasonable and prudent professional judgment in providing professional services to TDCJ.

(6) Competence. A financial advisor or service provider shall strive to continually improve its competence and the quality of services, and discharge its responsibilities to the best of its ability.

(7) Conflicts of Interest.

(A) If a financial advisor or service provider is aware of any significant conflict between the interests of TDCJ and the interests of another person, the financial advisor shall advise TDCJ of the conflict and shall also include appropriate qualifications or disclosures in any related communication.

(B) A financial advisor or service provider shall not perform professional services involving an actual or potential conflict of interest with TDCJ unless the financial advisor's ability to act fairly is unimpaired, there has been full disclosure of the conflict to TDCJ, and TDCJ has expressly agreed in writing to the performance of the services by the financial advisor.

(8) Confidentiality.

(A) A financial advisor or service provider shall not disclose to another person any confidential information obtained from TDCJ or regarding TDCJ's investments unless authorized to do so by TDCJ in writing or required to do so by law.

(B) For the purposes of this subsection, "confidential information" refers to information not in the public domain of which the financial advisor or service provider becomes aware during the course of rendering professional services to TDCJ. It may include information of a proprietary nature, information that is excepted from disclosure under the Public Information Act, Government Code, Chapter 552, or information restricted from disclosure under any contract or service agreement with TDCJ.

(e) Contract Voidable. A contract under which a financial advisor or service provider renders financial services or advice to TDCJ is voidable by TDCJ if the financial advisor violates a standard of conduct outlined in 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 January 16, 2004.

TRD-200400385
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 463-0422

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 47. CONTRACTING TO PROVIDE PRIMARY HOME CARE

The Texas Department of Human Services (DHS) proposes new Subchapter A, concerning introduction, §§47.1, 47.3, and 47.5; Subchapter B, concerning provider agency contracts, §47.11; Subchapter C, concerning staff requirements, §§47.21, 47.23, and 47.25; Subchapter D, concerning service plan development, §§47.41, 47.43, 47.45, 47.47, and 47.49; Subchapter E, concerning service requirements, §§47.61, 47.63, 47.65, 47.67, 47.69, 47.71, and 47.73; and Subchapter F, concerning claims payment and documentation, §§47.81, 47.83, 47.85, 47.87, 47.89, and 47.5902, in its renamed Contracting to Provide Primary Home Care chapter. DHS proposes to repeal Subchapter A, concerning general provisions and services, §§47.1901-47.1904; Subchapter B, concerning service requirements, §§47.2901-47.2905 and §§47.2908-47.2914; Subchapter C, concerning claims payment; §§47.3906-47.3908; Subchapter D, concerning provider contracts, §§47.4902-47.4905; Subchapter E, concerning support documents, §47.5902; and Subchapter F, concerning sanctions, §47.6902, in its Primary Home Care chapter.

The purpose of the new sections and the repeals is to rewrite the chapter in plain English so that the sections are easier to read and understand. Subchapters have been reorganized to improve the clarity of the chapter. The new sections also incorporate existing policy into rule language, as well as provide clearer definitions and explanations of policies. The proposed rules make program changes that reduce provider liability and allow more flexibility in service delivery. These improved policies include: greater flexibility for Primary Home Care Program provider agencies in use of required forms, provision for the resolution of service delivery issues including the addition of an interdisciplinary team, minimizing requirements beyond licensure standards for certain program areas, and clearer direction for service delivery. The proposed sections address the standards for provider agencies contracting to provide services to eligible clients through DHS's Primary Home Care Program. The requirements in this chapter apply to three types of services in the Primary Home Care Program: primary home care (PHC) services, family care (FC) services, and community attendant (CA) services.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, 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 is to have rules that provider agencies and the public can more easily navigate and understand. Rule clarity and consistency will help provider agencies and agency staff ensure quality services for clients. Incorporating existing policy into rule language ensures that all applicable rules, policies, and procedures are easy to find and in one location. Allowing provider agencies flexibility in the use of forms will help reduce provider agency overhead. The addition of the requirements for the interdisciplinary team will ensure better services for clients and allow provider agencies a method of review for service delivery problems. The interdisciplinary team ensures that options are explored for quality service delivery. Minimizing program requirements beyond licensure requirements, where appropriate, will relieve provider agencies from keeping up with different requirements for multiple authorities. Clearer service delivery requirements should enable provider agencies to follow the service delivery requirements more easily, which should result in better quality service to clients. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposed rules streamline the Primary Home Care Program's process. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Cathryn Horton at (512) 438-4259 in DHS's Long Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-043, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

These rules are promulgated by DHS. This state agency is currently scheduled to be merged some time in 2004 into two successor agencies, the Texas Health and Human Services Commission (HHSC) and the Texas Department of Aging and Disability Services. This change is mandated by legislation passed by the 78th Legislature.

At the time of that transition, HHSC will have complete authority for these and all related rules. This may result in these rules being changed from one chapter of the Texas Administrative Code to another or other changes.

SUBCHAPTER A. INTRODUCTION

40 TAC §§47.1, 47.3, 47.5

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.1. Purpose.
This chapter establishes the requirements for provider agencies contracting to provide in-home attendant services to eligible clients through the Texas Department of Human Services (DHS) Primary Home Care Program. The requirements in this chapter apply to primary home care services, family care services, and community attendant services, unless otherwise specified in the text.

§47.3. Definitions.
The following words, terms, and phrases have the following meanings when used in this chapter, unless the context clearly indicates otherwise:

(1) Attendant--An employee of a provider agency who provides the authorized tasks to the client.

(2) Case manager--A Texas Department of Human Services (DHS) employee who is responsible for case management activities. Activities include eligibility determination, client registration, assessment and reassessment of client's need, service plan development, and intercession on the client's behalf.

(3) Client--A Community Care for Aged and Disabled (CCAD) client, as defined in Chapter 48 of this title (relating to Community Care for Aged and Disabled), who is eligible to receive services under this chapter. References in this chapter to "client" include the client's representative, unless the context indicates otherwise.

(4) Community attendant (CA) services--A service under the Primary Home Care Program providing in-home attendant services to clients. Clients receiving CA services must have a medical need for specific tasks. CA services (formerly known as §1929(b) or frail elderly) are provided under Title XIX of the federal Social Security Act (relating to Grants to States for Medical Assistance Programs) at 42 U.S.C. §1396t (relating to Home and community care for functionally disabled elderly individuals).

(5) Contract--The formal, written agreement between DHS and a provider agency to provide services to DHS clients eligible under this chapter in exchange for reimbursement.

(6) Contract manager--A DHS employee who is responsible for the overall management of the contract with the provider agency.

(7) Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays.

(8) Family care (FC) services--A service under the Primary Home Care Program providing in-home attendant services to eligible adults. FC services are provided under Title XX of the federal Social Security Act (relating to Block Grants to States for Social Services) at 42 U.S.C. §1397 et seq.

(9) Imminent danger--An immediate, real threat to a person's safety.

(10) Medical need--A medical diagnosis that results in a need for assistance with activities of daily living. For purposes of this chapter, activities of daily living do not include services that must be provided or supervised by licensed personnel.

(11) Negotiated referral--A request from the case manager to a provider agency to evaluate a person for service delivery, in which the case manager determines that the person's needs require that services begin on a particular date.

(12) Non-priority--One of two types of eligibility status for service delivery determined by the case manager. The other type of eligibility status for service delivery is priority. A non-priority client does not meet the criteria described in §48.2918(f) of this title (relating to Eligibility for Primary Home Care). Services delivered to such a client may be referred to as non-priority services, and an attendant who serves such a client may be referred to as a non-priority attendant.

(13) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma or New Mexico, a physician assistant currently licensed in Texas, or a registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse.

(14) Practitioner's statement--A document such as the DHS Practitioner's Statement of Medical Need form that includes:

(A) a statement signed by a practitioner that the client has a current medical need for assistance with personal care tasks and other activities of daily living; and

(B) certification that the provider agency verified with the United States' Centers for Medicare and Medicaid Services that the practitioner is not excluded from participation in Medicare or Medicaid.

(15) Practitioner's statement date--The practitioner's statement date is:

(A) the later of the following:

(i) the practitioner's signature date on the practitioner's statement; or

(ii) the date the provider agency receives the practitioner's statement. If the provider agency fails to stamp the receipt date on the form, the date of the practitioner's signature will be used to determine the practitioner's statement date; or

(B) the date of the practitioner's oral statement obtained for a negotiated referral. The provider agency must document the practitioner's oral statement date on the practitioner's written statement required in §47.47(c)(2) of this chapter (relating to Medical Need Determination).

(16) Primary Home Care Program--A DHS attendant care services program. Community attendant (CA), primary home care (PHC), and family care (FC) are the three types of services available under the Primary Home Care Program.

(17) Primary home care (PHC) services--A service under the Primary Home Care Program providing in-home attendant services to clients. Clients receiving PHC services must have a medical need for specific tasks. PHC services are provided under Title XIX of the federal Social Security Act, at 42 U.S.C. §1396a (relating to State plans for medical assistance).

(18) Priority--One of two types of eligibility status for service delivery determined by the case manager. The other type of eligibility status for service delivery is non-priority. A priority client meets the criteria described in §48.2918(f) of this title. Services delivered to such a client may be referred to as priority services, and an attendant who serves such a client may be referred to as a priority attendant.

(19) Provider agency--A home and community support services agency that contracts with DHS to provide services to clients in exchange for reimbursement.

(20) Reckless behavior--Acting with conscious indifference to the consequences.

(21) Regional nurse--A DHS employee who is responsible for authorizing a client to receive CA services.

(22) Representative--The client's spouse, other responsible party, or legal representative.

(23) Routine referral--A request from the case manager to a provider agency to evaluate a person for service delivery, in which the case manager determines that the person's needs do not require a negotiated referral.

(24) Service schedule--A schedule for delivering attendant services that is agreed upon and signed by the client. A fixed service schedule specifies certain days, times of day, or time periods for delivery of the services. A variable service schedule states the number of authorized hours of services to be delivered per day, per week, or per month, and does not otherwise specify any certain days, times of day, or time periods for delivery of the services.

(25) Signature--A person's name written in longhand or a mark representing his or her name on a document to certify it is correct. Initials are not an acceptable substitute for a signature.

(26) Supervisor--A provider agency employee who:

(A) coordinates the delivery of services in the client's service plan;

(B) supervises attendants; and

(C) meets the requirements found in §97.404 of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services).

(27) Unit of service--One hour of service delivered to a client.

(28) Working days--Days DHS is open for business.

(29) Written--Information recorded on paper or other legible document. Written information may be sent by mail or fax, or hand-delivered.

§47.5. Overview of Process.

The provider agency must:

(1) provide the tasks described in §47.41 of this chapter (relating to Allowable Tasks);

(2) accept all referrals as described in §47.43 of this chapter (relating to Referrals);

(3) conduct pre-initiation activities as described in §47.45 of this chapter (relating to Pre-Initiation Activities);

(4) resolve any service delivery issues as described in §47.49 of this chapter (relating to Interdisciplinary Team);

(5) ensure attendants are qualified and oriented to the client and service plan as described in §47.23 of this chapter (relating to Attendant Qualifications) and §47.25 of this chapter (relating to Attendant Orientation);

(6) start services for the client as described in §47.61 of this chapter (relating to Service Initiation);

(7) provide services to the client as described in §47.63 of this chapter (relating to Service Delivery);

(8) process any need for service plan changes as described in §47.67 of this chapter (relating to Service Plan Changes);

(9) coordinate client transfers to or from another provider agency as described in §47.69 of this chapter (relating to Transfers);

(10) suspend services only as described in §47.71 of this chapter (relating to Suspensions); and

(11) process special requirements for annual reauthorizations for community attendant services as described in §47.73 of this chapter (relating to Annual Reauthorization for Community Attendant Services).

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 January 22, 2004.

TRD-200400451
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

SUBCHAPTER B. PROVIDER AGENCY CONTRACTS

40 TAC §47.11

The new section is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section affects the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.11. Contracting Requirements.

(a) General contracting requirements. The provider agency must meet all provisions described in this chapter and Chapter 49 of this title (relating to Contracting for Community Care Services).

(b) Licensure. The provider agency in the Primary Home Care Program must deliver only personal assistance services, as defined in §97.2 of this title (relating to Definitions), only under the Personal

Assistance Services (PAS) category of Home and Community Support Services Agency licensure.

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 January 22, 2004.

TRD-200400452
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

SUBCHAPTER C. STAFF REQUIREMENTS

40 TAC §§47.21, 47.23, 47.25

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.21. Supervisor Training Requirements.

(a) General training. The provider agency must train all supervisors as described in §97.245 of this title (relating to Staffing Policies).

(b) Program-specific training. The provider agency must ensure the supervisor understands the applicable rules and procedures of the Primary Home Care Program.

§47.23. Attendant Qualifications.

In addition to the requirements described in §97.404 of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services), attendants must:

(1) be an employee of the provider agency;

(2) be 18 years of age or older;

(3) not be a legal or foster parent of a minor who receives the service; and

(4) not be the spouse of a client who receives the service. This paragraph is not applicable to family care services.

§47.25. Attendant Orientation.

(a) Orientation. In addition to the requirements described in this section, the provider agency must ensure each attendant is oriented as described in Chapter 97, Subchapter C, of this title (relating to Minimum Standards for All Home and Community Support Services Agencies) and §97.404 of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services). Orientation is not required for supervisors acting as attendants.

(b) Method of orientation.

(1) An attendant must receive orientation in person in the client's home or other location where services are delivered.

(2) The client must be present when the attendant receives orientation in person.

(3) An attendant may receive orientation by telephone or in the provider agency office, at the discretion of the supervisor, if the attendant:

(A) meets the requirements described in §97.701 of this title (relating to Home Health Aides); or

(B) has six continuous months of experience in delivering attendant care.

(4) An attendant may receive orientation by telephone, at the discretion of the supervisor, when:

(A) the service plan changes; or

(B) the attendant previously worked for the client.

(5) The provider agency supervisor may use discretion to determine if the attendant needs to be oriented if:

(A) the attendant previously worked for the client; and

(B) the service plan has not changed since the attendant worked for the client.

(c) Due dates. The supervisor must orient each attendant on or before the time the attendant begins to provide attendant services.

(d) Documentation of attendant orientation.

(1) The attendant orientation must be recorded on a single document that includes:

(A) the client name and DHS client number;

(B) the attendant name;

(C) the date of the attendant orientation;

(D) whether the orientation was conducted in person with the client or by telephone;

(E) information about how the client's condition affects the performance of tasks;

(F) the tasks to be performed;

(G) the service schedule;

(H) the number of hours the attendant is to provide;

(I) the total number of hours the client is authorized to receive;

(J) safety and emergency procedures, including universal precautions;

(K) specific situations about which the attendant should notify the provider agency, including:

(i) changes in the client's needs;

(ii) incidents that affect the client's condition;

(iii) hospitalization of the client;

(iv) the client's absence or relocation from home; and

(v) the attendant's inability to work; and

(L) the signature of the:

(i) supervisor who conducts the orientation;

(ii) the attendant who is oriented, if present; and

(iii) the client, if present.

(2) The provider agency must maintain documentation of the attendant orientation in the client file.

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 January 22, 2004.

TRD-200400453
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

SUBCHAPTER D. SERVICE PLAN DEVELOPMENT

40 TAC §§47.41, 47.43, 47.45, 47.47, 47.49

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.41. Allowable Tasks.

The Primary Home Care Program includes the following tasks:

(1) Personal care tasks related to the care of the client's physical health. These tasks include:

(A) bathing, which is:

(i) drawing water in sink, basin, or tub;

(ii) hauling or heating water;

(iii) laying out supplies;

(iv) assisting in or out of tub or shower;

(v) sponge bathing and drying;

(vi) bed bathing and drying;

(vii) tub bathing and drying; and

(viii) providing standby assistance for safety;

(B) dressing, which is:

(i) dressing the client;

(ii) undressing the client; and

(iii) laying out clothes;

(C) meal preparation, which is:

(i) cooking a full meal;

(ii) warming up prepared food;

(ii) planning meals;

(iii) helping prepare meals; and

(iv) cutting client's food for eating;

(D) feeding/eating, which is:

(i) spoon-feeding;

(ii) bottle-feeding;

(iii) assisting with using eating and drinking utensils and adaptive devices. This does not include tube feeding; and

(iv) providing standby assistance or encouragement;

(E) exercise, which is walking with the client;

(F) grooming/shaving/oral care, which is:

(i) shaving;

(ii) brushing teeth;

(iii) shaving underarms and legs, when requested;

(iv) caring for nails; and

(v) laying out supplies;

(G) routine hair/skin care, which is:

(i) washing hair;

(ii) drying hair;

(iii) assisting with setting, rolling, or braiding hair. This does not include styling, cutting, or chemical processing of hair;

(iv) combing or brushing hair;

(v) applying nonprescription lotion to skin;

(vi) washing hands and face;

(vii) applying makeup; and

(viii) laying out supplies;

(H) assistance with self-administered medications. This means assistance with medication as defined in §97.2(10) of this title (relating to Definitions);

(I) toileting, which is:

(i) changing diapers;

(ii) changing colostomy bag or emptying catheter bag;

(iii) assisting on or off bedpan;

(iv) assisting with the use of a urinal;

(v) assisting with feminine hygiene needs;

(vi) assisting with clothing during toileting;

(vii) assisting with toilet hygiene, including the use of toilet paper and washing hands;

(viii) changing external catheter;

(ix) preparing toileting supplies and equipment. This does not include preparing catheter equipment; and

(x) providing standby assistance; and

(J) transfer/ambulation, which is:

(i) non-ambulatory movement from one stationary position to another (transfer). This does not include carrying;

(ii) adjusting or changing the client's position in a bed or chair (positioning);

(iii) assisting in rising from a sitting to a standing position;

(iv) assisting in positioning for use of a walking apparatus;

(v) assisting with putting on and removing leg braces and prostheses for ambulation;

(vi) assisting with ambulation or using steps;

(vii) assisting with wheelchair ambulation; and

(viii) providing standby assistance.

(2) Home management tasks that support the client's health and safety. These tasks include:

(A) cleaning, which is:

(i) cleaning up after the client's personal care tasks;

(ii) emptying and cleaning the client's bedside commode;

(iii) cleaning the client's bathroom;

(iv) changing the client's bed linens and making the client's bed;

(v) cleaning floor of living areas used by client;

(vi) dusting areas used by client;

(vii) carrying out the trash and setting out garbage for pick up;

(viii) cleaning stovetop and counters;

(ix) washing the client's dishes; and

(x) cleaning refrigerator and stove;

(B) laundry, which is:

(i) doing hand wash;

(ii) gathering and sorting;

(iii) loading and unloading machines in residence;

(iv) using Laundromat machines;

(v) hanging clothes to dry;

(vi) folding and putting away clothes; and

(C) shopping, which is:

(i) preparing a shopping list;

(ii) going to the store and purchasing or picking up items;

(iii) picking up medication; and

(iv) storing the client's purchased items.

(3) Escort. Escort includes the following:

(A) accompanying the client outside the home to support the client in living in the community;

(B) arranging for transportation. The provider agency may also choose to directly provide transportation; however, direct client transportation is not reimbursed under the Primary Home Care Program;

(C) accompanying the client to a clinic, doctor's office, or location for medical diagnosis or treatment; and

(D) waiting in the doctor's office or clinic with a client when necessary due to client's condition or distance from home.

§47.43. Referrals.

(a) The provider agency must:

(1) accept all Texas Department of Human Services (DHS) referrals for services under the Primary Home Care Program; and

(2) conduct the pre-initiation activities as described in §47.45 of this chapter (relating to Pre-Initiation Activities).

(b) There are two methods of referral:

(1) For negotiated referrals, the case manager makes the referral by phone and on DHS's Authorization for Community Care Services form.

(2) For routine referrals, the case manager makes the referral on DHS's Authorization for Community Care Services form.

§47.45. Pre-Initiation Activities.

(a) Pre-initiation activities. The supervisor must complete the following activities for each referral:

(1) Conduct an evaluation.

(A) The evaluation must be a single document that includes the person's self-report of:

(i) the dates and reasons for any hospitalization within the last three months; and

(ii) the assistance needed for the person to achieve activities of daily living, including any assistive devices or medical equipment used by the person.

(B) If the provider agency determines during the evaluation that the client exhibits reckless behavior that results in imminent danger to the health and safety of the client, the provider agency must convene an Interdisciplinary Team meeting as described in §47.49 of this chapter (relating to Interdisciplinary Team) to discuss the barriers to service delivery.

(2) Develop a service plan. The service plan must be a single document that:

(A) is agreed upon and signed by the client and the provider agency;

(B) indicates the location of service delivery. The provider agency must:

(i) make a reasonable effort to deliver services at a location outside the client's home, if requested by the client; and

(ii) maintain written justification if the client's request was not granted; and

(C) includes the following:

(i) the tasks the client will receive.

(I) The provider agency must ensure that at least one personal care task is authorized by the Texas Department of Human Services (DHS), scheduled, and provided.

(II) Recipients of family care services are not required to receive any personal care tasks.

(III) The provider agency must ensure the tasks the client will receive do not duplicate any services received from any other source;

(ii) the total weekly hours of service DHS authorizes the client to receive;

(iii) the service schedule;

(iv) frequency of supervisory visits; and

(v) a statement that:

(I) the Primary Home Care Program only provides the tasks allowable in the program as described in §47.41 of this chapter (relating to Allowable Tasks) and agreed to on the service plan; and

(II) the provider agency is not responsible for meeting the applicant's needs other than tasks allowed under the Primary Home Care Program.

(3) Obtain a practitioner's statement as described in §47.47 of this chapter (relating to Medical Need Determination). This paragraph does not apply to family care services.

(b) Service plan differences.

(1) The provider agency must orally notify the case manager when the initial service plan developed by the provider agency:

(A) has more hours than authorized on DHS's Authorization for Community Care Services form; or

(B) has no personal care tasks. This subparagraph does not apply to family care services.

(2) The provider agency must discuss the difference in the service plan with the case manager.

(3) The provider agency must provide services according to the existing service plan, until the provider agency receives a new DHS Authorization for Community Care Services form.

(4) The provider agency must maintain the following documentation regarding the service plan difference in the client file:

(A) the specific difference in the service plan; and

(B) the decision regarding the difference.

(c) Pre-initiation activities due date. The provider agency must complete the pre-initiation activities as follows:

(1) for routine referrals, within 14 days after one of the following dates, whichever is later:

(A) the referral date (Item 1) on DHS's Authorization for Community Care Services form; or

(B) the date the provider agency receives DHS's Authorization for Community Care Services form. If the provider agency fails to stamp the receipt date on the form, the referral date (Item 1) will be used to determine timeliness; and

(2) for negotiated referrals, by the service initiation date negotiated with the case manager.

(d) Delay in pre-initiation activities.

(1) The provider agency must document any failure to complete the pre-initiation activities for routine referrals by the due date, including:

(A) the reason for the delay, which must be beyond the control of the provider agency;

(B) either the date the provider agency anticipates it will complete the pre-initiation activities or specific reasons why the provider agency cannot anticipate a completion date; and (C) a description of the provider agency's ongoing efforts to complete pre-initiation activities.

(2) The provider agency must orally notify the case manager of any failure to complete the pre-initiation activities for negotiated referrals before the negotiated service initiation date. Oral notice means directly speaking with the case manager and does not include a message left by voice mail. The case manager may refer the client to another provider agency.

(e) Documentation of pre-initiation activities.

(1) The provider agency may combine the evaluation and service plan into a single document, but each item must be clearly identifiable.

(2) The provider agency must maintain documentation of the pre-initiation activities in the client file.

§47.47. Medical Need Determination.

(a) Applicability. This section does not apply to family care services.

(b) Determining medical need. The provider agency must ensure medical need determination by obtaining and submitting a practitioner's statement by the applicable due date, as described in §47.45 of this chapter, (relating to Pre-Initiation Activities) for:

(1) persons whom the Texas Department of Human Services (DHS) refers to the provider agency (unless the person requests and is to receive family care services);

(2) clients who are receiving family care services and whom DHS refers to the provider agency for primary home care or community attendant services; and

(3) clients whom DHS refers to the provider agency to have medical need reassessed, as requested by the case manager, such as when the initial medical need was established for a limited time.

(c) Negotiated referrals. In the case of negotiated referrals, the provider agency must:

(1) obtain a practitioner's oral statement if the provider agency is unable to obtain a practitioner's written statement so that the provider agency can begin services on the date negotiated; and

(2) follow up with a practitioner's written statement as described in §47.45 of this chapter within 14 days from the date the case manager contacts the provider agency to make the negotiated referral.

(d) Mental illness and mental retardation. Persons diagnosed with mental illness, mental retardation, or both are not considered to have established medical need based solely on such diagnoses, but may establish medical need through a related diagnosis.

(e) Documentation of medical need determination. The provider agency must maintain the practitioner's statement in the client file.

§47.49. Interdisciplinary Team.

(a) Interdisciplinary Team (IDT). The IDT is a designated group that includes the following individuals who meet when the provider agency identifies the need to discuss service delivery issues or barriers to service delivery:

(1) the client or the client's representative, or both;

(2) a provider agency representative; and

(3) a Texas Department of Human Services (DHS) representative. A DHS representative may be:

(A) the case manager (or designee);

(B) the contract manager (or designee); or

(C) the regional nurse (or designee).

(b) Convening an IDT meeting.

(1) The provider agency must convene an IDT meeting within three working days of the date the provider agency:

(A) suspends services to a client under §47.71(a)(7) or (b) of this chapter (relating to Suspensions); or

(B) identifies an issue that prevents the provider agency from carrying out a requirement of the Primary Home Care Program.

(2) If the provider agency is unable to convene an IDT meeting with all the members described in subsection (a) of this section, the provider agency must convene the IDT meeting with the available members and send the documentation of the IDT meeting described in subsection (e) of this section to the Regional Administrator for the DHS region in which the client resides.

(A) The documentation must be sent within five working days of the date of the IDT meeting.

(B) Further action by the provider agency may be required, based on a DHS review of the IDT meeting documentation.

(c) IDT meeting.

(1) The IDT meeting may be conducted by telephone conference call or in person.

(2) The IDT must:

(A) evaluate the issue;

(B) identify any solutions to resolve the issue; and

(C) make recommendations to the provider agency.

(d) IDT meeting outcome. The provider agency must do one of the following within two working days after the IDT meeting:

(1) implement the recommendations of the IDT; or

(2) discharge the client from the provider agency and refer the case back to the case manager for referral to another provider agency.

(e) Documentation of the IDT meeting. The provider agency must document the IDT meeting in the client file, including the:

(1) specific reasons for calling the IDT meeting. If the specific reasons include staffing issues, the provider agency must document good faith efforts to find staffing for the client. Examples of good faith efforts may include:

(A) placement of newspaper, television, or radio ads;

(B) outreach through churches and other nonprofits;

(C) use of employment agencies;

(D) use of state agency administered programs; and

(E) efforts to encourage clients to locate and refer to the provider agency potential attendants in the community;

(2) participants in the IDT meeting. If all members described in subsection (a) of this section are unable to participate, the provider agency must document all efforts made to convene an IDT meeting with all the members;

(3) recommendations of the IDT;

(4) provider agency's action as a result of the IDT recommendations; and

(5) reasons for the provider agency's actions.

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

Filed with the Office of the Secretary of State on January 22, 2004.

TRD-200400454
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

SUBCHAPTER E. SERVICE REQUIREMENTS

40 TAC §§47.61, 47.63, 47.65, 47.67, 47.69, 47.71, 47.73

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.61. Service Initiation.

(a) Medical need requirement. The provider agency must not initiate services to a person identified in §47.47(b) of this chapter (relating to Medical Need Determination) until the practitioner has established medical need for that person. This section does not apply to family care services.

(b) Service initiation. The provider agency must initiate services:

(1) for routine referrals described in §47.43 of this chapter (relating to Referrals):

(A) for family care services, within 14 days after the following, whichever is later:

(i) the referral date (Item 1) on DHS's Authorization for Community Care Services form; or

(ii) the date the provider agency receives DHS's Authorization for Community Care Services form. If the provider agency fails to stamp the receipt date on the form, the referral date (Item 1) is used to determine timeliness; or

(B) for primary home care and community attendant services, by the initiation date determined by the provider agency. The service initiation date must be within seven days of the practitioner's statement date; and

(2) for negotiated referrals described in §47.43 of this chapter, on the date negotiated.

(c) Notification of service initiation and practitioner's statement date.

(1) The provider agency must send written notice of:

(A) service initiation to the case manager for family care, primary home care, and community attendant services; and

(B) the practitioner's statement date:

(i) to the case manager, for primary home care; or

(ii) to the regional nurse, for community attendant services.

(2) The provider agency must send the written notice within 14 days after initiating services.

(d) Delay in service initiation. The provider agency must document any failure to initiate services by the applicable due date in subsection (b) of this section, including:

(1) the reason for the delay, which must be:

(A) beyond the control of the provider agency; and

(B) not caused directly by the provider agency;

(2) either the date the provider agency anticipates it will initiate services, or specific reasons why the provider agency cannot anticipate a service initiation date; and

(3) a description of the provider agency's ongoing efforts to initiate services.

(e) Documentation of service initiation. The provider agency must maintain documentation of service initiation in the client file.

§47.63. Service Delivery.

(a) Service interruptions. A service interruption occurs when, on a particular day or time when services are scheduled:

(1) the client requests that:

(A) no hours of service be provided; or

(B) fewer hours of service than reflected in the service schedule be provided; or

(C) a specific attendant not provide services to the client;

(2) the client is not at home when services are scheduled;

(3) services are suspended as described in §47.71 of this chapter (relating to Suspensions); or

(4) services are not delivered for other reasons beyond the control of the provider agency, such as acts of nature and other disasters.

(b) Delivery of services.

(1) The provider agency must ensure:

(A) services are delivered according to the service plan described in §47.45 of this chapter (relating to Pre-Initiation Activities);

(B) all authorized and scheduled services are provided to a client, except in the case of a service interruption, as defined in subsection (a) of this section; and

(C) a client does not receive, during a calendar month, more than five times the weekly authorized hours on the Texas Department of Human Services' (DHS's) Authorization for Community Care Services form.

(2) The provider agency must not exceed the weekly authorized hours except in the case of a temporary increase:

(A) due to unusual circumstances and client need; and

(B) requested by the client.

(C) This paragraph does not apply to the circumstances described in subsection (d) of this section.

(c) Service interruption documentation.

(1) In the case of a priority client, the provider agency must document all service interruptions by the 30th day after the beginning of the service interruption.

(2) In the case of a non-priority client, the provider agency must document all service interruptions that exceed 14 consecutive days by the 30th day after the day service interruption exceeds 14 consecutive days.

(A) For a fixed service schedule, the service interruption begins on the first day services are scheduled but not delivered.

(B) For a variable service schedule, the service interruption begins the Sunday following the week the client did not receive all the weekly hours on a service plan approved by the client.

(3) The reason documented must be a reason listed in subsection (a) of this section.

(4) If the provider agency learns of a service interruption after the deadlines listed in paragraphs (1) and (2) of this subsection, the provider agency must document the following as soon as the provider agency learns of the service interruption:

(A) the reason for the service interruption. The reason documented must be a reason listed in subsection (a) of this section;

(B) the reason for the delay in documenting the service interruption; and

(C) the date the provider agency learned of the service interruption.

(d) Service delivery outside the client's home.

(1) The provider agency may develop a service plan that includes services regularly delivered at a location other than the client's home. The service plan must not exceed the weekly hours authorized on DHS's Authorization for Community Care Services form.

(2) The provider agency may deliver services outside the client's home when the service plan does not include the regular delivery of such services.

(3) The provider agency:

(A) may deliver services outside the client's home only if the client requests such services.

(B) is not required to pay for expenses incurred by attendants delivering services outside the client's home.

(C) must:

(i) make a reasonable effort to deliver services at a location other than the client's home when requested by the client;

(ii) maintain written justification if the client's request was not granted; and

(iii) document in the client's file:

(I) each instance when a client requested services at a location other than the home;

(II) whether the client's request was granted;

(III) what services were provided; and

(IV) where the services were delivered.

(e) Service delivery documentation.

(1) The provider agency must document the delivery of services, including:

(A) the provider agency name;

(B) the provider agency vendor number;

(C) the attendant name;

(D) the client name;

(E) the DHS client number;

(F) the specific service delivery period, including month, day, and year, as applicable;

(G) the tasks assigned;

(H) the units of service delivered;

(I) the dates services were delivered;

(J) certification that the attendant delivered the documented tasks.

(i) For electronic service delivery documentation systems, each person delivering services inputs a unique identifier to certify the services delivered.

(ii) For paper service delivery documentation systems, each person delivering services signs the timesheet to certify the services delivered.

(I) The attendant must sign his or her name or a mark representing his or her name on the timesheet to certify that it is correct. Initials are not an acceptable substitute for a signature.

(II) An attendant who is unable to sign the timesheet may designate another person to sign the timesheet. The provider agency must maintain written documentation of the:

(-a-) reason the attendant is unable to sign the timesheet; and

(-b-) identity of the person authorized to sign the timesheet on behalf of the attendant.

(2) Paper service delivery documentation must be a single document with a specific service delivery period not exceeding one calendar month.

(f) Documentation of service delivery. The provider agency must maintain documentation of service delivery in the client file. The provider agency must be able to identify all attendants delivering tasks to the client.

§47.65. Supervisory Visits.

(a) Supervisory visits. A supervisor must conduct supervisory visits to assess and document on a single form whether the:

(1) service plan is adequate;

(2) client continues to need the services;

(3) client needs a service plan change;

(4) attendant continues to be competent to provide the authorized tasks; and

(5) attendant is delivering the authorized tasks.

(b) Frequency. The supervisor must establish the frequency of supervisory visits, based on the specific needs of the client, the attendant, or both. The frequency of supervisory visits must be at least annually.

(c) Documentation of supervisory visits. The provider agency must maintain documentation of each supervisory visit in the client file.

§47.67. Service Plan Changes.

(a) Increase in hours or terminations.

(1) The provider agency must notify the case manager in writing within seven days of learning of any change that may:

(A) require an increase in hours in the client's service plan; or

(B) result in the client receiving no personal care tasks. This subparagraph does not apply to family care services.

(2) The notification must include the:

(A) date the provider agency learned of the need for the change;

(B) reason for the change;

(C) type of change (including the number of service hours); and

(D) signature and date of the provider agency representative.

(b) Decrease in hours. The provider agency must develop a new service plan, as described in §47.45(a)(2) of this chapter (relating to Pre-Initiation Activities), within 21 days of the provider agency identifying the need for an ongoing decrease in hours from the service plan currently approved by the client.

(c) Immediate increase in hours.

(1) The provider agency must discuss with the case manager the reason(s) a client requires an immediate increase in service hours, and must obtain approval from the case manager of both the number of additional service hours to be provided the client and the effective date of the change.

(2) The provider agency must implement the immediate increase in hours on the date negotiated with the case manager.

(3) The provider agency must document the immediate increase in hours. Documentation must include:

(A) the date the provider agency received approval for the change;

(B) the name of the case manager who approved the change;

(C) the effective date of the change; and

(D) the number of hours authorized.

(4) The provider agency must maintain documentation of service plan changes:

(A) in the client file; and

(B) according to the terms of the contract.

(d) Implementation of service plan changes. The provider agency must implement the service plan change on the following date, whichever is later:

(1) the authorization date (Item 4) on the Texas Department of Human Services' (DHS's) Authorization for Community Care Services form; or

(2) five days after the date the provider agency receives DHS's Authorization for Community Care Services form. If the

provider agency fails to stamp the receipt date on the form, the authorization date (Item 4) will be used to determine timeliness.

(e) Delay in service implementation. The provider agency must document by the next working day any failure to implement a service plan change on the effective date of the change. The documentation must include:

(1) the reason for the failure to timely implement the service plan change; and

(2) the new implementation date.

§47.69. Transfers.

(a) Negotiation of client transfer from one provider agency to another. The provider agencies involved in a client transfer must coordinate with the case manager to negotiate the transfer date.

(b) Initiation of services. The receiving provider agency must initiate services on the negotiated date. The negotiated date is the begin date (Item 4) on the Texas Department of Human Services' (DHS's) Authorization for Community Care Services form.

(c) Evaluation and service plan. On or before the begin date (Item 4), the receiving provider agency must:

(1) conduct an assessment, as described in §47.45 of this chapter (relating to Pre-Initiation Activities); and

(2) develop a service plan, as described in §47.45 of this chapter.

§47.71. Suspensions.

(a) Required suspensions. The provider agency must suspend services if:

(1) the client permanently leaves the state or moves to a county where the provider agency does not contract with the Texas Department of Human Services (DHS) to provide services under the Primary Home Care Program;

(2) the client moves to a location where services cannot be provided under the Primary Home Care Program;

(3) the client dies;

(4) the client is admitted to an institution. An institution is defined as a:

(A) hospital;

(B) nursing facility;

(C) state school;

(D) state hospital; or

(E) intermediate care facility serving persons with mental retardation or a related condition;

(5) the client requests that services or specific tasks end;

(6) DHS denies the client's Medicaid eligibility (not applicable to family care services); or

(7) the client or someone in the client's home exhibits reckless behavior, which may result in imminent danger to the health and safety of the client, the attendant, or another person. If this occurs, the provider agency must make an immediate referral to:

(A) the Texas Department of Protective and Regulatory Services or other appropriate protective services agency;

(B) local law enforcement, if appropriate; and

(C) the client's case manager.

(b) Optional suspensions. The provider agency may suspend services if:

(1) the client or someone in the client's home engages in discrimination against a provider agency or DHS employee in violation of applicable law; or

(2) the client refuses services for more than 30 consecutive days.

(c) Notification of service suspension. The provider agency must notify the case manager by fax of any suspension by the next working day. The faxed notice of a suspension must include:

(1) the date of service suspension;

(2) the reason(s) for the suspension;

(3) the duration of the suspension, if known; and

(4) an explanation of the provider agency's attempts to resolve the problem that caused the suspension, including the reasons why the problem was not resolved. This paragraph only applies to suspensions under subsection (a)(7) and (b) of this section.

(d) Interdisciplinary Team (IDT) meeting. The provider agency must convene an IDT meeting, as described in §47.49 of this chapter (relating to Interdisciplinary Team), if services are suspended under subsection (a)(7) or (b) of this section.

(e) Resuming services after suspension.

(1) The provider agency must resume services after suspension:

(A) upon the client's return home, or the date the provider agency becomes aware of the client's return home, if applicable;

(B) on the date specified in writing by the case manager;

(C) as a result of a recommendation by the IDT; or

(D) upon the provider agency's receipt of notification from the case manager that the provider agency must resume services pending the outcome of the appeal.

(2) The provider agency must notify the case manager in writing of the date services resume and must send the notice within seven days of that date.

§47.73. Annual Reauthorization for Community Attendant Services.

(a) Reauthorization request.

(1) The provider agency must request annual reauthorization for all community attendant services clients.

(2) The provider agency must send the following to the regional nurse to obtain annual reauthorization:

(A) the Texas Department of Human Services' (DHS's) Authorization for Community Care Services form received from the case manager; and

(B) a signed statement indicating whether the supervisor agrees or disagrees with the tasks and hours indicated on DHS's Authorization for Community Care Services form. If the supervisor disagrees, the statement must provide the specific reasons for disagreeing with the hours and tasks on this form.

(b) Reauthorization request due date. The provider agency must submit the information described in subsection (a)(2) of this section to the regional nurse within 14 days after one of the following dates, whichever is later:

(1) the referral date (Item 1) on DHS's Authorization for Community Care Services form; or

(2) the date the provider agency receives DHS's Authorization for Community Care Services form. If the provider agency fails to stamp the receipt date on the form, the referral date (Item 1) will be used to determine timeliness.

(c) Documentation of annual reauthorization. The provider agency must maintain documentation of the written request for reauthorization for community attendant services in the client file.

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 January 22, 2004.

TRD-200400455
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

SUBCHAPTER F. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §§47.81, 47.83, 47.85, 47.87, 47.89, 47.5902

The new sections are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.81. Monitoring Medicaid Eligibility.

(a) Applicability. This section does not apply to clients who are receiving family care services.

(b) Verification of Medicaid eligibility. The provider agency must verify each month that a client remains Medicaid eligible. The provider agency may verify the client's current Medicaid eligibility by:

(1) viewing the client's Texas Department of Human Services (DHS) Medicaid Identification form; or

(2) using the current systems available to verify client registration.

(c) Reimbursement. The provider agency is not entitled to payment from DHS for services delivered if the provider agency fails to verify the client has current Medicaid eligibility.

§47.83. Monitoring Reviews.

(a) Monitoring reviews. The Texas Department of Human Services (DHS) conducts monitoring reviews in the Primary Home Care Program as described in Chapter 49 of this title (relating to Contracting for Community Care Services) and in this chapter.

(b) Fiscal monitoring. Fiscal monitoring in the Primary Home Care Program includes monitoring financial errors, which are applied to the entire unit of service. Financial errors include the following instances:

(1) DHS reimburses the provider agency for services, but the service delivery documentation is missing for the period for which services are reimbursed. DHS applies the error to the total number of units reimbursed for the pay period.

(2) DHS reimburses the provider agency for services, but the attendant fails to complete the units of service delivered portion of the service delivery documentation. DHS applies the error to the total number of units reimbursed for the pay period.

(3) DHS reimburses the provider agency for hours that exceed the total number of hours recorded on the service delivery documentation. DHS applies the error to the total number of units reimbursed in excess of the units recorded on the service delivery documentation. The lesser of the two totals is used to calculate the total number of hours recorded on the service delivery documentation if the following occurs:

(A) the time in and time out are recorded on the service delivery documentation, and the sum of the time in and time out does not equal the total time recorded for the pay period; or

(B) the sum of the daily totals of time does not equal the total time recorded for the pay period.

(4) DHS reimburses the provider agency for units of service for days on which the client did not receive services. DHS applies the error to the total number of units reimbursed for the day on which the client did not receive services.

(5) DHS reimburses the provider agency for units of service for days on which the client was Medicaid ineligible. DHS applies the error to the total number of units reimbursed for the days on which the client was Medicaid ineligible. This paragraph does not apply to family care services.

(6) The provider agency makes a claim for services, but a valid practitioner's statement is missing. DHS applies the error to the total number of units claimed and not covered by a valid practitioner's statement. This paragraph does not apply to family care services.

(7) The provider agency makes a claim for services, but the practitioner's statement date is after the first day services were delivered. DHS applies the error to the total number of units claimed before the practitioner's statement date. This paragraph does not apply to family care services.

§47.85. Retroactive Payment Procedures.

(a) Applicability.

(1) This section does not apply to family care services.

(2) A provider agency that chooses to request retroactive payment must comply with the requirements of this section.

(b) Definition of retroactive payment. A retroactive payment is payment by the Texas Department of Human Services (DHS) to a provider agency for services under the Primary Home Care Program that are provided before the date the case manager determines the person's eligibility for the services.

(c) Reimbursement.

(1) The provider agency may be reimbursed for services provided before the date a completed, signed, and dated copy of DHS's Application for Assistance--Aged and Disabled form is received:

(A) for up to three months for a person who does not have Medicaid eligibility at the time of the request for retroactive payment; and

(B) for an indefinite period for a person who is Medicaid eligible at the time of the request for retroactive payment.

(2) DHS only reimburses the provider agency for the:

(A) services described in §47.41 of this chapter (relating to Allowable Tasks);

(B) number of hours of services allowed to be provided the person, calculated as described in §48.2918(c) of this title (relating to Eligibility for Primary Home Care); and

(C) allowable costs of the Primary Home Care Program, as described in 1 TAC, Chapter 355 (relating to Medicaid Reimbursement Rates).

(3) DHS will not reimburse the provider agency for the retroactive period if:

(A) the provider agency fails to submit the required documentation within the required time frames; or

(B) the person provided services does not meet the requirements described in subsection (d) of this section.

(d) Requirements before requesting retroactive payment. The provider agency may not request retroactive payment unless:

(1) the person appears to be Medicaid eligible as defined in §48.1201 of this title (relating to Definition of Program Terms);

(2) the provider agency obtains a practitioner's written statement as described in §47.47 of this chapter (relating to Medical Need Determination);

(3) the person requires at least one personal care task as described in §47.41 of this chapter; and

(4) the provider agency has verified and documented that the person is not already receiving services under the Primary Home Care Program from another provider agency.

(e) Pre-initiation activities. The provider agency must complete the pre-initiation activities described in §47.45(a) of this chapter (relating to Pre-Initiation Activities).

(f) Intake referral. On the day that the provider agency completes the pre-initiation activities, the provider agency must contact the local DHS office by telephone and make an intake referral by providing DHS information on the person to start the eligibility process.

(g) Service initiation. The provider agency must not begin to provide services to the person before the date the provider agency completes the pre-initiation activities and processes the intake referral as described in subsections (e) and (f) of this section.

(h) Requesting retroactive payment.

(1) A provider agency's written request for retroactive payment must include:

(A) a copy of the service plan required by subsection (e) of this section;

(B) a copy of DHS's Practitioner's Statement of Medical Need form; and

(C) the retroactive payment information, including the:

(i) name of the provider agency;

(ii) contact information for the person;

(iii) date services were started;

(iv) tasks provided to the person. This includes both tasks allowed and not allowed by the Primary Home Care Program;

(v) weekly hours of service provided to the person. This includes hours allotted to tasks allowed and not allowed by the Primary Home Care Program; and

(vi) cost per hour of service charged to the person.

(2) The provider agency must submit the written request for retroactive payment:

(A) to the case manager or, if no case manager has been assigned, to DHS intake staff; and

(B) within seven days after the date the provider agency processes the intake referral.

(i) Charges to persons who receive services.

(1) The provider agency may charge a person for services for which the provider agency intends to request retroactive payment, unless the person is Medicaid eligible.

(2) The provider agency must reimburse the entire amount of all payments made by the person to the provider agency for eligible services, even if those payments exceed the amount DHS will reimburse for the services, if DHS determines that the person is eligible for the Primary Home Care Program.

(j) Documentation of retroactive payment requests. The provider agency must maintain documentation of retroactive payment requests in the person's file.

§47.87. Record Keeping.

(a) General record keeping requirements. The provider agency must maintain records according to:

(1) Chapter 49 of this title (relating to Contracting for Community Care Services);

(2) Chapter 69 of this title (relating to Contracted Services); and

(3) the terms of the contract.

(b) Program specific records. The provider agency must maintain records of compliance with the requirements of this chapter.

(c) Financial records. The provider agency must maintain financial records:

(1) to support its billings to the Texas Department of Human Services (DHS) for payment under §47.89 of this chapter (relating to Reimbursement);

(2) to document reimbursements made by DHS. The documentation must include:

(A) amount of reimbursement;

(B) voucher number;

(C) warrant number;

(D) date of receipt; and

(E) any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the provider agency's accounting system; and

(3) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A provider agency's financial records must include the following:

(A) deposit slips, bank statements, cancelled checks, and receipts;

(B) purchase orders;

(C) invoices;

(D) journals and ledgers;

(E) payroll and tax records;

(F) service delivery documentation;

(G) Internal Revenue Service, Department of Labor, and other government records and forms;

(H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);

(I) equipment inventory records;

(J) records of the provider agency's internal accounting procedures;

(K) chart of accounts, as defined by GAAP; and

(L) records of the provider agency's company policies.

(d) Subcontractor records. If a provider agency utilizes a subcontractor, the provider agency must maintain records of the subcontractor's activities. Maintaining all records to support subcontractor claims is the responsibility of the provider agency.

(e) Failure to maintain records. Failure to maintain records as specified in this section may result in:

(1) corrective action plans;

(2) monetary exceptions; or

(3) other actions deemed necessary or appropriate by DHS.

§47.89. Reimbursement.

(a) Billing requirements.

(1) The provider agency must bill for services provided as described in §49.41 of this title (relating to Billings and Claims Payment).

(2) The provider agency must not bill Texas Department of Human Services (DHS) for:

(A) more hours than the client's weekly authorization, except when services are delivered as described in §47.63(b) of this chapter (relating to Service Delivery);

(B) services delivered in a licensed facility, if the facility is required by the license to provide those services; and

(C) services or tasks that duplicate any services or tasks provided to the client by another source.

(b) Unit rate. The provider agency must agree to accept the unit rate authorized by DHS.

(c) Documentation. The provider must maintain the documentation described in this chapter to be eligible for reimbursement.

(d) Rounding. The provider agency must bill DHS for services in quarter-hour increments, rounding up to the next quarter-hour if the actual time worked is eight minutes or more, and rounding down to the previous quarter hour if the actual time worked is seven minutes or less.

(e) Allowable Tasks. The provider agency must bill DHS only for the tasks described in §47.41 of this chapter (relating to Allowable Tasks).

§47.5902. Reimbursement Methodology for Primary Home Care.

(a) General requirements. The Texas Department of Human Services (DHS) or its designee applies the general principles of cost determination as specified in §20.101 of this title (relating to Introduction).

(b) Cost reporting. Provider agencies must follow the cost-reporting guidelines as specified in §20.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(1) All provider agencies must submit a cost report unless the number of days between the date the first DHS client received services and the provider agency's fiscal year end is 30 days or fewer. The provider agency may be excused from submitting a cost report if circumstances beyond the control of the provider agency make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider agency's custody by any governmental entity. Requests to be excused from submitting a cost report must be received at the address specified in the letter mailed with the cost report before the due date of the cost report.

(2) Provider agencies are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. DHS or its designee excludes from reimbursement determination unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by provider agencies. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(A) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(B) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (A)(i) of this paragraph.

(c) Reimbursement determination. Reimbursement is determined in the following manner.

(1) Cost determination by cost area. Allowable costs are combined into three cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Service support cost area. This includes field supervisors' salaries and wages, benefits, and mileage reimbursement expenses. This also includes building, building equipment, and operation and maintenance costs; administration costs; and other service costs. Administration expenses equal to $0.18 per priority unit of service are allocated to priority. The administration costs remaining after this allocation are summed with the other service support costs.

(B) Non-priority attendants cost area. This includes non-priority attendants' salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §20.112 of this title (relating to Attendant Compensation Rate Enhancement).

(C) Priority attendants cost area. This includes priority attendants' salaries and wages, benefits, mileage reimbursement, expenses. This cost area is calculated as specified in §20.112 of this title.

(2) Recommended reimbursement by cost area. For the service support cost area described in paragraph (1)(A) of this subsection, the following is calculated:

(A) Projected costs. Each contract's total allowable costs, excluding depreciation and mortgage interest, per unit of service are projected from each contract's reporting period to the next ensuing reimbursement period, as described in §20.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. Reimbursement may be adjusted where new legislation, regulations, or economic factors affect costs as specified in §20.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(B) Projected cost per unit of service. To determine the projected cost per unit of service for each contract, the total projected allowable costs for the service support cost area are divided by total units of service, including non-priority services, priority services, and STAR+PLUS services, in order to calculate the projected cost per unit of service.

(C) Projected cost arrays. Each contract's projected allowable costs per unit of service are rank ordered from low to high, along with each contract's corresponding units of service for each cost area.

(D) Recommended reimbursement for the service support cost area. The total units of service for each contract are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The weighted median cost component is multiplied by 1.044 to calculate the recommended reimbursement for the service support cost area. The service support cost area recommended reimbursement is limited, if necessary, to available appropriations.

(3) Total recommended reimbursement.

(A) For non-priority clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(B) of this subsection.

(B) For priority clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(C) of this subsection.

(d) Reimbursement determination authority. The reimbursement determination authority is specified in §20.101 of this title.

(e) Desk reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all provider agencies. The frequency and nature of the field audits are determined by DHS or its designee to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §20.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and provider agencies will be notified of the results of a desk review or an audit in accordance with §20.107 of this title (relating to Notification of Exclusions and Adjustments). Provider agencies may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §20.110 of this title (relating to Informal Reviews and Formal Appeals).

(f) Factors affecting allowable costs. Provider agencies must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §20.102 of this title (relating to General Principles of Allowable and Unallowable Costs) and §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Reporting revenues. Revenues must be reported on the cost report in accordance with §20.104 of this title (relating to Revenues).

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 January 22, 2004.

TRD-200400456
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

CHAPTER 47. PRIMARY HOME CARE
SUBCHAPTER A. GENERAL PROVISIONS AND SERVICES

40 TAC §§47.1901 - 47.1904

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

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.1901. Definitions.
§47.1902. Required Services.
§47.1903. Staffing Requirements.
§47.1904. Training Requirements.

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 January 22, 2004.

TRD-200400457
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER B. SERVICE REQUIREMENTS

40 TAC §§47.2901 - 47.2905, 47.2908 - 47.2914

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

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.2901. Referrals to Provider Agencies.

§47.2902. Assessment, Service Plan, and Requesting Prior Approval.

§47.2903. Provider Agency Requirements after Verbal Referral for Primary Home Care or Community Attendant Services.

§47.2904. Critical Omissions/Errors for Primary Home Care or Community Attendant Services.

§47.2905. Initiation of Service.

§47.2908. Monitoring Medicaid Eligibility for Primary Home Care.

§47.2909. Medical Need Determination.

§47.2910. Service Breaks.

§47.2911. Orientation of Attendants.

§47.2912. Service Plan Changes.

§47.2913. Prior Approval Renewal for Community Attendant Services.

§47.2914. Suspension of Services.

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 January 22, 2004.

TRD-200400458
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER C. CLAIMS PAYMENT

40 TAC §§47.3906 - 47.3908

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

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.3906. Claims Payment Reviews and Audits.

§47.3907. Missing Records.

§47.3908. Retroactive Payment Procedures.

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

Filed with the Office of the Secretary of State on January 22, 2004.

TRD-200400459
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER D. PROVIDER CONTRACTS

40 TAC §§47.4902 - 47.4905

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

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.4902. Primary Home Care Provider Qualifications.

§47.4903. Provisional Contracts.

§47.4904. Current Contractors.

§47.4905. Option To Contract for Family Care Services.

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 January 22, 2004.

TRD-200400460
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER E. SUPPORT DOCUMENTS

40 TAC §47.5902

(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 Human 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, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.5902. Reimbursement Methodology for Primary Home Care.

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 January 22, 2004.

TRD-200400461
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

SUBCHAPTER F. SANCTIONS

40 TAC §47.6902

(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 Human 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, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§47.6902. Sanctions.

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 January 22, 2004.

TRD-200400462
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 7, 2004
For further information, please call: (512) 438-3734

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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 30. DISEASE MANAGEMENT

1 TAC §354.1391

The Texas Health and Human Services Commission (HHSC) proposed new §354.1391, concerning In-home Total Parenteral Hyperalimentation Services, in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7906). At this time, the September 12, 2003 version of §354.1391 has not been adopted. The HHSC inadvertently proposed new §354.1391, concerning Conditions for Participation, in the January 30, 2004, issue of the *Texas Register* (29 TexReg 739). Although the rule numbers are identical, the subject matter is different. The HHSC has withdrawn from consideration the proposed new §354.1391 which appeared in the January 30, 2004, issue of the *Texas Register*. The HHSC would also like to repropose the January 30, 2004, rule, concerning Conditions for Participation, as new §354.1415. This section falls under Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 32, Disease Management.

Filed with the Office of the Secretary of State on January 27, 2004.

TRD-200400516
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: January 27, 2004
For further information, please call: (512) 424-6576

TITLE 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 103. GENERAL RULES

16 TAC §103.2

The Texas Motor Vehicle Board of the Texas Department of Transportation withdraws from consideration proposed new §103.2, concerning Service-Only Facility, which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10010). Section 103.2 is withdrawn and simultaneously republished with changes in response to public comment regarding the original version of §103.2.

Filed with the Office of the Secretary of State on January 22, 2004.

TRD-200400441
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: January 22, 2004
For further information, please call: (512) 416-4899

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2820, §21.2826

The Texas Department of Insurance has withdrawn new §21.2820 and §21.2826 adopted on an emergency basis in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7030).

Filed with the Office of the Secretary of State on January 20, 2004.

TRD-200400394
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 1, 2004
For further information, please call: (512) 463-6327

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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 75. AUTOMOBILE CLUB

SUBCHAPTER B. REGISTRATION OF AGENTS

1 TAC §75.10

The Office of the Secretary of State adopts amendments to §75.10, concerning an exemption for individuals who sell automobile club memberships only in connection with an associated consumer transaction without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10587).

The purpose of the amendments is to clarify that such individuals may receive minor compensation for the sale of the automobile club membership. The amendments also provide guidelines regarding the type of associated consumer transactions that may qualify an individual for the exemption from registration as an automobile club agent.

No comments were received concerning the proposed amendments.

The amendments are adopted under the Texas Government Code, §2001.004(1) which provides the Secretary of State with the authority to prescribe and adopt rules. The amendments affect the Texas Occupations Code, §722.011.

This agency 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 January 16, 2004.

TRD-200400387
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: February 5, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 475-0775

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 adopts with changes 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 as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 11181). The nonsubstantive changes are necessary because of two errors made in the printing of the file.

Amendments to §111.67 and §111.71 implement amendments to Texas Government Code, Chapter 552, enacted by the passage of Senate Bill 653, effective September 1, 2003. The other amendments recommended by the Open Records Steering Committee (ORSC) update, restructure, revise language, and create more efficient processes throughout the rules.

Amendments to the rules will assist the public by clarifying language and procedures used to determine the cost of copies of pubic records and to better reflect current practices of the Open Records Steering Committee.

The comment period closed January 18, 2004. No comments were received.

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

The adopted rules will affect the Texas Government Code, Title 5, Chapter 552 and §2308.253

§111.61. Purpose.

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

(1) 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);

(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 §552.267 of the Texas Government Code.

(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.

(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 county commissioners court in the state;

(C) A municipal governing body in the state;

(D) 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 school district board of trustees;

(F) A county board of school trustees;

(G) A county board of education;

(H) The governing board of a special district;

(I) The governing body of a nonprofit corporation organized under Chapter 67 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;

(J) 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;

(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) 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 - 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) 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 - 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 is counted as a single copy. A piece of paper that has information recorded 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 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--$1.00;

(B) Magnetic tape--actual cost;

(C) Data cartridge--actual cost;

(D) Tape cartridge--actual cost;

(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) VHS video cassette--$2.50;

(K) Audio cassette--$1.00;

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

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

(c) Labor charge for programming. 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 an hour, which includes 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.

(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.

(d) Labor charge for locating, compiling, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is $15 an hour, which includes fringe benefits. The labor charge includes the actual time to locate, compile, and reproduce the requested information.

(2) A labor 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 or more separate buildings that are not physically connected with each other; or

(B) A remote storage facility.

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

(A) 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; or

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

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, 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 paragraph (2)(A) of this subsection, 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 charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor 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 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 costs associated with a particular request. Example: if one hour of labor 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 x .20 = $5.70. 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 = $43.50 x .20 = $8.70.

(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. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before 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 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 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 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.

(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 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 older than five years; or

(B) Completely fills, or when assembled will completely fill, six or more archival boxes.

(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 older than three years; or

(B) Completely fills, or when assembled will completely fill, three or more archival boxes.

(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 itemized estimated charges, including any allowable charges for labor, overhead, copies, etc.;

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

(3) 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 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 accept the estimated charges;

(B) 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 amount estimated on the updated statement; or

(2) An amount that exceeds by more than 20% 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 governmental body has 16 or more full-time employees and the estimated charges are $100 or more; or

(2) 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 bond for the entire estimated amount; or

(2) 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 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 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, 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 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) 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) 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) The Texas Building and Procurement Commission shall send a copy of the determination to the complainant and to the governmental body.

(h) Pursuant to §552.269(b) of the Texas Government Code, 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) 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 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 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 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.

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

(2) Nonstandard-size copy:

(A) Diskette: $1.00;

(B) Magnetic tape: actual cost;

(C) Data cartridge: actual cost;

(D) Tape cartridge: actual cost;

(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) VHS video cassette--$2.50;

(K) Audio cassette--$1.00;

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

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

(3) Labor charge:

(A) For programming--$28.50 per hour;

(B) For locating, compiling, and reproducing--$15 per hour.

(4) Overhead charge--20% of labor 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/Server system--$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) Other costs--Actual cost.

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

(14) 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, 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 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 and Procurement Commission.

This agency 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 January 22, 2004.

TRD-200400446
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: February 11, 2004
Proposal publication date: December 19, 2003
For further information, please call: (512) 463-4257

CHAPTER 114. PAYMENT FOR GOODS AND SERVICES

1 TAC §§114.1, 114.5, 114.7, 114.9, 114.10

The Texas Building and Procurement Commission adopts amendments to §§114.1, 114.5, 114.7, 114.9 and 114.10 without changes in the proposed text as published in the December 5, 2003, edition of the *Texas Register* (28 TexReg 10848), concerning payment for goods and services.

The adopted amendments eliminate outdated or unnecessary language and clarify current agency procedure.

The rules as amended: replace references to the General Services Commission with the Texas Building and Procurement Commission; delete references to another agency and to statutes in effect through September 1, 1999; and correctly reflect an email address at Secretary of State's website.

The public comment period ended January 4, 2004. There were no public comments.

The rules are adopted under the authority of the Texas Government Codes, §§2152.001 and 2152.003

The following codes are affected by these rules: §§2107.002, 2155.003, 2155.381, 2251.002, 2251.003, 2251.021, 2251.025

This agency 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 January 22, 2004.

TRD-200400439
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: February 11, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 463-4257

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 20. ADMINISTRATION SUBCHAPTER A. CONTRACTS AND PURCHASES DIVISION 2. RESOLUTION OF CONTRACT CLAIMS

16 TAC §§20.21, 20.23, 20.25, 20.27, 20.29, 20.31, 20.33, 20.35, 20.37, 20.39, 20.41, 20.43, 20.45, 20.47, 20.49, 20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, 20.67, 20.69, 20.71, 20.73, 20.75

The Railroad Commission of Texas adopts new §§20.21, 20.23, 20.25, 20.27, 20.29, 20.31, 20.33, 20.35, 20.37, 20.39, 20.41, 20.43, 20.45, 20.47, 20.49, 20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, 20.67, 20.69, 20.71, 20.73, and 20.75, relating to the resolution of contract claims, in Chapter 20, Subchapter A, new Division 2, without changes to the proposed versions published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10606). Subchapter A, Contracts and Purchases, will be reorganized so that existing rules, §§20.1, 20.5, and 20.10 (relating to Procedures for Filing and Resolving Protests of a Contract Solicitation or Award, Historically Underutilized Businesses, and Bid Opening and Tabulation) will be in new Division 1, to be entitled Bid Protests, HUBs, and Bid Openings. New §§20.21, 20.23, 20.25, 20.27, 20.29, 20.31, 20.33, 20.35, 20.37, 20.39, 20.41, 20.43, 20.45, 20.47, 20.49, 20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, 20.67, 20.69, 20.71, 20.73, and 20.75 will be in new Division 2, to be entitled Resolution of Contract Claims.

The Commission adopts the new sections as required by Texas Government Code, §2260.052(c), as added by Acts 1999, 76th Legislature, Chapter 1352, §9, effective August 30, 1999. The new sections are based on the model rules promulgated by the Office of the Attorney General pursuant to Texas Government Code, §2260.052(c), with minimal changes, including adaptation to the Commission's administrative structure, the elimination of subchapters, and the elimination of dates which are already past with regard to the applicability of pending contracts.

New §20.21, relating to Informal Procedures Encouraged, provides that the parties to a contract are encouraged to resolve any disagreement concerning the contract in the ordinary course of contract administration using informal procedures.

New §20.23, relating to Applicability, provides that new Division 2, Subchapter A, does not apply to an action of the Commission for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute, and provides that new Division 2 does not apply to contracts: (1) between the Commission and the federal government or its agencies, another state or another nation; (2) between the Commission and a local governmental body, or a political subdivision of another state; (3) between a subcontractor and a contractor, when neither the contractor or the subcontractor is the Commission; (4) within the exclusive jurisdiction of state or local regulatory bodies other than the Commission; or (5) within the exclusive jurisdiction of federal courts or regulatory bodies.

New §20.25, relating to Definitions, defines words and terms that are used in the new Division 2. The word "Director" means the Executive Director of the Commission. The word "division" means Division 2 of Title 16, Part 1, Chapter 20, Subchapter A, of the Texas Administrative Code. The term "SOAH" means the State Office of Administrative Hearings.

New §20.27, relating to Prerequisites to Suit, provides that the procedures contained in this division are exclusive and required prerequisites to suit under Texas Civil Practice and Remedies Code, Chapter 107, and Texas Government Code, Chapter 2260.

New §20.29, relating to Sovereign Immunity, provides that this division does not waive the Commission's sovereign immunity to suit or liability.

New §20.31, relating to Notice of Claim of Breach of Contract, provides that a contractor may not assert a claim of breach of contract by the Commission under Texas Government Code, Chapter 2260, unless the contractor delivers a written and signed notice of the claim to the Director by hand, certified mail return receipt requested, or other verifiable delivery service; the notice states in detail: (1) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached; (2) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and (3) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed; and the contractor delivers the notice no later than 180 days after the date of the event the contractor asserts as the basis of the claim. In addition, the contractor may submit supporting documentation or other tangible evidence to facilitate the Commission's evaluation of the contractor's claim.

New §20.33, relating to Commission Counterclaim, specifies the Commission's duties when asserting a counterclaim under Texas Government Code, Chapter 2260, including notice of the counterclaim, form and contents of the counterclaim, supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the Commission's counterclaim, and the deadline for the delivery of the notice of counterclaim to the contractor. New subsection (e) states that nothing in the adopted rules precludes the Commission from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

New §20.35, relating to Request for Voluntary Disclosure of Additional Information, provides that the parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached. The rule applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media. New subsection (c) provides that the contractor and the Commission may seek additional information directly from third parties, including, without limitation, the contractor's subcontractors; new subsection (d) provides that nothing in new §20.35 requires any party to disclose the requested information or any matter that is privileged under Texas law; and new subsection (e) provides that material submitted pursuant to this section and claimed to be confidential by the contractor or a third party must be handled pursuant to the requirements of Texas Government Code, Chapter 552.

New §20.37, relating to Duty to Negotiate, requires the parties to negotiate in accordance with the timetable set forth in new §20.39 (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

New §20.39, relating to Timetable, outlines the Commission's duties following receipt of a contractor's notice of claim; requires the parties to begin negotiations within a reasonable period of time; provides that the Commission may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract in certain cases; and provides that the parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in new §20.39(b) or new §20.39(c), whichever is applicable. New subsection (e) states when the parties must complete the negotiations that are required by this division as a prerequisite to a contractor's request for a contested case hearing; new subsection (f) allows the parties to agree in writing to extend the time for negotiations. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

New §20.39(g) specifies how the contractor may request a contested case hearing before SOAH, pursuant to new §20.49 (relating to Request for Contested Case Hearing), and new subsection (h) provides that the parties may agree to mediate the dispute at any time before the 270th day after the Commission receives the contractor's notice of claim or before the expiration of any extensions agreed to by the parties pursuant to new §20.39(f).

New §20.39(i) provides that nothing in the section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c), or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

New §20.41, relating to Conduct of Negotiation, specifies the provisions for conducting negotiations, including the assistance of one or more neutral third parties, the exchange of relevant documents that support the respective claims, defenses, counterclaims, or positions, and that the material submitted pursuant to this subsection and claimed to be confidential by the contractor must be handled pursuant to the requirements of Texas Government Code, Chapter 552.

New §20.43, relating to Settlement Approval Procedures, requires the parties to disclose their settlement approval procedures prior to, or at the beginning of, negotiations. The parties should select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

New §20.45, relating to Settlement Agreement, states the requirements for a settlement agreement.

New §20.47, relating to Costs of Negotiation, provides that unless the parties agree otherwise, each party is responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of consultant's fees and expert's fees.

New §20.49, relating to Request for Contested Case Hearing, specifies the provisions for a request for a contested case hearing. If a claim for breach of contract is not resolved in accordance with the rules in this division on or before the 270th day after the Commission receives the notice of claim, and after the expiration of any extension agreed to by the parties pursuant to new §20.39(f) (relating to Timetable), the contractor may file a request with the Commission for a contested case hearing before SOAH. The request must be in writing and state the legal and factual basis for the claim, and be delivered to the Director

within 30 days after the 270th day or the expiration of any written extension agreed to pursuant to new §20.39(f) (relating to Timetable). The Commission must forward the contractor's request for a contested case hearing to SOAH within a reasonable period of time, not to exceed 30 days, after receipt of the request. The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Commission if they have achieved a partial resolution of the claim or if they have reached an impasse in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

New §20.51, relating to Mediation Timetable, specifies a timetable for mediation between the contractor and the Commission, including after the case has been referred to SOAH. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

New §20.53, relating to Conduct of Mediation, prohibits a mediator from imposing his or her own judgment on the issues for that of the parties, requires the mediator to be acceptable to both parties, and provides that the mediation is subject to the provisions of Texas Government Code, Chapter 2009, the Governmental Dispute Resolution Act. The parties should select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

New §20.55, relating to Agreement to Mediate, provides that the parties may agree to use mediation as an option to resolve a breach of contract claim at the time they enter into the contract and include a contractual provision to do so, and requires that any agreement to mediate include consideration of certain factors.

New §20.57, relating to Qualifications and Immunity of the Mediator, lists the qualifications that the mediator must possess, and provides that the parties must decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator. New subsection (c) requires the parties to obtain from the prospective mediator a written statement of the ethical standards that will govern the mediation.

New §20.59, relating to Confidentiality of Mediation and Final Settlement Agreement, provides that mediation conducted under the new rules in this division is confidential in accordance with Texas Government Code, §2009.054, and that the confidentiality of a final settlement agreement to which the Commission is a signatory that is reached as a result of the mediation is governed by Texas Government Code, Chapter 552.

New §20.61, relating to Costs of Mediation, provides that unless the contractor and Commission agree otherwise, each party is responsible for its own costs incurred in connection with the mediation. The costs of the mediation process itself must be divided equally between the parties. Each party is responsible for its own attorney's fees.

New §20.63, relating to Settlement Approval Procedures, provides that each party must disclose its settlement approval procedures to the other party prior to the mediation. The parties should select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

New §20.65, relating to Initial Settlement Agreement, provides that the representatives of the parties must sign any settlement agreement reached during the mediation and that the agreement must describe each party's required procedures in connection with final approval of the agreement.

New §20.67, relating to Final Settlement Agreement, provides that a final settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim must be in writing and signed by representatives of the contractor and the Commission who have authority to bind each respective party; must identify any issue not resolved; and specifies that a partial settlement does not waive a party's rights under Texas Government Code, Chapter 2260.

New §20.69, relating to Referral to the State Office of Administrative Hearings, provides that if mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the Commission.

New §20.71, relating to Assisted Negotiation Processes, provides that parties to a contract dispute under Texas Government Code, Chapter 2260 may agree, either contractually or when a dispute arises, to use the assisted negotiation (alternative dispute resolution) processes described in new §20.75 (relating to Assisted Negotiation Methods) in addition to negotiation and mediation to resolve their dispute.

New §20.73, relating to Use of Assisted Negotiation Processes, lists the factors that may help parties decide whether one or more assisted negotiation processes could help resolve their dispute.

New §20.75, relating to Assisted Negotiation Methods, specifies the assisted negotiation methods. If the parties agree to use an assisted negotiation procedure, they shall agree in writing to a detailed description of the process prior to engaging in the process.

The Commission received no comments on the proposed new rules.

The Commission adopts the new sections under Texas Government Code, §2260.052(c), which requires the Commission to develop rules to govern the negotiation and mediation of contract claims.

Statutory authority: Texas Government Code, §2260.052(c).

Cross reference to statute: Texas Government Code, §2260.052(c).

Issued in Austin, Texas, on January 23, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2004.

TRD-200400476
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: February 12, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 475-1295

TITLE 19. EDUCATION

PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.1

The Windham School District Board of Trustees adopts new rule §300.1, Presentations to the Windham School District Board of Trustees, without change to the text as proposed in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8773). The purpose of the amendment is to provide the opportunity for public presentations to the Windham School District Board of Trustees on topics that are subject to the Board's jurisdiction but are not posted for deliberation.

No comments were received.

The new rule is adopted under Texas Education Code, §§19.001-19.004, which establish the Windham School District, with the governance and policymaking role of the Texas Board of Criminal Justice, as well as Texas Government Code, Chapter 551, the Open Meetings Act.

Cross Reference to Statutes: Texas Education Code, §§19.001 et seq., and Texas Government Code, Chapter 551.

This agency 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 January 16, 2004.

TRD-200400383
Carl Reynolds
General Counsel
Windham School District
Effective date: February 5, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 936-2159

TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners adopts amendments to §361.1(20), without changes to the proposed text as published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10023).

The amendments to rule §361.1(20), which defines "Direct Supervision", are adopted in response to amendments made to the Plumbing License Law (Occupations Code, Title 8, Chapter 1301) by SB 282, 78th Legislature, Regular Session. The term "Direct Supervision" is used in §1301.002(6) of the Plumbing License Law to state that a Plumber's Apprentice is an individual who works under the "direct supervision" of a licensed plumber. §1301.002(6) also states that a Plumber's Apprentice is an individual who works under the "supervision" of a Master Plumber. The word "direct" is not used in §1301.002(6), when providing the supervision requirements of a Plumber's Apprentice by a Master Plumber. The term "Direct Supervision" is defined by Board rule §361.1(20), as requiring a licensed plumber to be present on-the-job to directly supervise a Plumber's Apprentice who is engaged in learning and assisting in the installation of plumbing work. The proposed amendments to Board rule §361.1(20) will reflect amendments made to §1301.351 of the Plumbing License Law by the 78th Legislature (SB 282, Regular Session), which allows a Plumber's Apprentice to install plumbing in a new one-family or two-family dwelling located in an unincorporated area of the state without the continuous or uninterrupted on-the-job direct supervision of a licensed plumber. The proposed amendments to Board rule §361.1(20) will also reflect amendments made to §1301.351 of the Plumbing License Law, which require a licensed plumber to have training and management responsibility for the Plumber's Apprentice and shall review and inspect the Plumber's Apprentice's work. For the purposes of enforcement of the Plumbing License Law, the proposed amendments also will require the Responsible Master Plumber of a plumbing company to provide the name and plumber's license number of the individual who was assigned to train and manage the Plumber's Apprentice and to review and inspect the Plumber's Apprentice's work.

One comment from the Texas Builder's Association was received, supporting the rule amendment.

The amendments are adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251 and §1301.351 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.351 allows a Plumber's Apprentice to install plumbing in a new one-family or two-family dwelling located in an unincorporated area of the state without the continuous or uninterrupted on-the-job direct supervision of a licensed plumber.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2004.

TRD-200400472
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 12, 2004
Proposal publication date: November 14, 2003
For further information, please call: (512) 458-2145

22 TAC §361.6

The Texas State Board of Plumbing Examiners adopts amendments to §361.6, which specifies certain fees charged by the

Board, including the fees for late renewal of each license, endorsement and registration issued by the Board. The amendments are adopted without changes to the proposed text as published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10024).

Prior to September 1, 2003, the Plumbing License Law required all fee penalties for late renewal of a license or endorsement to be determined based on the amount of an examination fee. The 78th Legislature (Regular Session) amended §1301.403 of the Plumbing License Law (Title 8, Chapter 1301, Occupations Code), to require that the fee penalties for each late renewal of a license, endorsement or registration be based on the amount of the renewal fee. The amendments to §361.6 will reflect these changes in the Plumbing License Law. The proposed amendments to §361.1 also clarify that renewal fees may be paid electronically utilizing the internet through the Texas Online website, which may be accessed through the Board's website.

No comments were received regarding the proposed amendments.

The amendments are adopted under and affect the Plumbing License Law (Title 8, Chapter 1301, Occupations Code), §§1301.251, 1301.253 and 1301.403. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fees in amounts that are reasonable and necessary to cover the costs of administering the Plumbing License Law. Section 1301.403 requires the Board to set late renewal fee penalties based on the amount of the renewal fee.

No other statute, article or code 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 January 23, 2004.

TRD-200400473
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 12, 2004
Proposal publication date: November 14, 2003
For further information, please call: (512) 458-2145

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.2

The Texas State Board of Plumbing Examiners adopts new §365.2, which lists the type of plumbing related work that, under certain conditions, does not require an individual to hold a plumber license in order to perform the work, without changes to the proposed text as published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10027).

The adoption of new rule §365.2 is necessary in order to replace, renumber and relocate rule §365.11 (Exemptions), which is currently proposed to be repealed. The new rule §365.2 will more logically follow rule §365.1 (License and Registration Categories; Scope of Work Permitted). In addition to replacing the current §365.11, the new rule §365.2 will reflect the changes made by the 78th Legislature (Regular Session) to Subchapter B (Exemptions), of the Plumbing License Law (Chapter 1301, Occupations Code). The current Board Rule §361.1 (28), which defines "Maintenance Man or Maintenance Engineer", remains valid and unchanged and does not conflict with the proposed new rule §365.2.

No comments were received regarding the proposed new rule.

The new rule is adopted under and affect the Plumbing License Law (Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature), §1301.251, Subchapter B, in its entirety. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law and Subchapter B, §§1301.051, 1301.052, 1301.053, §1301.054, 1301.055, 1301.056 and 1301.057 list the type of plumbing related work that, under certain conditions, does not require an individual to hold a plumber license in order to perform the work.

No other statute, article or code is affected by the new 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 January 23, 2004.

TRD-200400474
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 12, 2004
Proposal publication date: November 14, 2003
For further information, please call: (512) 458-2145

22 TAC §365.11

The Texas State Board of Plumbing Examiners adopts the repeal of §365.11, which lists the type of plumbing related work that, under certain conditions, does not require an individual to hold a plumber license in order to perform the work, without changes, as published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10028).

The repeal of §365.11 is necessary in order to renumber and relocate the rule to §365.2, where the rule will more logically follow rule §365.1 (License and Registration Categories; Scope of Work Permitted). Additionally, the current §365.11 does not reflect the changes made by the 78th Legislature (Regular Session) to the Plumbing License Law (Chapter 1301, Occupations Code). The proposal of new rule §365.2 (Exemptions) will incorporate each of the changes to the Plumbing License Law.

No comments were received regarding the proposed repeal.

The repeal is adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article or code is affected by this rule repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2004.

TRD-200400475
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 12, 2004
Proposal publication date: November 14, 2003
For further information, please call: (512) 458-2145

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER R. DIABETES

28 TAC §21.2602, §21.2604

The Commissioner of Insurance adopts amendments to §21.2602 and §21.2604, concerning minimum standards for benefits provided to enrollees with diabetes in health benefit plans and coverage under health benefit plans for equipment and supplies and self-management training associated with the treatment of diabetes. The amendments are adopted without changes to the proposed text as published in the July 18, 2003, issue of the *Texas Register* (28 TexReg 5625), and will not be republished.

The amendments are intended to properly implement Insurance Code art. 21.53D, consistent with legislative intent. The amendments to §21.2602 and §21.2604 are provided to clarify that all requirements of 28 TAC Chapter 21, Subchapter R, (Diabetes) apply to health plans provided by risk pools created under Chapter 172, Local Government Code (risk pools). Subchapter R was adopted in 1999 pursuant to Insurance Code art. 21.53D, which directs the Commissioner of Insurance, in consultation with the Texas Diabetes Council (TDC), to adopt by rule minimum standards for benefits provided to enrollees with diabetes. Subchapter R, as originally adopted, excluded risk pools from the requirement that health plans that provide benefits for the treatment of diabetes and associated conditions must provide coverage for diabetes equipment, supplies and self-management training programs. Excluding risk pools from providing these coverages does not conform to the applicable statutory mandate and is inconsistent with legislative intent. Adoption of the amendments resolves that inconsistency.

The amendments include language changes that make clear that risk pools are subject to the requirements of §§21.2603, 21.2605, and 21.2606, so that risk pools must meet the same requirements as all other health plans to which Subchapter R applies.

The adoption also includes an amendment to §21.2602 to delete unnecessary language and an amendment to §21.2604 to correct a citation.

Section 21.2602 and §21.2604: One comment was received on the proposal. The same commenter submitted comments to an earlier proposal of the same nature, that was published in the January 10, 2003, issue of the *Texas Register* (28 TexReg 430). The comment to the current proposal was submitted as a "supplement" to the comment on the proposal published on January 10, 2003.

The commenter believes that requiring a risk pool created pursuant to Local Government Code Chapter 172 to provide coverage for diabetes equipment and supplies and for diabetes self-management training is beyond the department's authority. The commenter notes that Chapter 172 risk pools are generally exempt from Texas Insurance Code provisions pursuant to the language found at Local Government Code §172.014, but acknowledges that art. 21.53D contains language that essentially nullifies the Chapter 172 exemption. The commenter contends that this nullification of the Chapter 172 exemption applies to mandated benefits under art. 21.53D, but not to coverage for supplies and services associated with diabetes under art. 21.53G. The standards set forth by the commissioner pursuant to art. 21.53D, the commenter argues, may not include requirements regarding coverage for supplies and services associated with the treatment of diabetes because the legislature enacted a separate statute, art. 21.53G, that applies to those supplies and services, and art. 21.53G does not include a nullification of the Chapter 172 exemption.

The commenter believes that the department unnecessarily attempts to construe an unambiguous statute. This comment is part of an analysis by the commenter that focuses entirely on art. 21.53G, and argues that the rule of statutory construction historically known as expressio unius est exclusio alterius (the express mention of one thing, consequence or class in a statute is tantamount to the exclusion of all others) prohibits the department from requiring risk pools to provide coverage for supplies and services associated with diabetes that are addressed under art. 21.53G.

The commenter reflects a clear understanding of the department's stated position that in order to effect the will of the legislature, the minimum standards for the treatment of diabetes adopted pursuant to art. 21.53D must include a requirement that health plans provide coverage for diabetes supplies, equipment and training. But the commenter also argues that if this were the case, there would have been no need for the legislature to enact art. 21.53G, and it cannot be presumed that the legislature engaged in a useless or meaningless act.

The commenter also disagrees with the department's position, stated in the July 18 proposal, that art. 21.53D is the controlling authority and determines the outcome because the legislature took final action on art. 21.53D after it took final action on art. 21.53G. The commenter's position is that both articles were adopted in the same legislative session, with the same effective date, and there is no conflict between the two articles.

The commenter requests that the rule be revised to clarify that Chapter 172 risk pools are subject only to the requirements of art. 21.53D and not to art. 21.53G.

Agency Response: The department respectfully disagrees, and declines to make the requested changes to the proposed rule.

Art. 21.53D does not incorporate art. 2153G by reference. Each article is independent with regard to the health plans to which it applies and with regard to the mandates it imposes for coverage of diabetes care. Art. 21.53G is cited along with art.

21.53D as authority for these amendments because art. 21.53G provides more specific guidance about minimum requirements for coverage for diabetes supplies, equipment and self-management training. The commenter seems to acknowledge that the mandates in art. 21.53D are broader in scope than those in art. 21.53G, and only seeks to have risk pools excluded from the parts of the art. 21.53D mandates that require coverage for diabetes supplies, equipment and self-management training. However, nothing in art. 21.53G affects in any way the applicability of all standards established pursuant to art. 21.53D to all of the health plans identified in art. 21.53D, §2. The commenter's reliance upon the cited rule of statutory construction would only be helpful if the applicability of art. 21.53G alone was being considered. But the real issue identified by the commenter is the need to correctly reconcile two statutes that are in conflict with regard to the applicability to risk pools of certain minimum standards for diabetes care coverage. Whereas art. 21.53G does not expressly include risk pools in its scope, art. 21.53D does. Thus, expressio unius est exclusio alterius does not control the question of the applicability of art. 21.53D to risk pools.

The department also disagrees with the commenter's argument that if minimum standards established pursuant to art. 21.53D could require risk pools to provide coverage for diabetes equipment, supplies and self-management training, there would have been no need for the legislature to enact art. 21.53G. Art. 21.53G addresses standards for coverage for diabetes equipment, supplies and self-management training by many different kinds of health plans other than risk pools, including reciprocal exchanges operating pursuant to Chapter 942 of the Insurance Code. Art. 21.53D does not include reciprocal exchanges in its scope. Art. 21.53G is the only statute that mandates coverage for diabetes supplies, equipment and self-management training by reciprocal exchanges and it is therefore not rendered meaningless or useless by the department's interpretation of art. 21.53D.

The department considers the fact that the legislature took final action on art. 21.53D after it took final action on art. 21.53G to be a very salient point. Government Code §311.025(a) stipulates that if statutes enacted in the same legislative session are irreconcilable, the statute latest in date of enactment prevails. As noted in the proposal, art. 21.53D was enacted after art. 21.53G.

The legislature also made a specific statement about the applicability of art. 21.53D to risk pools, while it made no specific statement on the inclusion of risk pools in the scope of art. 21.53G. Art. 21.53G did not address the issue of its applicability to risk pools at all. Art. 21.53G and its legislative history are actually silent on the question of the applicability of art. 21.53G to risk pools. It is only because of the language in Local Government Code §172.014 that the necessary interpretation of this silence is that art. 21.53G presumptively, when read in isolation, does not apply to risk pools.

Perhaps most important to note is that the legislature made its intent clear by including in its record an express statement regarding the applicability of art. 21.53D to risk pools. During the House floor debate on second reading of SB 162 (the bill enacting art. 21.53D) on May 23, 1997, Representative Madden offered Floor Amendment #2, which read as follows:

Amend SB 162 as follows:

On page 3, following line 25, add a new subsection "*(3)*" that incorporates this language, "*Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.*", and renumber the lines of the subsequent text accordingly.

Representative Madden stated the amendment was the same one "offered last night" to allow coverage under the Local Government Code, Chapter 172. The House Journal for May 22, 1997 shows that CSSB 54 was debated by the House on that date. On p. 3329 of the 1997 House Journal is a Floor Amendment for CSSB 54 that is identical in wording to Floor Amendment #2 for SB 162. No other bill was discussed in the House on May 22, 1997 that had the same or similar wording. When Representative Gray laid out CSSB 54, she indicated that there was one amendment, to be offered by Representative Madden, that would make sure women working for cities and counties would also receive the benefits of CSSB 54. (CSSB 54 allowed women to go directly to their OB/GYN without first seeing their primary care physician.)

Thus, the legislature did see fit to enact legislation that is intended to require risk pools to provide coverage for diabetes supplies, equipment and self-management training. Rather than suggesting an intent to include risk pools in the scope of art. 21.53D for only limited purposes, the history gives the clear message that persons covered by risk pools (persons working for cities and counties) are to receive the same benefits as everyone else covered by art. 21.53D.

Art. 21.53D was enacted more recently than art. 21.53G, and addressed its applicability to risk pools more specifically than did art. 21.53G. These facts, combined with the legislative history cited above, compel the department to conclude that risk pools should be treated the same as all other benefit plans that are subject to these rules. This includes the requirement that the benefit plans provide coverage for diabetes equipment, supplies and self-management training in accordance with the standards in these rules.

Against: Texas Municipal League Intergovernmental Employee Benefits Pool (TMLIEBP).

The amendments are adopted under the Insurance Code Arts. 21.53G, 21.53D and §36.001. Art. 21.53G provides guidance about coverages required for diabetes supplies, equipment and self-management training. Art. 21.53D, §3 provides that the commissioner shall by rule adopt minimum standards for benefits to enrollees with diabetes and that each health care benefit plan shall provide benefits for the care required by the minimum standards. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2004.

TRD-200400399

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 9, 2004
Proposal publication date: July 18, 2003
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 364. MODEL SUBDIVISION RULES

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 364 concerning Model Subdivision Rules without changes to the proposed text as published in the December 5, 2003 issue of the *Texas Register* (28 TexReg 10880) and will not be republished. The amendments are to §§364.2, 364.18, 364.32, 364.33, 364.34, 364.36, 364.52, 364.54, 364.55, and 364.91. The amendments are adopted for cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts amendment to §364.2 to refer to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission because it has changed its name. The board adds new subsection §364.18(1) to define the term "commission" to refer to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission since it has changed its name. Additionally, §364.18(17), which defined "TNRCC", is deleted. All remaining subsections in §364.18 are renumbered accordingly. Consequently, the board amends the references to the "TNRCC" in §§364.18(8), 364.32(a)(2), 364.33(a)(1), 364.33(b)(3), 364.34(a), 364.52(1)(A), 364.52(1)(B), 364.52(3)(A), 364.52(3)(B), 364.55(c)(2), 364.91(4), 364.91(5) and 364.91(6) to refer to the "commission".

The board adopts amendment to Appendix 1A, which is an attached graphic for §364.32(a)(1). Appendix 1A is a sample form agreement and it contains an effective date at the end of the agreement. The effective date identified in the form currently references "19__". The board amends the form to reflect that the potential date for this agreement will be in this century so that it is amended to be "20__".

The board adopts amendment to §364.32(a)(2) to require a subdivider that proposes to create a public water system relying on groundwater to comply with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. At the time that the board adopted current §364.32(a)(2), Chapter 230 of 30 TAC had not been proposed or adopted. With the adoption and implementation of Chapter 230 of 30 TAC, the commission has adopted specific criteria in assessing groundwater availability for specified areas throughout the state. In order to establish a consistent standard for counties and municipalities that enforce groundwater availability certifications, the board adopts the criteria and process that the commission has implemented in 30 TAC Chapter 230. The board adopts amendment to §364.32(b) to require a subdivider that proposes to rely on individual wells for each residential lot to comply with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. The board relies on the same reasons expressed in relation to the amendment to §364.32(b) as the justification for this amendment.

The board also adopts amendment to §364.32(b) to amend the citation of 30 TAC §290.103 to be a citation to 30 TAC §290.104, delete the reference to 30 TAC §290.105, add a reference to 30 TAC §290.108, and amend the reference to 30 TAC §290.110 to be a reference to 30 TAC §290.109. The existing cited provisions correctly identified the then existing appropriate primary drinking water standards the board, acting in consultation with the commission and the office of the attorney general, determined were the appropriate water quality standards to be applied for a county or municipality in approving individual wells for individual lots as a water supply source in new residential subdivisions in the affected counties. Since the adoption of these standards, the commission has amended and to some degree restructured 30 TAC Chapter 290 Subchapter F in which these drinking water standards are identified. The amendments to §364.32(b) correct the references so that the references are to the appropriate sections to retain the drinking water standards that are intended by the board, in consultation with the commission and the office of the attorney general.

The board adopts amendment to Appendix 1B, which is an attached graphic for §364.33(a)(2). Appendix 1B is a sample form agreement and it contains an effective date at the end of the agreement. The effective date identified in the form currently references "19__". The board amends the form to reflect that the potential date for this agreement will be in this century so that it is amended to be "20__".

The board adopts amendment to §364.33(b)(3) to amend the citation of 30 TAC §285.3(b) to be a citation to 30 TAC §285.3(i). At the time that the board adopted the existing §364.33(b)(3), 30 TAC §285.3(b) was the commission rule that prohibited certain wastewater disposal techniques that were deemed inadequate such as boreholes, cesspools, and seepage pits. The commission has amended its rules and the rule that now fully prohibits these wastewater disposal techniques is correctly identified as 30 TAC §285.3(i). The amendment to §364.33(b)(3) corrects the existing reference to identify the current commission rule that prohibits these wastewater disposal techniques. The board adopts amendment to §364.36 to change the statute referenced therein from Local Government Code §235.002(b)(2) to Local Government Code §233.062(c). This amendment is necessary due to legislative changes made in 2001 which changed the citation necessary to refer to this section.

The board adopts amendment to §364.52 to delete the phrase "be accompanied by" and insert the phrase "include on the plat or have attached to the plat". The Local Government Code requires that the final engineering report required in this section actually be included on or attached to the plat. In certain circumstances, however, the board has learned that plats are being accepted without the engineering report being on or attached to the plat. This amendment will eliminate any confusion that may have lead to these circumstances.

The board adopts amendment to §364.52(1)(A) to require that the final engineering report for a subdivision that will be connecting to an existing public water system and will rely on groundwater include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. At the time that the board adopted current §364.52(1)(A), Chapter 230 of 30

TAC had not been proposed or adopted. With the adoption and implementation of Chapter 230 of 30 TAC, the commission has adopted specific criteria in assessing groundwater availability for residential subdivisions throughout the state. In order to establish a consistent standard for counties and municipalities that enforce groundwater availability certifications, the board adopts the criteria and process that the commission has implemented in 30 TAC Chapter 230. The board amends §364.52(1)(B) to require that the final engineering report for a subdivision that will be connecting to a new public water system and will rely on groundwater include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. The board relies on the same reasons expressed in relation to the amendment to §364.52(1)(A) as the justification for this amendment. The board adopts amendment to §364.52(2) to require that the final engineering report for a subdivision that will rely on individual wells for each residential lot include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. The board relies on the same reasons expressed in relation to the amendment to §364.52(1)(A) as the justification for this amendment.

The board adopts amendment to Appendix 2A, which is an attached graphic for §364.54(a). Appendix 2A is a sample form agreement. Paragraph 3 of the sample agreement references "the final subdivision plat of the subdivision." In order for the form to be effective, a blank space should have been provided to allow the insertion of the name of the subdivision. The board amends the form to insert a blank between "the" and "subdivision" so that when the form is used the subdivision name can be inserted. On page iii of this sample form, paragraph 14 of the sample agreement states the county will provide timely notification to the subdivider of defects in construction. The sample form should reflect that for those instances that the notice states that the defects create immediate and substantial harm, the subdivider has five days to cure the defect. However, as currently printed, the agreement lacks the word "if" before the phrase "the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm" thereby requiring all defects to be cured within five days. The board amends this appendix to insert "if" before the phrase "the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm" to reflect the intent of the board for this provision. In paragraph 15 of this agreement, the text inadvertently states that the county may "disperse" certain funds. This verb was intended to be "disburse" and the board amends this appendix to so reflect. Finally, this sample agreement also contains an effective date at the end of the agreement. The effective date identified in the form currently references "19__". The board amends the form to reflect that the potential date for this agreement will be in this century so that it is amended to be "20__".

The board adopts amendment to Appendix 2B, which is an attached graphic for §364.54(c)(3). Appendix 2B is a sample form irrevocable letter of credit. Appendix 2B is a sample form agreement and it contains effective dates at the beginning of the agreement. The effective dates identified in the form currently references "19__". The board amends the form to reflect that the potential dates for this agreement will be in this century so that it is amended to be "20__". Finally, the fourth paragraph of this letter references the "Uniform Customs and Practice for Documentary Credits, 1983 version, International Chamber of Commerce, Publication No. 400." This reference should be to the 1993 version, which is actually publication no. 500 of the International Chamber of Commerce. The board amends the appendix to change the reference to correct the version year and the correct publication number so that the reference reads as "Uniform Customs and Practice for Documentary Credits, 1993 version, International Chamber of Commerce, Publication No. 500."

The board adopts amendment to §364.91(1) to include the phrase "and within the extraterritorial jurisdiction of the municipality." The Local Government Code provides that the municipalities that are required to adopt these subdivision regulations must adopt and enforce the rules within the extraterritorial jurisdiction of the municipality as well as within the corporate boundaries of the municipality. This amendment will make the statutory requirement clear in the rules as well.

The board adopts amendment to §364.91(4) to amend the citation of 30 TAC §290.103 to be a citation to 30 TAC §290.104, delete the reference to 30 TAC §290.105, add a reference to 30 TAC §290.108, and amend the reference to 30 TAC §290.110 to be a reference to 30 TAC §290.109. The existing cited provisions correctly identified the then existing appropriate primary drinking water standards the board, acting in consultation with the commission and the office of the attorney general, determined were the appropriate water quality standards to be applied for a municipality in approving individual wells for individual lots as a water supply source in new residential subdivisions in the affected counties. Since the adoption of these standards, the commission has amended and to some degree restructured 30 TAC Chapter 290 Subchapter F in which these drinking water standards are identified. The amendments to §364.91(4) correct the references so that the references are to the appropriate sections to retain the drinking water standards that are intended by the board, in consultation with the commission and the office of the attorney general.

Comments on the proposed amendments were received from Mr. Scot Campbell from the Texas Land Developers Association.

Mr. Scot Campbell submitted a letter stating that the Texas Land Developers Association is in opposition to some of the items in the new proposed Model Subdivision Rules. Mr. Campbell states that the proposed requirements for the water well use are not beneficial to either the developer or the lot buyer.

BOARD RESPONSE: The board believes that this comment is intended to address the changes to §§364.32(a)(2), 364.32(b), 364.52(1)(A), and 364.52(1)(B). These sections relate to the criteria that will be applied when the proposed residential subdivision intends to rely on groundwater for the drinking water supply. The amendments to these sections apply the requirements that the commission recommends for counties in other areas of the state in which there is concern about the groundwater availability. The board adopts these sections to be consistent with the commission requirements in order to establish a consistent standard for counties and municipalities that enforce groundwater availability certifications throughout the state.

Mr. Campbell comments that the rules do not properly interpret the requirement to bond or install on-site sewer facilities when plating a new subdivision. Mr. Campbell states that Local Government Code §232.032 only requires the lots in the subdivision be approved by an appropriate government authority as being adequately and legally served by septic systems. Mr. Campbell comments that therefore the Local Government Code provision does not require that septic tanks either be installed or a financial guarantee be provided to insure installation of septic tanks.

BOARD RESPONSE: The amendments proposed by the board do not amend the existing provisions that require that subdivider to either construct septic tanks or provide financial guarantees to insure the construction of septic tanks to obtain final plat approval. The board does not agree that the cited statutory provision is subject to the interpretation provided by Mr. Campbell or that these rules are subject to any limitations that may be created by the Local Government Code. The authority of the board to adopt these rules is derived from the Water Code, §16.343. The Water Code requires the board to develop rules that will insure the provision of adequate water and sewer service in order to prevent the creation of new residential subdivisions lacking these essential services. From the inception of these model subdivision rules in 1991 the board has sought to require that septic tanks either be installed or financial guarantees be provided to insure installation of septic tanks. The board concludes that these rules are required to fulfill the purposes and intent of the Water Code.

Mr. Campbell further comments that the statutes do not include a requirement that a subdivider pay for the costs of water meters, water rights, or membership fees as a part of the water service infrastructure.

BOARD RESPONSE: The current amendments proposed by the board do not affect the existing rule provisions that impose this requirement. The board recognizes that there is not an explicit statutory requirement to require that the payment of these fees be included in the costs of completing water infrastructure for new residential subdivisions. The board, however, adopted this provision in 2000 because it is necessary to have all the costs related to the water infrastructure paid in order to prevent residential areas from being occupied without access to these services. The board continues this provision in order to fulfill the purpose and intent of the Water Code.

Finally, Mr. Campbell also comments that the requirements for letters of credit or bonds in the County Subdivision Contract are not clear and leave room for misinterpretation and that it was not the legislature's intent to create a requirement that would be impossible to achieve.

BOARD RESPONSE: The compliance history with this provision does not indicate that it is either being misinterpreted or that compliance is impossible. Without greater specificity as to the provisions that remain unclear, the board does not believe that amendments related to the letters of credit are appropriate.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §364.2

The amendments are adopted under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the adopted amendments are Texas Water Code, Chapter 15 and Chapter 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2004.

TRD-200400421
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 10, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 475-2052

SUBCHAPTER B. MODEL RULES

DIVISION 1. GENERAL AND ADMINISTRATIVE PROVISIONS

31 TAC §364.18

The amendments are adopted under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the adopted amendments are Texas Water Code, Chapter 15 and Chapter 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2004.

TRD-200400422
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 10, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 475-2052

DIVISION 2. MINIMUM STANDARDS

31 TAC §§364.32 - 364.34, 364.36

The amendments are adopted under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the adopted amendments are Texas Water Code, Chapter 15 and Chapter 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2004.

TRD-200400423

Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 10, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 475-2052

DIVISION 3. PLAT APPROVAL

31 TAC §§364.52, 364.54, 364.55

The amendments are adopted under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the adopted amendments are Texas Water Code, Chapter 15 and Chapter 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2004.

TRD-200400424
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 10, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 475-2052

SUBCHAPTER C. MODEL RULES (MUNICIPALITY)

DIVISION 2. MUNICIPALITIES WITH EXISTING SUBDIVISION ORDINANCES

31 TAC §364.91

The amendments are adopted under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the adopted amendments are Texas Water Code, Chapter 15 and Chapter 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2004.

TRD-200400425
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 10, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 475-2052

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.1, §141.3

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §141.1 and §141.3, concerning the scope of authority of the board and its presiding officer. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10887). The text of the rules will not be republished.

The amended rules are adopted to incorporate new language under Chapter 141, General Provisions. The function of both amended rules is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004).

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as giving the Policy Board the authority to promulgate rules relating to the board's decision-making processes.

This agency 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 January 16, 2004.

TRD-200400371
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

37 TAC §141.2

The Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §141.2, concerning the number of members that constitutes a quorum of the policy board. The repeal is adopted without changes to the proposal as published in the December 5, 2003,

issue of the *Texas Register* (28 TexReg 10889). The text of the repeal will not be republished.

The repeal is adopted to allow the identical information to be placed in 37 TAC §141.3, relating to board administration. The repeal is adopted in conjunction with the agency's review of Chapter 141 and in accordance with the requirements of Texas Government Code, §2001.039. The board has determined that the reason for adoption of the rule does not continue to exist.

No comments were received regarding adoption of the repeal of the rule.

The repeal is adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

This agency 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 January 16, 2004.

TRD-200400377
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General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

SUBCHAPTER B. RULEMAKING

37 TAC §141.57

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §141.57, concerning board procedures for petitions for rule adoptions. The amendments are adopted without change to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10889). The text of the rule will not be republished.

The amended rule is adopted to incorporate new language under Chapter 141, General Provisions. The function of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by deleting references to the "policy board."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036 and §508.082, Government Code. The board interprets §508.036 as giving the Policy Board the authority to promulgate rules relating to the board's decision-making processes, and §508.082 as giving the board the authority to adopt rules relating to the submission and presentation of information and arguments to 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 January 16, 2004.

TRD-200400370
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

SUBCHAPTER D. REGISTRATION OF VISITORS AND FEE AFFIDAVITS

37 TAC §141.81

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §141.81, concerning board procedures for registering visitors to board offices. The amendment is adopted without change to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10890). The text of the rule will not be republished.

The amended rule is adopted to incorporate new language under Chapter 141, General Provisions. The function of the amendment is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by including "parole commissioner" where applicable.

No comments were received regarding adoption of the amendment.

The amendment is adopted under §508.036, Government Code, which the board interprets as giving the Policy Board the authority to promulgate rules relating to the board's decision-making processes, and §508.082, Government Code, which the board interprets as giving the board the authority to adopt rules relating to the submission and presentation of information and arguments to 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 January 16, 2004.

TRD-200400369
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

SUBCHAPTER E. INTERVIEWS

37 TAC §141.91

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §141.91, concerning board procedures for interviewing. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10891). The text of the rule will not be republished.

The amendments are adopted to incorporate new language under Chapter 141, General Provisions. The function of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by including "parole commissioner" where applicable.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036 and §508.082, Government Code. The board interprets §508.036 as giving the Policy Board the authority to promulgate rules relating to the board's decision-making processes. The board interprets §508.082 as giving the Board the authority to adopt rules relating to the submission and presentation of information and arguments to 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 January 16, 2004.

TRD-200400368
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

37 TAC §141.94

The Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §141.94, concerning decisions made during interviews. The repeal is adopted without changes to the proposal as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10891). The text of the repeal will not be republished.

The repeal is adopted to bring the rules into compliance with current board practice. The repeal is adopted in conjunction with the agency's review of Chapter 141 and in accordance with the requirements of Texas Government Code, §2001.039. The board has determined that the reason for adoption of the rule does not continue to exist.

No comments were received regarding adoption of the repeal of the rule.

The repeal is adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

This agency 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 January 16, 2004.

TRD-200400378
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

SUBCHAPTER F. SUBPOENAS

37 TAC §141.101

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §141.101, concerning board procedures for issuing subpoenas. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10891). The text of the rule will not be republished.

The amendments are adopted to incorporate new language under Chapter 141, General Provisions. The function of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by deleting references to the "policy board."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

This agency 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 January 16, 2004.

TRD-200400367
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

37 TAC §141.102

The Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §141.102, concerning serving and enforcing subpoenas. The repeal is adopted without changes to the proposal as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10892). The text of the repeal will not be republished.

The repeal is adopted to eliminate duplicative wording from the rules. The repeal is adopted in conjunction with the agency's review of Chapter 141 and in accordance with the requirements of Texas Government Code, §2001.039. The board has determined that the reason for adoption of the rule does not continue to exist.

No comments were received regarding adoption of the repeal of the rule.

The repeal is adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

This agency 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 January 16, 2004.

TRD-200400379
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.1, 145.9, 145.16, 145.17

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§145.1, 145.9, 145.16 and 145.17, concerning parole considerations. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10892). The text of the rules will not be republished.

The amendments are adopted to incorporate new language under Chapter 145, Parole. The function of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by replacing "board" with "parole panel" where applicable, and by adding "parole commissioner" where applicable. Another function of the amendments is to replace "inmate" with the preferred term, "offender."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, which the board interprets as providing the Policy Board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

This agency 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 January 16, 2004.

TRD-200400366
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

37 TAC §§145.3, 145.12 - 145.15

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.3 and §§145.12 - 145.15, concerning parole decisions. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10894). The text of the rules will not be republished.

The amendments are adopted to incorporate new language under Chapter 145, Parole. The function of the amendments is to conform the board's rules to new statutory law (§508.141, subsection (g), Government Code (Senate Bill 917, Acts of the 78th Legislature, Regular Session, 2003, effective June 18, 2003)) establishing time periods for considering offenders for release after denial; to conform to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by adding the term "parole commissioner" where applicable; and to conform to statutory law by updating the name of a Texas Department of Criminal Justice division. Another function of the amendments is to replace "inmate" or "prisoner" with the preferred term, "offender," and to replace "special needs parole" with the updated term, "Medically Recommended Intensive Supervision."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, which the board interprets as providing the Policy Board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

This agency 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 January 16, 2004.

TRD-200400365
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.21

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.21, concerning parole in absentia. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10897). The text of the rule will not be republished.

The amendments are adopted to incorporate new language under Chapter 145, Parole. The function of the amendments is to update the name of a division in the Texas Department of Criminal Justice, and to replace "prisoner" and "administrative releasee" with the preferred term, "offender."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, which the board interprets as providing the Policy Board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

This agency 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 January 16, 2004.

TRD-200400364
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

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CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §146.6, §146.8

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §146.6 and §146.8, concerning the scheduling of preliminary and revocation hearings. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10897). The text of the rules will not be republished.

The amendments are adopted to incorporate new language under Chapter 146, Revocation of Parole or Mandatory Supervision. The function of the amendments is to conform the board's rules to new statutory law (§508.282, Government Code (Senate Bill 880, Acts of the 78th Legislature, Regular Session, 2003, effective September 1, 2003)), which changed the number of days allowed for disposition of certain charges regarding a violation of parole or other forms of release from prison.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes and §508.044, Government Code, which the board interprets as giving the Policy Board the authority to adopt rules relating to the conduct of hearings.

This agency 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 January 16, 2004.

TRD-200400363
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

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CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §§147.1, 147.2, 147.5

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§147.1, 147.2, and 147.5, concerning hearings and the authority of hearing officers. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10898). The text of the rules will not be republished.

The amendments are adopted to incorporate new language under Chapter 147, Hearings. The function of the amendments is to make non-substantive changes to the wording of the board rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes and §508.044, Government Code, which the board interprets as giving the Policy Board the authority to adopt rules relating to the conduct of hearings.

This agency 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 January 16, 2004.

TRD-200400376
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

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37 TAC §147.3

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §147.3, concerning communicating the facts or laws from a hearing to all the parties involved. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10899). The text of the rule will not be republished.

The amendments are adopted to incorporate new language under Chapter 147, Hearings. The function of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by amending the list of individuals who render hearing decisions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes and §508.044, Government Code, which the board interprets as giving the Policy Board the authority to adopt rules relating to the conduct of hearings.

This agency 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 January 16, 2004.

TRD-200400375
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.56

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §150.56, concerning the administration of the agency. The amendments are adopted without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10899). The text of the rule will not be republished.

The amendments are adopted to incorporate new language under Chapter 150, Memorandum of Understanding and Board Policy Statements. The function of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) and to replace the term "chairperson" with the preferred term, "presiding officer."

No comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036, Government Code, which the board interprets as providing the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

This agency 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 January 16, 2004.

TRD-200400374
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: February 5, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 406-5388

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice adopts the amendment to §151.4, concerning Presentations to the Texas Board of Criminal Justice without changes to the text as proposed in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8829).

The purpose of the amendment is to provide the opportunity for public presentations to the Texas Board of Criminal Justice on topics that are subject to the Board's jurisdiction but are not posted for deliberation.

No comments were received regarding the amendment.

The amendment is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and §492.007, which requires the Board to provide access and public comment on issues within the jurisdiction of the board, as well as Texas Government Code, Chapter 551, the Open Meetings Act.

The amendment is adopted under Texas Government Code, Chapter 551, and §492.007.

Cross Reference to Statutes: Texas Government Code, Chapter 551, and §492.007.

This agency 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 January 16, 2004.

TRD-200400381

Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: February 5, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 463-0422

37 TAC §151.8

The Texas Board of Criminal Justice adopts the amendment to §151.8, concerning Advisory Committees without changes to the text as proposed in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10426).

The purpose of the amendment is to establish the identification of the committee's purpose, tasks, and method of reporting travel reimbursement for the members of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

No comments were received regarding the amendment.

The amendment is adopted under Texas Government Code, §2110.005.

Cross Reference to Statutes: Texas Government Code, §2110.005.

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 January 16, 2004.

TRD-200400382
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: February 5, 2004
Proposal publication date: November 21, 2003
For further information, please call: (512) 463-0422

37 TAC §151.21

The Texas Board of Criminal Justice adopts the amendment to §151.21, concerning Weapons Policy without changes to the text as proposed in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8830).

The purpose of the amendment is to summarize the governing statutes in light of changes by the 78th Texas Legislature, Regular Session (Senate Bill 501 and House Bill 864), and articulate the Board's policy regarding possession of weapons on TDCJ property by peace officers, concealed handgun license holders, and employees of TDCJ.

No comments were received regarding the amendment.

The amendment is adopted under Texas Penal Code §§38.11, 46.03, and 46.035; Texas Government Code, §492.013.

Cross Reference to Statutes: Texas Penal Code §§38.11, 46.03, and 46.035.

This agency 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 January 16, 2004.

TRD-200400380
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: February 5, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 463-0422

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 147. CONTRACT PROGRAM REQUIREMENTS

The Texas Commission on Alcohol and Drug Abuse (Commission) adopts new Chapter 147, §§147.101 - 147.116, 147.201 - 147.204, 147.301 - 147.304, 147.401, 147.402, 147.501, 147.502, 147.601 - 147.604, and 147.701, concerning Contract Program Requirements, with changes to the text that was published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7226).

The new Chapter 147 has been reorganized to provide a more functional and logical framework. It incorporates portions of other existing rules concerning the delivery of program services funded by the Commission. Narcotics treatment programs, HIV, women's services, prevention/intervention and outreach, screening, assessment, and referral (OSAR) services are affected by these changes.

Most of the funding specific rules for Commission funded prevention programs, formerly found in 40 TAC Chapter 144, Contract Requirements, and 40 TAC Chapter 148, Facility Licensure, have been moved to the new 40 TAC Chapter 147. These rules set out specific program requirements for program selection, target population, reporting, evaluation, and each of the six Center for Substance Abuse Prevention (CSAP) strategies.

The new rules also take into account the new capacity and outcome measures requirement of the Performance Partnership Grant (PPG), which CSAP and the Substance Abuse and Mental Health Services Administration (SAMSHA) is proposing for fiscal year 2005. As a result, requirements pertaining to capacity management and outcome measures are included in this new rule.

The public comment period began on August 29, 2003, with the publication of the proposed rules in the *Texas Register* and on the Commission's web site, and ended October 15, 2003. Public meetings to discuss the rules were held during the comment period in Austin, Dallas and Houston. The Commission received the majority of comments in writing by e-mail, fax and U.S. mail. Commission staff summarized the comments received and published draft responses for review on the Commission's web site

in advance of its November 12, 2003, open meeting. The draft included a number of changes in response to the concerns expressed. As directed by the Commissioners at the November 12 meeting, the rules were revised further and published along with a draft final order on the Commission's web site in advance of the December 9, 2003, open meeting. Chapter 147 was approved for adoption during that meeting.

The Commission received comments on the proposed rules from Amarillo Council on Alcoholism and Drug Abuse (Amarillo Council); The Association of Substance Abuse Programs (ASAP); Austin Travis County MHMR; Avenues Counseling Center; Brazos Valley Council on Alcohol and Substance Abuse; Heart of Texas Council on Alcohol and Drug Abuse; Land Manor; Phoenix House; Rainbow Days, Inc.; Riverside General Hospital; Serenity Foundation of Texas; Southeast Texas Regional Planning Commission; Tarrant County Hospital District; University of Texas Southwestern Medical Center at Dallas; Volunteers of America; West Texas Counseling and Rehabilitation Programs; and various individual commenters. The specific comments received and the Commission's responses appear below:

General Comments and Observations:

The Association of Substance Abuse Programs (ASAP) comments that the Commission should defer any action on the proposed rules. The Commission agrees that it should not enact the changes contained in 40 TAC Chapter 147 in a manner that has a substantial impact on service delivery in fiscal year 2004. The Commission plans to adopt proposed 40 TAC Chapter 147 with an effective date of September 1, 2004. Proceeding in this manner will enable the Commission to provide guidance to parties who anticipate contracting with the Commission in the future.

Rule-Specific Comments in Numerical Order:

Subchapter A. Prevention and Intervention.

An individual commenter is concerned about individual record keeping for intervention counseling. The Commission responds that the new rule clarifies requirements for documentation under the existing rule. The new rule does not add significant record keeping requirements to the existing rule.

Austin Travis County MHMR requests that the rules clearly state whether they apply to HIV and HEI. The Commission responds that Commission funded HIV/HEI programs are guided by §§147.201 - 147.204 which specifically address HIV services. HIV/HEI are not traditional prevention or intervention programs and therefore are guided by separate rules.

Austin Travis County MHMR also requests information dissemination be defined in 40 TAC Chapter 141. The Commission responds that information dissemination is defined in §141.101(20)(c).

§147.103(e). Program Design and Implementation.

Tarrant County Hospital District and UT Southwestern Medical Center at Dallas request that the curricula referenced in the rule be approved by the Commission. The Commission responds that no change is needed as the rule adequately specifies the requirements for such curricula.

§147.103(g). Program Design and Implementation.

Brazos Valley Council on Alcohol and Substance Abuse requests that the Commission delete the requirement that a program obtain signed agreements from other mental health, health care, and social service agencies. The Commission notes that the commenter referred to the current, not proposed rule. The Commission responds that the proposed rules deletes this requirement and instead requires the program to maintain a resource directory that contains current information about local referral resources, including location and contact information, services offered, and eligibility criteria.

§147.107(e). Information Dissemination.

Amarillo Council, Austin Travis County MHMR and Avenues Counseling Center are concerned about collecting individual participant demographics for this activity. The Commission responds that the intent of this rule is not to collect individual participant demographics and has revised the rule.

§147.108(c). Prevention Education and Skills Training.

UT Southwestern Medical Center at Dallas requests that the curricula referenced in the rule be approved by TCADA. The Commission responds that no change is needed as the rule adequately specifies the requirements for such curricula.

§147.109(c). Alternative Activities.

Amarillo Council is concerned about collecting individual participant demographics for this activity. The Commission responds that the intent of this rule is not to collect individual participant demographics and has revised the rule.

§147.110(a). Problem Identification and Referral.

Tarrant County Hospital District suggests a revision to the rule to require follow-up on only those participants receiving case management services. The Commission declines to make this change as follow-up is appropriate for referrals of program participants.

§147.111(d). Community-Based Process.

Rainbow Days, Inc. comments that §147.110(d) contains requirements that are no longer used as performance measures for the FY 04 contract. The commenter believes that the rule should be amended to incorporate this change. The Commission responds that the information is useful and therefore should be collected even though it does not constitute a performance measure. To the extent that these requirements change in FY 05, the amended requirements can be included in the FY 05 contract.

§147.112. Environmental and Social Policy.

Amarillo Council and an interested individual are concerned about collecting individual participant demographics. The Commission has revised §147.112(g).

§147.113(b). Intervention Services.

Tarrant County Hospital District suggests that this rule be revised to reflect that not every participant attends school. The Commission responds that current school attendance is not required to collect the requested information.

§147.113(b)(1). Intervention Services.

A concerned individual comments that there is not enough time to complete a screening on all participants. The Commission responds that intervention services only target indicated populations. The intent of the rule is that each participant receiving indicated prevention services will receive the screening set forth in the rule to ensure that the individual receives appropriate services.

§147.113(b)(2). Intervention Services.

Tarrant County Hospital District requests a change to §147.112(b) regarding intervention services "screening" and requests that the Commission use the term "assessment." The Commission declines to make this change as it believes the term "screening" prevents confusion with a traditional substance abuse "assessment."

§147.113(b)(2). Intervention Services.

ASAP requests clarification of the rule provision to limit the collection of information about the family of intervention program participants to that which is allowed by law. The Commission responds that there are various laws regarding privacy of information which may protect against requirements to disclose requested information. It is the responsibility of the provider to ascertain whether a particular inquiry is appropriate under the circumstances.

§147.114(c). Community Coalitions.

A commenter questioned whether community coalitions could provide youth prevention and intervention and youth primary prevention under §147.114(c). The Commission responds that this is not permitted because community coalitions are not intended to provide direct services.

§147.116. Pregnant and Parenting Adult and Adolescent Female Prevention Services.

UT Southwestern Medical Center at Dallas suggests adding a standard to require a provider to provide direct supportive services under §147.116. The Commission responds that such services can be provided directly or through referral.

§147.116(2). Pregnant and Parenting Adult and Adolescent Female Prevention Services.

Tarrant County Hospital District requests that the curricula referenced in the rule be approved by TCADA. The Commission responds that no change is needed as the rule adequately specifies the requirements for such curricula.

§147.116(1), (2), (3), and (7). Pregnant and Parenting Adult and Adolescent Female Prevention Services.

UT Southwestern Medical Center at Dallas submits additional language to expand requirements for PPI programs under these rules. The Commission responds that the commenter may address the suggested changes in their organizational policies and procedures.

Subchapter B. Standards of Care for HIV Programming.

Austin Travis County MHMR comments that Subchapter A, Prevention and Intervention, is not specific enough regarding HEI and HIV outreach. The Commission responds that commission funded HIV/HEI programs are guided by Subchapter B, §§147.201 - 147.204 which specifically addresses HIV services. HIV/HEI are not traditional prevention or intervention programs and therefore are guided by separate rules.

§147.204(b). Minimum Operational Requirements for HIV Early Intervention (HEI) Programs.

A commenter wants a definition of service coordination under §147.204(b). The Commission responds that the term service coordination does not need additional definition beyond that contained in §141.101(113).

§147.304(c). Minimum Operational Requirements (relating to Pharmacotherapy).

West Texas Counseling and Rehabilitation Programs is concerned that the 18 month rule will have detrimental effects on the methadone community. The Commission responds that the 18 month rule does not suggest that a client should be removed from methadone maintenance. The 18 month rules moves the responsibility for a client's methadone maintenance from the public funding system to the client or other private payer sources. The rule provides that a client who can demonstrate medical necessity may be granted a waiver by the Commission's Executive Director to continue treatment on public funding.

§147.303. Required Services. (relating to Pharmacotherapy)

A commenter suggested that treatment providers sometimes prevent compliance with §147.303. TCADA acknowledges this concern and directs the commenter to §§148.204, 148.207 and 148.208, which ensure access to appropriate services on a nondiscriminatory basis.

§147.304(b). Minimum Operational Requirements. (relating to Pharmacotherapy).

A commenter suggested that §147.304(b) is awkwardly worded. The Commission agrees and has revised the rule.

§147.304(b). Minimum Operational Requirements. (relating to Pharmacotherapy).

An individual commenter requests less prescriptive language in this rule. The Commission responds that the prescribed number of sessions is consistent with the Commission's goals for Opiod Treatment Programs (OTPs) which is to address the multiple issues of narcotic addiction.

General Comments and Concerns Regarding Subchapter D. Outreach, Screening, Assessment and Referral (OSAR) Services.

Austin Travis County MHMR suggests deletion of the assessment requirement. The Commission responds that it believes the assessment component is critical to functionality of the front door process. The Commission further responds that the proposed rule will not have any impact on current OSRs. The proposed rule will affect the organizations awarded OSAR contracts in FY 05 and are intended to provide general guidance regarding the expectations of the OSAR services the Commission expects to purchase for FY 05. The specific detailed expectations for OSARs will be set forth in the upcoming Request for Proposals (RFP) and FY 05 contracts. The Commission will take into consideration any additional costs associated with providing OSAR services as it prepares the RFP for FY 05 as well as the other specific concerns expressed by commenters.

Austin Travis County MHMR suggests adding §§147.403 - 147.407 to define performance measures and performance measure review for OSARs. The Commission responds that the commenter's suggestions are more appropriate for contract requirements.

Austin Travis County MHMR appears to disagree with the OSAR concept and repeatedly refers to a Network Maintenance Organization (NMO). The Commission responds that OSARs are integral to the statewide service delivery continuum and the NMO is not an organizational structure mentioned in §147.401 and §147.402.

Phoenix House commented that treatment providers will have difficulty working with OSARs who do not work for their facility. Therefore, a requirement should be placed on receiving programs to coordinate with the referring OSAR. The commenter provided specific examples of ways the receiving agency could cooperate. TCADA acknowledges this concern and directs the commenter to §§148.204, 148.207, and 148.208 of the Standard of Care.

Phoenix House asks if there will be a place for an OSAR in the NorthSTAR region and if so, how will it be distinguished from the ACT team function. Further, how will the OSAR mesh with NorthSTAR and the components of NorthSTAR? The Commission responds that there will not be a place in the NorthSTAR region for OSARs.

Southeast Texas Regional Planning Commission (SETRPC) and Phoenix House comment on the costs associated with implementing the new rules for OSARs and request interpretations of how the rules should be implemented.

Specific Comments and Concerns Regarding the Implementation of Subchapter D. Outreach, Screening, Assessment and Referral (OSAR) Services.

SETRPC, Phoenix House, Amarillo Council, ASAP, Serenity Foundation of Texas, and interested individuals have each submitted very specific concerns regarding the implementation of OSAR rules.

The specific concerns of SETRPC are that the duties the new rules impose on OSAR providers are not feasible under the current funding levels and resulting staffing structure that would be needed to perform them. SETRPC believes that the level of service required would reduce the number of clients served and reduce the ability of the counselor to properly bond with the client. Additionally, SETRPC believes that the requirement for continuous availability for screening and assessments is not realistic under current budgets. SETRPC believes that the services required by §147.402(l)(1) and (2) are not being done by most OSRs in Texas, thereby creating a larger workload for the providers who do perform these services. SETRPC requests that the terms "long-term service coordination" and "high-severity clients" be defined, as those terms are used in §147.402(l)(3). SETRPC questions whether the post-discharge follow-up was in addition to the 60 day treatment follow-up contained in 40 TAC Chapter 147. SETRPC also questions how long the requirement for long term monitoring continues as a service delivery requirement for OSARS and whether an OSAR will be responsible for ongoing individual therapy.

Phoenix House also comments on the cost of implementing the proposed OSAR model, noting it will be more expensive and difficult to manage. Phoenix House provides the following detailed list of questions regarding the expectations TCADA has for the OSAR:

a. How many OSAR employees per 100,000 population is considered sufficient to serve the community?

b. How many clients will an OSAR be expected to carry at any one time on a case load?

c. When should an OSAR drop a client so that new clients can be added to the case load?

d. How long is considered reasonable to carry a client on a case load?

e. Does the OSAR responsibility extend to the entire family of the client? Do these individuals count also as far as number on case load is concerned?

f. Will sufficient funding be available to staff 24-7 as required in the new rules?

g. If client is too intoxicated to travel to the OSAR, will the OSAR be required to travel to the intoxicated client?

f. How many miles will the OSAR be required to travel in the middle of the night to serve an intoxicated client? How can the OSAR be assured the client will be there when the OSAR arrives?

g. What is the safety plan for an OSAR who serves a client in the middle of the night?

h. Considering that sometimes OSARs must send a client hundreds of miles away to receive treatment, how can the OSAR monitor and follow the client coordinating client's care across the continuum of care from a great distance?

i. What is the DSM-IV criteria for high severity clients?

j. To what extent will an OSAR be required to find a homeless client affordable housing to help client maintain sobriety?

k. Will there be special case managers who will deal with the clients who are high severity dually diagnosed and non-complaint? How will this be handled?

Amarillo Council comments that the requirement in §147.402(h) that the OSAR provide brief intervention is too broad in that it implies that the OSAR is required to provide outpatient treatment rather than the brief intervention model. The Council recommends that brief intervention be should be provided as pre-treatment or interim services by the OSAR.

Amarillo Council comments that care coordination or classic case management is a needed and valuable service and that OSAR providers are a logical choice to perform this function.

Amarillo Council believes that §147.402(1) and (m) sets forth a whole new service requiring the involvement of treatment providers, not just OSARs, and asks what type of care plan is envisioned? The Council inquires whether it is as an "authorization" plan.

The Council has concerns regarding terminology. The Council believes that criteria needs to be set in place defining "high-severity" clients because there could be a wide range of interpretations. The Council believes that the term "evaluating treatment" is too wide open and without setting up standard procedures, measures, authority, etc. and could lead to problems with subjective assessments. The Council questions how long term is "long term" and what does "monitoring" include?

Amarillo Council believes that the addicted and recovering population is a transient group especially in the early years of recovery and that there is no legal motivator or medication requirement or other necessary services to keep them in touch with the chemical dependency (CD) treatment providers or "case managers." Being able to maintain a "long term" CD related contact is a challenging proposition whether or not a client is maintaining sobriety. The Council believes that performance measures should reflect reality. The Council believes that the expectations in §147.402(m) are unclear and that there are many uncontrollable factors that would make "ensuring" a seamless episode of care almost impossible. Globally, the Council recommends that TCADA delete §147.402(l)(1) - (3) and (m) from the proposed

rules in order to allow for more careful study and planning for the implementation of a CD related care coordination system in order to avoid a significant disruption to the system of care.

ASAP and Serenity Foundation of Texas further comment that the new services required by §147.402(l) will require additional funding and that the use of an OSAR may restrict the ability of rural providers to admit directly into their programs without using an OSAR. They also question what type of care plan is envisioned and asks if the rules require a modified "utilization review." They request clarification regarding the phase "evaluating treatment" as used in §147.402(l)(3)(A) and the terms "long term" and "monitoring." They comment that the requirements of §147.402(m) regarding a seamless episode of care are unclear and unrealistic. Lastly, they recommend deleting §§147.402(l) and (m) in their entirety and replace them with more generalized language.

An individual commenter noted that §147.402(l) will require a "super" case manager and that such staff will be expensive. The commenter further stated that the receiving agency should be required to coordinate admissions and discharge with the OSAR. The commenter questions whether the requirements of §147.402(l) include all funded services and whether funded agencies have to notify the OSAR when they utilize direct admission.

As noted above, the OSAR rules are intended to provide general guidance regarding the expectations of the OSAR services the Commission expects to purchase for FY 05. The specific detailed expectations of OSARs will be set forth in the upcoming Request for Proposals (RFP) and FY 05 contracts. However, the Commission recognizes that the comments can serve to facilitate discussion on the challenges of implementing the new OSAR model.

§147.402. Standards for OSAR Service Provision.

Heart of Texas Council on Alcohol and Drug Abuse asks whether an OSAR will be required to determine financial and clinical eligibility and how QCCs will screen and assess after hours. The commenter also inquires about the division of responsibility between the OSAR and treatment provider and about training requirements. The Commission responds that financial eligibility guidelines currently exist and, in the FY 05 contracts, both clinical and financial eligibility will be determined by the OSAR. Regarding screening and assessment, the organization's policies and procedures will reflect the physical location of the QCC and require that a QCC who performs screenings and assessments have access to a computer for data entry into BHIPS. Training requirements for OSAR staff are set forth in the rules of the respective licensing agencies and the provider's policies and procedures.

§147.402(d). Standards for Outreach, Screening, Assessment and Referral (OSAR) Service Provision.

Austin Travis County MHMR comments that requiring screening, assessment, and emergency response to be done using the Commission's Behavioral Health Integrated Provider System (BHIPS) is problematic because not all providers of those services use BHIPS. The Commission responds that it only requires its funded providers to use BHIPS and it anticipates that, in FY 05, all OSARs will be Commission-funded.

Austin Travis County MHMR suggests removing 24-hour accessibility to OSARs. Amarillo Council commented that it is not advisable to require screening and emergency response using BHIPS for 24 hours a day, seven days a week, since clients are often not in any condition to complete a BHIPS assessment. The Commission has provided guidance regarding what constitutes a screening. Screening information can be entered into BHIPS within 24 hours of the occurrence. Emergency response should be available at all times. Every crisis intervention may not constitute a screening.

§147.402(g). Standards for Outreach, Screening, Assessment and Referral (OSAR) Service Provision.

Amarillo Council further comments that the requirements of §147.402(g) are unclear and suggests that it would be more appropriate to say that the OSAR should "facilitate" admission to appropriate services. The Council also feels that §147.402(g) overlaps with the requirements of §147.402(l)(2). The Commission believes that the questioned language clearly sets forth expectations for OSAR conduct and OSAR coordination of client care and is therefore not duplicative. Therefore, the Commission declines to modify this requirement.

§147.402(h). Standards for OSAR Service Provision.

Austin Travis County MHMR states that definitions of brief intervention in Chapter 141 rules are not congruent with the requirement for action in §147.402(h). The Commission agrees and revises the definition of "brief intervention" in §141.101.

§147.402(i). Standards for Outreach, Screening, Assessment and Referral (OSAR) Service Provision.

Amarillo Council and ASAP question the use of the term "alternative" in §147.402(i). TCADA agrees with these comments and has revised the rule. ASAP also recommends moving this section to follow section §147.402(g). The Commission declines to make this change as it is unnecessary and does not serve to clarify the rule.

§147.402(j). Standards for Outreach, Screening, Assessment and Referral (OSAR) Service Provision.

The Commission has received a comment from Brazos Valley Council on Alcohol and Substance Abuse indicating that an intensive family psychosocial assessment, service plan, and discharge plan is required for the family. TCADA responds that such an assessment is not required by the rule. Screening and assessment shall, when appropriate, address the family as a unit and referrals shall be provided for family members, including prevention services for children.

Brazos Valley Council also requests that TCADA add a requirement for mandatory hours of services for the family and individual family counseling as needed. TCADA responds that family involvement is encouraged, but it does not believe that imposing this requirement is appropriate at this time.

§147.402(k). Standards for Outreach, Screening, Assessment and Referral (OSAR).

Brazos Valley Council on Alcohol and Substance Abuse requests that the Commission delete the requirement that a program obtain signed agreements from other mental health, health care, and social service agencies. The Commission notes that the commenter referred to the current, not proposed rule. The Commission responds that the proposed rules delete this requirement and instead require the program to maintain a resource directory that contains current information about local referral resources, including location and contact information, services offered, and eligibility criteria.

§147.502. Select Performance Measure Definitions.

Amarillo Council and ASAP are concerned that the minimum duration for length of stay of clients in treatment, as defined in the proposed rule, will limit clinicians' judgment on length of stay. Additional concerns are expressed regarding early discharge in appropriate circumstances. The Commission responds that 14 days is the suggested minimum duration for clients' length of stay in treatment. The Commission does not give a maximum paid length of stay if clinical necessity is documented. The Commission agrees that discharge prior to fourteen days may be appropriate and has revised §147.502(a)(3) accordingly.

§147.602. Purpose of Program.

A commenter questions why for profit entities are excluded from funding under §147.602. The Commission agrees with the commenter that funding is available for public and private entities and has revised the rule.

§147.602(a). Purpose of Program.

The commenter asks a question about §147.602(a) regarding the meaning of "individual plan." The section cited by the commenter does not exist in the proposed rule, nonetheless, "individual plan" in §147.604 refers to an "individualized treatment plan."

§147.603(a)(1). Availability of Services.

Brazos Valley Council on Alcohol and Substance Abuse requests that the Commission delete the requirement that a program obtain written agreements. The Commission responds that the proposed rule does not require written agreements.

§147.604(4), (5), (6), (9), (10), and (15). Individualized Plan of Services.

Riverside General Hospital suggests that the rule could be revised to include referrals to other community resources. The Commission agrees with the suggested change and has revised the rule.

§147.604(5), (6), (9), (10). Individualized Plan of Services.

ASAP and Volunteers of America comment that the proposed rule language puts provider counselors outside their scope of practice. In response to this comment, the Commission notes that the intent of the rule is not to require the provider to deliver the required services directly. The intent of the rule may be met by facilitating access or ensuring appropriate referral. The text of §147.604(4), (5), (9) and (10) has been revised to clarify these expectations. The text of §147.604(6) appears to be appropriate as written. In addition, minor grammatical revisions have been made to §147.604(5).

All comments, including any not specifically referenced herein, were fully considered by the Commission. In adopting 40 TAC Chapter 147, the Commission makes other grammatical and non-substantive changes for the purpose of clarifying its intent.

SUBCHAPTER A. PREVENTION AND INTERVENTION

40 TAC §§147.101 - 147.116

The new sections are adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new sections are also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new sections are Chapters 461 and 464 of the Health and Safety Code.

§147.101. Applicability and Definitions.

(a) The rules in this subchapter apply only to funded programs providing prevention or intervention services.

(b) All funded programs must also comply with Chapter 148 of this title (relating to General Provisions).

(c) The words and terms used in this chapter shall have meanings set forth in Chapter 141 of this title, unless the context clearly indicates otherwise. The following definition is specific to prevention and intervention: Young Adults--Individuals aged 18 - 21 served by Commission-funded youth services prevention providers. Prevention providers may bill and report individuals aged 18 - 21 as youth if all other requirements are met.

§147.102. Youth Prevention Programs.

(a) The goal of youth prevention programs shall be to preclude the onset of the use of alcohol, tobacco and other drugs by youth and to foster the development of social and physical environments that facilitate healthy, drug-free lifestyles.

(b) Youth prevention programs shall offer universal and/or selective prevention strategies to youth and their families.

§147.103. Program Design and Implementation.

(a) The provider shall determine what population(s) the program is designed to serve: universal, selective or indicated.

(b) The program shall identify and describe the primary and secondary target populations including specific information about:

(1) age, gender, and ethnicity;

(2) risk and protective factors;

(3) patterns of substance use;

(4) social and cultural characteristics;

(5) knowledge, beliefs, values, and attitudes; and

(6) needs.

(c) The program shall identify goals which:

(1) address identified risks, needs and/or problems of the primary and secondary target populations;

(2) are designed to enhance protective factors;

(3) clearly describe behavioral and/or societal changes to be achieved; and

(4) are realistic in relation to available resources.

(d) The program shall establish objectives that are linked to the goals. Objectives must be measurable, have outcome and family strategies where appropriate.

(e) The program design shall be based on a logical, conceptually sound framework to connect the prevention or intervention effort with the intended result of preventing alcohol, tobacco, and other drug problems. Curricula selected shall be evidence based and appropriate for the target population served. The program shall maintain the fidelity of the program design.

(f) In order to carry out the program design, the program shall incorporate a combination of some or all of the Center for Substance

and Prevention's (CSAP) prevention strategies. All youth prevention programs (YPP) and youth intervention programs (YPI) must at a minimum conduct prevention education and skills training as a core strategy.

(g) The program shall be designed to build on and support related prevention and intervention efforts in the community. The program shall establish formal linkages and coordinate with other community resources.

(h) The program shall be appropriately structured to implement the program design. The prevention effort shall be consistent with the availability of personnel, resources, and realistic opportunities for implementation.

(i) The program design, content, communications, and materials shall:

(1) be available in the primary language of the target population;

(2) be appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age, and developmental level of the target population; and

(3) recognize the cultural context of the family unit.

§147.104. Key Performance and Activity Measures.

The program shall track and appropriately document the key performance and activity measures defined for the target populations and the services provided as outlined in the contract. The program must maintain adequate documentation to substantiate the reported numbers.

§147.105. Performance Measure Review.

(a) Programs will be held to specific key performance measures as stated in the contract.

(b) The Commission shall review actual performance on key measures and notify the program in writing if the program failed to achieve the expected level of performance.

(c) If the program fails to achieve the expected level of performance, the program shall respond within 30 days from the postmark date of the Commission's written notification with a timeframe in which the deficiencies will be resolved. The program must resolve the noted deficiencies or be subject to sanctions as described in the contract.

(d) The Commission shall take at least one of the following actions in response to performance deficiencies:

(1) notify the program in writing that timeframe for resolving deficiencies has been approved;

(2) specify additional conditions to include manual pay;

(3) impose contract restrictions or sanctions or terminate the contract.

§147.106. Staff Training.

(a) During the first six months of employment, all direct service prevention and intervention staff shall receive a total of 16 hours of training (or document 16 hours of equivalent training), with a minimum of three hours in each of the following areas:

(1) cultural competency;

(2) risk and protective factors/building resiliency;

(3) child development and/or adolescent development, as appropriate; and

(4) strategies for strengthening families.

(b) Staff shall have specific training in the curriculum implemented for prevention education/skills training before facilitating the curriculum independently.

(c) In subsequent years, all direct services prevention staff shall receive eight hours of prevention training related to the program design.

§147.107. Information Dissemination.

(a) Each program that provides activities within this strategy shall disseminate information about these topics as appropriate for the target population:

(1) the nature and extent of alcohol, tobacco, and other drug use, abuse, and addiction;

(2) human immunodeficiency syndrome (HIV) infection, tuberculosis (TB), Hepatitis, and sexually transmitted diseases (STDs); and/or

(3) information about available services and resources.

(b) The information shall be accurate and current.

(c) The information shall be accessible and understandable to the target population in terms of:

(1) content; and

(2) mode, time, and location of delivery.

(d) The program shall document the number of individuals receiving written information/literature.

(e) For presentations, documentation shall include, as applicable:

(1) date, time, and duration of activity;

(2) location of activity;

(3) staff/volunteers conducting activity;

(4) purpose and goal of activity; and

(5) number of participants.

§147.108. Prevention Education and Skills Training.

(a) Education and skills training must be designed to affect critical life and social skills and include decision-making, refusal skills, critical analysis and systematic judgment abilities.

(b) The activities must include extensive interaction between the leader and the participants.

(c) Activities shall be conducted according to a written, time-specific curriculum, which is based on proven, effective principles.

(d) Each program that provides activities within this strategy must help participants gain knowledge and/or skills needed to access assistance or help with a problem.

(e) Documentation shall include, as applicable:

(1) date, time, and duration of activity;

(2) location of activity;

(3) staff/volunteers conducting activity;

(4) purpose and goal of activity;

(5) number of participants; and

(6) demographics of participants.

§147.109. Alternative Activities.

(a) Each program that provides activities within this strategy shall provide alternative activities designed to assist participants in:

(1) mastering new skills;

(2) developing/maintaining relationships;

(3) bonding with peers, family, school, and community;

(4) building cultural understanding, and honoring diversity; and

(5) identifying activities which offset the attraction to fill needs met by alcohol, tobacco and other drug use.

(b) Alternative activities shall be planned and conducted to complement the existing program design and proposed outcomes.

(c) Documentation shall include, as applicable:

(1) date, time, and duration of activity;

(2) location of activity;

(3) staff/volunteers conducting activity;

(4) purpose and goal of activity; and

(5) number of participants.

§147.110. Problem Identification and Referral.

(a) General requirements. Each program will provide components to identify those who have indulged in illegal use of tobacco or alcohol and those individuals who can have indulged in first use of illicit drugs in order to assess if their behavior can be reversed through education. Required components include screening, referral, and follow-up. This strategy does not include any activity designed to determine if a person is in need of treatment.

(b) Screening. The screening process shall be designed to identify warning signs for alcohol, tobacco, and/or other drug abuse. The screening shall also identify STD/HIV risk factors as appropriate.

(c) Referral. The program shall maintain a current list of referral resources, including other services provided by the organization.

(d) Follow-up. The program shall conduct and document follow-up on referrals to ensure that the participant has presented for services.

(e) Documentation. The program shall maintain documentation of each screening which includes:

(1) date of the screening;

(2) zip code of the individual screened;

(3) demographics of the individual screened;

(4) referrals made; and

(5) any follow-up contacts.

§147.111. Community-Based Process.

(a) Each program that provides activities within this strategy shall work with other service providers, organizations, individuals, and families to effectively promote substance abuse services and improve the community's ability to prevent substance abuse and related problems.

(b) The program must establish formal linkages with other service providers to build a continuum of substance abuse services in the community. The program shall document active participation in collaborations to support community resource development.

(c) When the program coordinates services with another provider, there must be a written agreement that is renewed annually (by signature or other documented contact) and includes:

(1) names of the providers entering into the agreement;

(2) services or activities each provider will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

(d) Documentation of community-based process activities shall include, as applicable:

(1) date, time, and duration of activity;

(2) key contact persons/providers involved;

(3) purpose and goal of activity;

(4) further action steps needed; and

(5) action or change achieved.

§147.112. Environmental and Social Policy.

(a) Each program that provides activities within this strategy shall take steps to influence the incidence and prevalence of substance abuse through:

(1) legal and regulatory strategies; or

(2) service and action-oriented activities.

(b) Activities must involve members of the community and other key stakeholders who will be impacted by the outcome.

(c) Efforts must be systematic and sustained.

(d) Documentation shall include, as applicable:

(1) date, time, and duration of activity;

(2) key contact persons/providers involved;

(3) purpose and goal of activity;

(4) further action steps needed; and

(5) action or change achieved.

(e) Documentation of minors and tobacco presentations shall document:

(1) content; and

(2) mode, time, and location of delivery.

(f) The program shall document the number of persons receiving written information/literature.

(g) For presentations, documentation shall include, as applicable:

(1) date, time, and duration of activity;

(2) location of activity;

(3) staff/volunteers conducting the activity;

(4) purpose and goal of activity; and

(5) number of participants.

§147.113. Intervention Services.

(a) Each program that provides activities within this strategy shall provide indicated prevention services to individual participants who are showing early warning signs of substance use or abuse and/or exhibiting other high risk problem behaviors. Family members may also be involved in these services.

(b) The program shall determine the needs of the participant (and family members) in a culturally appropriate, face-to-face screening. The screening shall gather information to identify the participant's risk and protective factors in five domains: individual, family, school, peer relationships, and community. Should the participant and/or family member need a more intensive level of services, the invention service provider facilitates their access to the needed service.

(1) Information about the individual shall include:

(A) age, gender, culture and ethnicity;

(B) individual assets;

(C) ATOD use; and

(D) legal issues.

(2) Information about the family as permitted by law shall include:

(A) structure;

(B) functioning; and

(C) family history of ATOD use.

(3) School information shall include:

(A) literacy level;

(B) academic performance; and

(C) behavioral functioning issues.

(4) Information about peer relationships shall include:

(A) ATOD use;

(B) gang or club involvement;

(C) legal issues; and

(D) social functioning.

(5) Information about the community shall include:

(A) economic status;

(B) general environment;

(C) criminal activity; and

(D) availability of ATOD.

(c) The staff person and the participant (and family members, if appropriate) shall develop an intervention plan to address identified needs. The plan shall include:

(1) behavioral goals;

(2) timelines for completing the goals; and

(3) recommended indicated services.

(d) Intervention counseling sessions and screenings shall be conducted through confidential face-to-face contacts with participants and/or family members.

(e) The program may also provide crisis intervention services to participants and their families to intervene in situations which may or may not involve alcohol and drug use, and which may escalate if immediate attention is not provided.

(1) Crisis intervention may be offered through telephone contacts and/or face- to-face individual, family, and group interventions.

(2) Crisis intervention services must be documented.

(3) Crisis intervention services in the context of an indicated prevention program may be provided by non-licensed staff who are qualified to perform these functions.

(f) Intervention services for each participant shall be documented, including:

(1) the screening;

(2) the intervention plan;

(3) documentation of each intervention counseling session, including a summary of the intervention counseling session, and progress toward or away from identified goals;

(4) referrals and follow-ups; and

(5) an exit summary which includes a description of the results achieved and participant status at closure.

§147.114. Community Coalitions.

(a) Community coalitions shall implement strategies designed to accomplish the following goals:

(1) to prevent and reduce substance use and abuse among youth in each community served;

(2) to strengthen collaboration in communities and support the existing community-based prevention and treatment infrastructure; and

(3) to increase citizen participation and greater commitment among all sectors of the community toward reducing substance use and abuse. Community coalitions shall include (or document attempts to recruit) one or more representatives from each of these areas:

(A) youth;

(B) parents;

(C) businesses;

(D) media;

(E) schools;

(F) community organizations serving youth;

(G) faith-based groups;

(H) civic and/or volunteer groups;

(I) health care professionals;

(J) State, local or tribal governmental agencies with expertise in substance abuse;

(K) other organizations involved in reducing substance abuse;

(L) law enforcement; and

(M) recovery community.

(b) Community coalitions shall implement community-based processes and environmental and social policy strategies in the community.

(c) Community coalitions, other than Statewide Incentive Grant (SIG) recipients, shall not provide or subcontract for the provision of individual direct services, including prevention education and skills training, alternative activities or problem identification and referral.

§147.115. Prevention Resource Centers.

(a) The goal of each prevention resource center shall be to increase the effectiveness and visibility of prevention of alcohol, tobacco

and other drug use and abuse within the region it is funded to serve through information dissemination, community education, and identification of training resources and best practices in prevention.

(b) Each prevention resource center shall provide universal prevention strategies to the region it serves.

(c) Identified target groups shall include at a minimum: prevention professionals and volunteers; community leaders; teachers; school counselors and educational administrators; children and adolescents; parents and families; communities at large; local news media within the region served; and other persons in need of training in the area of alcohol, tobacco and other drugs.

(d) The following services are required of all funded prevention resource centers:

(1) prevention needs assessment and resource identification;

(2) prevention information marketing efforts;

(3) prevention training and referral to resources;

(4) prevention materials clearinghouse accessible to persons served in their region;

(5) regional coordination/networking; and

(6) regional prevention resource center web site and toll-free number.

(e) Each program shall submit reports as directed by the Commission.

§147.116. Pregnant and Parenting Adult and Adolescent Female Prevention Services.

In addition to the standards set forth in Chapter 148 of this title (relating to Standard of Care), prevention providers serving pregnant, post-partum female populations shall comply with the following standards of care:

(1) provide outreach and prevention services in prenatal clinics, hospitals, WIC offices, and other sites where adult and adolescent women may be seeking reproductive health care;

(2) utilize evidence based curricula for education on substance use, abuse and the effects of ATOD upon the fetus to women seeking services;

(3) identify pregnant women who are at high risk due to their use of ATOD or who are at high risk due to the use of ATOD by others and provide motivational counseling to reduce risk, provide education on reproductive health, fetal and child development, parenting, and family violence;

(4) provide referral of children and family members for substance prevention and/or treatment services;

(5) coordinate with other services and resources to include continuing care for pregnant, post-partum and parenting women;

(6) provide referral of infants and children 0-3 for early childhood intervention screening; and

(7) provide family service coordination for medical, perinatal, pediatric, WIC and other services that promote the health and well being of the individual.

(8) PPI programs shall comply with §147.112 (a), (b)(1) and (2), and (c) - (e) of this title (relating to Intervention Services).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2004.

TRD-200400486
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General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

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SUBCHAPTER B. STANDARDS OF CARE FOR HIV PROGRAMMING

40 TAC §§147.201 - 147.204

The new sections are adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new sections are also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new sections are Chapters 461 and 464 of the Health and Safety Code.

§147.201. Applicability.

The rules in this subchapter apply only to funded programs providing HIV services.

§147.202. HIV Required Services.

(a) Programs receiving TCADA HIV funds shall provide comprehensive HIV services to HIV infected persons with substance abuse problems and persons at risk of being infected as a result of substance abuse related activity and their families and/or significant others. HIV services shall include the following components:

(1) access to HIV antibody counseling and testing. Staff who perform HIV antibody counseling and testing must be currently registered as a Prevention Counseling and Partner Elicitation (PCPE) counselor with the Texas Department of Health.

(2) access to screening for TB and STDs.

(3) counseling to help change behaviors associated with risk of infection.

(b) Programs shall establish annual written service agreements with a comprehensive community resource network of related health, social service providers, and Texas Department of Health (TDH)-sponsored community or regional planning groups.

§147.203. Minimum Operational Requirements for HIV Outreach Programs.

(a) HIV outreach programs identify substance abusers who may or may not be seeking treatment and provide them with information, activities, referrals, and education directed toward informing drug users about the relationship between drug use (especially injecting

drug activity) and communicable diseases. The target population is specific to:

(1) injecting drug users at risk of HIV infection;

(2) women, adolescents, and ethnic minority drug users at risk of infection from HIV and other communicable diseases through drug use or unprotected sexual activities; and

(3) other drug users at risk of HIV and other communicable diseases.

(b) HIV outreach service programs shall use outreach models that are scientifically sound. Unless the Commission approves another model in writing, programs shall use one or more of the following models:

(1) The Indigenous Leader Model: Intervention Manual, Wiebel, W. and Levin, L.B., February 1992;

(2) The National Institute on Drug Abuse (NIDA) Standard Intervention Model for Injection Drug Users: Intervention Manual, National AIDS Demonstration Research (NADR) program, National Institute on Drug Abuse, February 1992; and

(3) AIDS Intervention program for Injecting Drug Users: Intervention Manual, Rhodes, R., Humfleet, G.L., et al., February 1992.

(c) HIV outreach services shall be delivered at times and locations that meet the needs of the target population.

(d) Commission-funded HIV outreach programs shall refer all persons found to be HIV-infected to Commission-funded HIV early intervention programs.

§147.204. Minimum Operational Requirements for HIV Early Intervention (HEI) Programs.

(a) Programs shall develop and implement strategies to identify HIV infected individuals by increasing awareness of HEI services within the target populations. Targets for such efforts should include HIV outreach programs, other HIV service organizations, substance abuse treatment programs, and related health organizations.

(b) Programs shall implement service coordination for HIV infected individuals, which accommodates needs associated with treatment for HIV and substance abuse services. Programs are linked as a network to all other HEI providers in the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2004.

TRD-200400487
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General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

SUBCHAPTER C. NARCOTIC TREATMENT PROGRAMS PROVIDING PHARMACOTHERAPY SERVICES

40 TAC §§147.301 - 147.304

The new sections are adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new sections are also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new sections are Chapters 461 and 464 of the Health and Safety Code.

§147.301. Applicability.

The rules in this subchapter apply only to funded Narcotic Treatment programs providing pharmacotherapy services.

§147.302. Program Objectives.

The ultimate objective for funding pharmacotherapy services is that this addicted population can have active lives, hold responsible jobs, succeed in school, care for families and have no greater incidence of psychopathology or general medical problems that their drug-free peers. Pharmacotherapy services are provided to substance abusing/dependent persons who are addicted to opioids/narcotics. Services include methadone administration and LAAM administration or other drugs that might be approved by the Federal Drug Administration (FDA) for therapy and approved by the Commission for payment. Narcotic treatment programs providing pharmacotherapy services should work to foster de-stigmatization, encourage the development of new clinical strategies and treatment strategies, promote individualized treatment planning, and ensure client rights.

§147.303. Required Services.

(a) Service components, modalities and delivery systems.

(1) Programs shall provide to staff and clients basic substance abuse/HIV/STDs/TB information. The information should include routes of transmission, methods of prevention, high-risk behaviors, occupational precautions, and behaviors in violation of Texas laws.

(2) Methadone/LAAM dosage levels should be conducted by a trained physician based on data that is adequate for each individual client.

(3) Programs shall provide or offer through a memorandum of understanding (MOU) with an appropriate service provider, high-risk prenatal care, proper dietary/nutrition requirements, ongoing individual, family, or group counseling, and parenting classes in conjunction with methadone treatment.

(4) Programs must ensure that methadone/LAAM clients have access to inpatient, residential or outpatient treatment for medical, surgical, psychiatric, and non-opiate chemical dependency conditions without interruption of pharmacotherapy services.

(b) Program design and implementation must address client's access to a full continuum of care to include substance free treatment for ATOD.

(c) Identify those services and/or collaborative arrangements that address co-occurring psychiatric and substance abuse disorders requirements.

(d) Treatment plans must address, if applicable:

(1) client's abuse or dependence on other substances; and

(2) employment counseling and support.

§147.304. Minimum Operational Requirements.

(a) All narcotic treatment programs providing pharmacotherapy services shall maintain certification and licensure compliance with applicable statutes and regulations adopted by: Texas Department of Health; Center for Substance Abuse Treatment; and the Drug Enforcement Agency.

(b) Narcotic treatment programs providing pharmacotherapy shall ensure that clients served in programs funded by the Commission receive face to face individual chemical dependency counseling sessions, a minimum of once per week, during the initial 45 days of treatment. After the initial 45 days of continuous treatment, the client shall receive at least one face to face individualized counseling session every two weeks. After one year of continuous treatment, the client shall receive at least one individual counseling session each month.

(c) For all methadone clients, including those admitted on or after September 1, 2002, the maximum duration of methadone services under a contract shall be 18 months. The executive director of the Commission may grant exceptions to this restriction upon application by the contractor. Any request for exception must be justified by documentation showing that the client needs additional methadone services. The executive director may consider whether the client has a documented medical, physical or mental health condition, which would prevent gainful and sustainable employment. If the need for continued services is due to a medical or physical condition, the assessment to justify extended services must be performed by a licensed health professional as defined by §141.101(71) of this title (relating to Definitions). If it is a result of a mental health condition, the assessment must be conducted by a qualified mental health professional as defined by §141.101(99) of this title. The assessment of the client's condition must be in direct consultation with a physician licensed by, and in good standing with, the Texas State Board of Medical Examiners.

(d) All narcotic treatment programs providing pharmacotherapy shall adopt policies and procedures that conform with §144.418(b) of this title (relating to Capacity Reporting) and §147.701 of this title (relating to Waiting Lists and Interim Services).

(e) All narcotic treatment programs providing pharmacotherapy shall complete a client fee assessment on each Commission-funded client every six months.

(f) All direct care employees shall receive annual training that includes: symptoms of opiate withdrawal; drug urine screens; current standards of pharmacotherapy; and poly-drug addiction.

(g) The narcotic treatment program providing pharmacotherapy shall ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted to an appropriate program not later than 21 days after making the request. Interim services must be provided within 48 hours.

This agency 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 January 23, 2004.

TRD-200400488

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Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

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SUBCHAPTER D. OUTREACH, SCREENING, ASSESSMENT AND REFERRAL (OSAR) SERVICES

40 TAC §147.401, §147.402

The new sections are adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new sections are also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new sections are Chapters 461 and 464 of the Health and Safety Code.

§147.401. Applicability.

The rules in this subchapter apply only to funded outreach, screening, assessment and referral (OSAR) services.

§147.402. Standards for Outreach, Screening, Assessment and Referral Service Provision.

(a) OSARs shall provide screening and assessment, brief interventions, and referral services to individuals with potential substance use disorders.

(b) Screening shall include determination of financial and clinical eligibility for Commission-funded services.

(c) Services shall be offered at times and in locations that facilitate access for target populations, including off-site locations.

(d) Screening and emergency response shall be available 24 hours a day, seven days a week. Screening and assessment shall be conducted by qualified staff using the Commission's Behavioral Health Integrated Provider System (BHIPS).

(e) Screening and assessment shall be sufficient to determine the problem severity, service needs, and stage of change. All clients referred for treatment shall have a DSM diagnosis.

(f) Services shall be provided by qualified staff with skills in motivational interviewing and other engagement techniques.

(g) If an individual is eligible and motivated for Commission-funded services, the OSAR shall arrange for admission to the appropriate service based on client needs and preferences.

(h) The OSAR shall provide brief interventions to help individuals move through the stages of change to a state of readiness to address substance use problems. Brief intervention may be provided as pre-treatment or interim services or as an independent service.

(i) Individuals who are not eligible for TCADA-funded services shall be referred to service providers consistent with their needs and financial resources.

(j) Screening and assessment shall, when appropriate, address the family as a unit and referrals shall be provided for family members, including prevention services for children.

(k) The program shall maintain a resource directory on file that contains current information about local referral resources, including location and contact information, services offered, and eligibility criteria.

(l) OSARs shall coordinate client care across the continuum of care.

(1) A care plan shall be developed for individuals entering Commission-funded services.

(2) The OSAR shall facilitate timely placement into an appropriate level of service.

(3) The OSAR shall provide long-term service coordination for high-severity clients, including:

(A) participating in evaluating treatment;

(B) facilitating intensity of services as determined by client needs and progress;

(C) participating in transfer and discharge planning;

(D) conducting post-discharge follow-up;

(E) providing long-term monitoring; and

(F) offering brief interventions when needed to maintain stability.

(m) OSARs shall coordinate with Commission-funded providers to ensure a seamless episode of care and maximize use of available resources.

(n) OSARs shall promote community awareness of available services through outreach with emphasis on increasing access for priority populations.

This agency 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 January 23, 2004.

TRD-200400489
Thomas F. Best
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

SUBCHAPTER E. TREATMENT PERFORMANCE STANDARDS

40 TAC §147.501, §147.502

The new sections are adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new sections are also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new sections are Chapters 461 and 464 of the Health and Safety Code.

§147.501. Applicability.

The rules in this subchapter apply only to funded treatment programs.

§147.502. Select Performance Measure Definitions.

(a) Minimum Duration of Retention in Treatment Reporting Requirement. This reporting requirement applies to intensive residential, supportive residential and outpatient programs except for pharmacotherapy programs. For a client to have completed the minimum threshold of retention in treatment, the client record must document the client-specific information that supports the reason for discharge listed on the discharge report in BHIPS. A client will be considered to have completed the minimum duration of retention in treatment if:

(1) In intensive or supportive residential program, the client's length of stay is at least 14 days.

(2) In outpatient programs, the client has attended at least 14 individual or group sessions.

(3) The discharge summary or transfer note shall indicate whether the client has successfully completed the minimum duration of retention in treatment according to the above criteria (unless the reasons for earlier discharge are clinically appropriate and documented) and must be signed by a qualified credentialed counselor (QCC).

(b) Abstinence. This measure applies to all programs except for pharmacotherapy programs and detoxification programs. Abstinence is the percent of clients who report no use of alcohol or drugs in the past 30 days when contacted 60 days after discharge from the treatment program.

(c) Referral Rate. This measure applies to detoxification programs. Referral rate is the percentage of clients who have completed detoxification treatment and are transferred continuing substance abuse treatment as defined below.

(d) Completion of Detoxification Treatment. The client record must record that both the following criteria have been met. Levels of toxic substances and withdrawal symptoms have been sufficiently reduced so that the client is medically stable and able to participate in a less intensive level of treatment. A statement to this effect must be signed by the medical director or designee of the program in the discharge summary or transfer note. A discharge plan or discharge note must be completed prior to discharge or transfer in accordance with §148.805 of this title (relating to Discharge).

(e) Referral. For a client to have been transferred from detoxification to continuing substance abuse treatment, the client records must indicate that one of the following criteria has been met.

(1) The client has been discharged from the program and referred to a less intensive level of treatment in another facility, and the program has conducted follow-up to determine the results of the referral. The referral and follow-up must be documented in the client record.

(2) The client has been transferred to a less intensive level of treatment within the organization. The client record must include a transfer note to document the transfer.

This agency 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 January 23, 2004.

TRD-200400490
Thomas F. Best
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

SUBCHAPTER F. TREATMENT FOR PREGNANT AND POST PARTUM WOMEN WITH DEPENDENT CHILDREN

40 TAC §§147.601 - 147.604

The new sections are adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new sections are also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new sections are Chapters 461 and 464 of the Health and Safety Code.

§147.601. Applicability.

The rules in this subchapter apply only to funded treatment programs for pregnant and post partum women with dependent children.

§147.602. Purpose of Program.

The Commission shall provide awards or contracts for the purpose of providing to pregnant and postpartum women and their children, including children in the custody of the court or the State, treatment for substance abuse through programs in which, during the course of receiving treatment:

(1) the women reside in facilities provided by the programs;

(2) the minor children of the women reside with the women in such facilities, if the women so request; and

(3) the services described in this section are available to or on behalf of the women.

§147.603. Availability of Services.

(a) A program will ensure:

(1) treatment services and each supplemental service will be available through the program, either directly or through agreements with other entities; and

(2) the services will be made available to each woman admitted to the program.

(b) A provider shall provide or arrange for transportation to all services required and not provided at the facility.

§147.604. Individualized Plan of Services.

A funding agreement for an award for provision of services under this subchapter shall contain the following requirements:

(1) In providing authorized services for an eligible woman, the program shall, in consultation with the women, prepare an individualized plan for the provision to the woman of the services.

(2) Treatment services under the plan will include:

(A) individual, group, and family counseling, as appropriate, regarding substance abuse; and

(B) follow-up services to assist the woman in preventing a relapse into such abuse.

(3) Treatment services provided shall be gender specific.

(4) Required supplemental services for eligible women shall include:

(A) provision of, or referral to, prenatal and postpartum health care;

(B) referrals for necessary hospital services; and

(C) referral to comprehensive social services.

(5) Required supplemental services for the infants and children of the woman shall be directly provided or provided by referral if the provider does not employ qualified staff:

(A) pediatric health care, including treatment for any perinatal effects of maternal substance abuse and including screenings regarding the physical and mental development of the infants and children and immunizations;

(B) provision of, or referral to, counseling and other mental health services, in the case of children; and

(C) referral to comprehensive social services.

(6) Therapeutic interventions for children in custody of women in treatment shall address their development needs and issues of sexual abuse and neglect either directly or through referral.

(7) Supervision of children shall be provided during periods in which the woman is engaged in therapy or in other necessary health or rehabilitative activities.

(8) Training in parenting shall be provided.

(9) Counseling on HIV and on acquired immune deficiency syndrome (AIDS), STDs and TB shall be provided directly or by referral.

(A) Clients shall be given the opportunity for pre- and post-test counseling on HIV and AIDS.

(B) Clients with a positive test for HIV shall be referred, when possible, to a Commission HEI/HIV coordinator or other community resources to be considered for services.

(C) Clients shall be offered testing for tuberculosis upon request.

(D) Clients shall be offered testing for sexually transmitted disease.

(10) Counseling on domestic violence and sexual abuse shall be provided, directly or by referral.

(11) Counseling on obtaining employment, including the importance of graduating from a secondary school or GED course, shall be provided.

(12) Reasonable efforts shall be made to preserve and support the family units of the women, including promoting the appropriate involvement of parents and others, and counseling the children of the women.

(A) In cases when the State has custody of the minor child, all efforts will be made to participate in a family reunification plan with the custodial agency.

(B) The provider will work with the court and the client to meet the conditions of the court to reunite the family.

(13) Planning for and counseling to assist reentry into society shall be provided, both before and after discharge, including referrals to any public or nonprofit private entities in the community involved that provide services appropriate for the women and the children of the women.

(14) Service coordination shall be provided, to include:

(A) assessing the extent to which authorized services are appropriate for the women and their children;

(B) in the case of the services that are appropriate, ensuring that the services are provided in a coordinated manner; and

(C) assistance in establishing eligibility for assistance under Federal, State, and local programs providing health services, mental health services, housing services, employment services, educational services, or social services.

(15) The program shall provide outreach services in the communities served to help identify women who are engaging in substance abuse and to encourage the women to seek services.

(16) A program providing services will:

(A) be operated at a location that is accessible to low-income pregnant and postpartum women; and

(B) provide authorized services in the language and the cultural context that is most appropriate.

(17) A funded program shall provide for continuing education in treatment services for the individuals who will provide treatment in the program to be operated by the program pursuant to such 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.

Filed with the Office of the Secretary of State on January 23, 2004.

TRD-200400491
Thomas F. Best
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Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

SUBCHAPTER G. CAPACITY MANAGEMENT AND INTERIM SERVICES

40 TAC §147.701

The new section is adopted pursuant to the Texas Health and Safety Code §461.012(a)(15) which provides the Commission with the authority to adopt rules governing its functions, including rules that prescribe the policies and procedures it follows in administering any Commission program and §461.0141 which provides the Commission with authority to adopt rules regarding purchase of services. The new section is also adopted under Texas Health and Safety Code §464.009, which provides TCADA with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of the new section are Chapters 461 and 464 of the Health and Safety Code.

§147.701. Waiting List and Interim Services.

The following provisions apply to all funded treatment services:

(1) The program shall maintain a waiting list or other organized and documented system to track eligible individuals who have been screened but cannot be treated immediately because of insufficient capacity. Eligible individuals who cannot enter treatment due to other circumstances may be placed on the waiting list, but the provider shall not hold empty beds or slots for anticipated clients for more than 48 hours.

(2) The program shall establish criteria that place members of the priority populations at the top of the waiting list.

(3) When individuals are placed on a waiting list, they shall also be referred to an entity that can provide testing, counseling, and treatment for HIV, TB and STDs.

(4) The program shall consult the State's facility capacity management system to facilitate prompt placement in an appropriate treatment program within a reasonable geographic area.

(5) The program shall implement written procedures to maintain contact with individuals waiting for admission.

(6) When a program does not have capacity to admit an injecting drug user or pregnant female, the program shall place the individual in another treatment facility or provide reasonable access to interim services (when another treatment facility is not available).

(A) Interim services shall be offered within 48 hours.

(B) Interim services shall include counseling and education about HIV and TB, including the risks of needle-sharing, the risks of transmission to sexual partners and infants, and steps that can be taken to prevent transmission. Referrals for HIV or tuberculosis treatment shall be provided if necessary. For pregnant females, interim services shall also include counseling about the effects of alcohol and drug use on the fetus and referrals for prenatal care.

(C) The program shall maintain documentation of interim services provided.

(7) The program shall ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted to an appropriate program not later than 21 days after making the request. Interim services must be provided within 48 hours as described in paragraph (6)(A) of this section.

(8) Capacity management may be handled through a centralized intake system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2004.

TRD-200400492

Thomas F. Best
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 349-6668

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.4

The Texas Board of Occupational Therapy Examiners adopts amendments to §364.4, concerning Licensure by Endorsement, with changes to the proposed text as published in the July 25 2003, issue of *Texas Register* (28 TexTeg 5842).

The section was amended to require applicants to submit the correct documents for their application.

One letter was received regarding adoption of the amendment. from the American Occupational Therapy Association that no score information exists for those who were certified prior to 1985.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§364.4. Licensure by Endorsement.

(a) The board may issue a license by endorsement to applicants currently licensed in another state, District of Columbia or territory of the United States which has licensing requirements substantially equivalent to this state. Previous Texas licensees are not eligible for License by Endorsement. An Applicant seeking endorsement must:

(1) meet all provisions for §364.1 of this title (relating to Requirements for License);

(2) arrange to have NBCOT's score report form sent directly to the board except applicants examined prior to 1985 should have NBCOT provide the board it's Verification of Certification form.

(3) Submit verification of license in good standing from the state(s) in which the applicant is currently licensed. This must be an original verification sent directly by the licensing board in that state, or,

(4) submit, if applying from a non-licensing state or US military and not holding a current state license , a Verification of Employment form substantiating occupational therapy employment for at least 2 years immediately preceding application for a Texas license

(b) Provisional License:

(1) The Board may grant a Provisional License to an applicant who is applying for License by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant's control. All other requirements for licensure by endorsement must be met. The applicant must also submit the Provisional License fee as set by the Executive Council. The Board may not grant a provisional license to an applicant with disciplinary action in their license history, or to an applicant with pending disciplinary action. The Provisional License will have a duration of 180 days.

(2) The Board may grant a Provisional License to an applicant who has previously held a Texas license and does not meet the requirements for restoration of a license as outlined in Chapter 370 provided that such applicant has a current license in good standing in another state which has licensing requirements substantially equivalent to Texas. Upon receiving a passing score from NBCOT, a new regular license will be issued, as outlined in §364.2 of this chapter. A failing score will result in revocation of the Provisional License. The Provisional License will have a duration of 180 days. The applicant must:

(A) submit a new application as outlined in §364.1 and §364.2 of this title;

(B) submit verification of the current license in another state or US territory;

(C) submit the provisional license fee as set by the Executive Council;

(D) submit a copy of the confirmation of registration for NBCOT's national 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 January 23, 2004.

TRD-200400482
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: February 12, 2004
Proposal publication date: July 25, 2003
For further information, please call: (512) 305-6962

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 DENIAL OF AMENDMENTS TO THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

The Commissioner of Insurance ("Commissioner") held a public hearing under Docket No. 2578 on December 2, 2003 at 9:30 a.m., in Room 100 of the William Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas to consider the petition of American International Companies (AIG). The petition sought the adoption of amendments to various rules pertaining to terrorism premium in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual) and in the Texas Workers' Compensation Statistical Plan (Stat Plan Manual). AIG's petition proposing the amendments was filed with the Texas Department of Insurance (TDI) Chief Clerk on October 14, 2003, and the notice of hearing was published in the November 14, 2003 issue of the *Texas Register* (28 TexReg 10291).

On February 24, 2003, a petition was filed by Staff proposing that terrorism premium be calculated based on total payroll for the policyholder. The methodology proposed by Staff was very similar to the methodology proposed by the National Council on Compensation Insurance (NCCI) for the states in which NCCI is the rating authority. Public notice of the staff's proposal was published in the March 7, 2003 issue of the Texas Register (28 TexReg 2127). No hearing was requested nor comments received concerning the proposal during the 30 days following the publication. On April 16, 2003, the Commissioner's Order No. 03-0273 was signed adopting the proposed amendments made by staff in its petition requiring that for Workers Compensation, terrorism premium be calculated based on total payroll for the policyholder. The effective date of the regulation was May 10, 2003, which is 15 days after the notice of the adoption was published in the *Texas Register* (28 TexReg 3529).

AIG originally filed its petition on July 17, 2003 and amended its request on September 2, 2003 and October 14, 2003. AIG proposed 4 amendments to the Manual and one amendment to the Stat Plan Manual, all of which pertain to adding an alternate method of calculating terrorism premium. This alternate method allows terrorism premium to be calculated as a percentage of premium.

The first proposed amendment modifies Rule III E., Calculation of Total Estimated Policy Cost – Item 4, of the Manual by amending the algorithm used to calculate workers' compensation premium to include the alternate method of calculating terrorism premium as a percentage of premium. The method of calculating terrorism premium proposed by the petitioner requires that the Premium Subject to Experience Modifier be multiplied by the terrorism rate filed with TDI by the insurance company and then the Estimated Standard Premium is increased by the results of such multiplication. The Premium Subject to Experience Modifier includes the Premium Incentive for Small Employers which is affected by the employer's claims experience. By applying the terrorism rate to the premium after it has been adjusted by the Premium Incentive for Small Employers, some small employers with the same or similar circumstances and conditions will be paying more terrorism premium due solely to prior claims experience. The petitioner presented no arguments for its application of the terrorism rate to the Premium Subject to Experience Modifier.

The second proposed amendment modifies Rule VI J., Terrorism Premium, of the Manual by adding the option of calculating terrorism premium based on premium rather than payroll. This proposed amendment indicates that the carrier will select the methodology used to calculate terrorism premium and file that selection with TDI. As discussed in the preceding paragraph, the proposed amendment to the rule contemplates that if terrorism premium is calculated on premium rather than payroll, then the terrorism premium is determined after the application of the Premium Incentive for Small Employers, if applicable. In addition, the proposed amendment to Rule VI J. of the Manual indicates that if terrorism premium is based on the petitioner's methodology rather than the current rule, then terrorism premium would include premium developed under Code 0913 – Domestic Workers – Residences Per Capita Basis. Code 0913 is a per capita classification, meaning that the premium is calculated on the number of employees working under that classification, rather than on a payroll basis. Under the current rule, terrorism premium does not apply to premium developed under Code 0913 because the basis of terrorism premium is payroll. In support of its amendment, the petitioner argued that its premium-based methodology is specifically permitted by the United States Department of the Treasury Interim Rule dated April 15, 2003, is consistent with standard business practice relating to the application of surcharges, assessments and taxes and is consistent with the recoupment provisions of the Terrorism Risk Insurance Act of 2002 (TRIA). The petitioner offered no support for applying the terrorism premium to Code 0913 workers if the alternate methodology is used.

The third proposed amendment offered by the Petitioner modifies Rule XV – Domestic Workers – Residences, Section D. of the Manual. This

rule currently states that premium developed under Code 0913 is not included in the calculation of terrorism premium. The petitioner's methodology includes premium developed under Code 0913 in the calculation of terrorism premium. Using the petitioner's methodology increases the amount of terrorism premium for a policyholder, even though there has been no increase in the risk of a terrorism loss. This increase in premium is unjustified and excessive considering that the risk of a terrorism loss is not increased. The petitioner offered no support for applying the terrorism premium to Code 0913 workers if the alternate methodology is used.

The fourth proposed amendment offered by Petitioner modifies Rule XVII - Premium Incentive for Small Employers, Section F. of the Manual indicating that if terrorism premium is calculated on the basis of premium rather than payroll, then the terrorism premium is determined after the application of the premium incentive for small employers, if applicable. As stated in the discussion of amendment one, the petitioner presented no arguments for its application of the terrorism rate to Premium Subject to Experience Modifier.

The fifth proposed amendment offered by Petitioner, modifies Part III 16 of the Stat Plan Manual to match the changes proposed to Rule III E., Rule VI J., Rule XV D. and Rule XVII. F of the Manual.

The petitioner testified that AIG selected the premium methodology for calculating terrorism premium rather than the payroll methodology because the premium methodology is consistent with the definition of a contingency factor. The definition of a contingency factor, referenced by the petitioner was taken from the Casualty Actuarial Society's (CAS) publication Foundations of Casualty Actuarial Sciences and is described as "a cushion in rate levels for events that could not be accurately forecast, such as severe economic conditions, unusual loss occurrences, or other 'unpredictable' developments." The CAS's Statement of Principles Regarding Property and Casualty Insurance Ratemaking describes a contingency factor as a charge for any systemic variation of the estimated costs from the expected costs. The Commissioner does not find the petitioner's arguments persuasive. The methodology selected by the petitioner to determine terrorism premium is not akin to a contingency factor. Terrorism losses or exposure can be identified and built into the ratemaking process through the same means as other catastrophic loss exposures, such as including hurricanes in the ratemaking process for homeowners insurance. Loss exposures that are difficult to quantify by traditional actuarial methods are often measured or priced by the use of models.

As further support of its proposed methodology, the petitioner cites Section 50.12(b) of the United States Treasury Interim Final Rule (final rule) dated April 15, 2003. The Commissioner does not find this argument to be sufficiently persuasive. Section 50.12 addresses the type of disclosure an insurer must give its insured and does not address the methodology of calculating premiums. Further, this section states "An insurer may describe the premium charged for insured losses covered by the Program as a percentage of annual premium, if consistent with standard business practice. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as characterizing the premium as a 'surcharge.'"

Although the proposed methodology may be commonly used for other lines of property and casualty insurance, it is inconsistent with the standard business practice of determining workers' compensation premiums in this state. The standard business practice for calculating workers' compensation premium is to multiply the total amount of payroll for the policyholder, expressed in hundreds of dollars, by a rate. A surcharge is normally determined by multiplying premium by a factor. The specific language of the final rule clearly states that the terrorism premium for a workers' compensation policy is not a surcharge and to describe it as such violates TRIA. The petitioner stated that its methodology is consistent with TRIA's recoupment provisions. The Treasury's Final Rule dated July 7, 2003 states that the amount of federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the federal government. Section 103(e)(8) of TRIA provides the treasury with the authority to recoup federal payments made under TRIA through policyholder surcharges, up to a maximum annual amount. Clearly, there is a difference between the terrorism premium paid by policyholders when workers' compensation coverage is purchased and the recoupment mandated by the federal government from policyholders that will be required in the event of a terrorism loss. Lastly, the petitioner stated that the proposed methodology is understandable to the policyholder since the most understandable articulation of a surcharge is as a percentage of premium. However, as described above, Section 50.12 of the final rule is very specific in stating that the disclosure notice must not describe the terrorism premium in a manner that is misleading, such as characterizing it as a surcharge.

The Commissioner does not find the Petitioner's arguments to be persuasive. The Commissioner finds that the proposed alternative method would disrupt the standard method for determining workers' compensation terrorism premium, allows insureds with the same classification to pay premium at a different rate without justification or support, does not adequately provide suitable justification for the application of a terrorism rate to the Premium Subject to Experience Modifier and allows the insurance company to choose a methodology in calculating terrorism premium that may increase the amount of terrorism premium for a policyholder when there has been no increase in the risk of a terrorism loss, nor an acceptable criteria established for selecting the methodology of calculation by the insurer. Based upon the foregoing, the Commissioner is of the opinion that the petition should be denied.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.96, which authorizes the Commissioner to promulgate standard and uniform manual rules for workers' compensation.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, §2001).

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the petition filed by American International Companies for amendments under Reference No. W-0703-14 and heard under Docket No. 2578 be denied.

TRD-200400481
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 23, 2004

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 Motor Vehicle Board

Title 16, Part 6

TRD-200400465
Filed: January 22, 2004

Proposed Rule Reviews

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1. Texas Department of Health, Chapter 289. Radiation Control, Subchapter E. Registration Regulations, §289.230, and Subchapter F. License Regulations, §289.254 and §289.260.

This review is in accordance with the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200400506
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 27, 2004

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 consideration for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 60, Texas Commission of Licensing and Regulation. 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 30 days after publication in the *Texas Register*.

Proposed changes to these rules are published in the Proposed Rules section of this issue of the *Texas Register*. The proposed rules are 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.

Subchapter A. Authority and Responsibilities

§60.1. Authority.

§60.10. Definitions.

Subchapter B. Organization

§60.60. Responsibilities of the Commission--General Provisions.

§60.61. Responsibilities of the Commission--Meetings.

§60.62. General Powers and Duties of the Commission.

§60.63. Responsibilities of the Department and Executive Director.

§60.64. Duration of Advisory Committee/Boards/Councils.

§60.65. Petition for Adoption of Rules.

Subchapter C. Fees

§60.80. Program Fees.

§60.81. Charges for Providing Copies of Public Information.

§60.82. Dishonored Check Fee.

§60.83. Late Renewal Fees.

Subchapter D. Practice and Procedure

§60.100. Purpose and Scope.

§60.101. Filing, Computation of Time, and Notice.

§60.102. Agreements To Be in Writing.

§60.103. Hearings Examiner.

§60.104. Conduct and Decorum.

§60.105. Ex Parte Consultations.

§60.106. Parties.

§60.107. Representative Appearances.

§60.108. Form and Content of Pleadings.

§60.120. Motions.

§60.121. Service of Documents on Parties.

§60.122. Examination and Correction of Pleadings.

§60.123. Amended Pleadings.

§60.124. Prepared Testimony and Exhibits.

§60.150. Dismissal Without Hearing.

§60.151. Disposition by Agreement.

§60.152. Prehearing Conference.

§60.153. Postponement, Continuance, Withdrawal, or Dismissal.

§60.154. Consolidation.

§60.155. Discovery.

§60.156. Place and Nature of Hearings.

§60.157. Order of Procedure.

§60.158. Briefs.

§60.159. Participation by Telephone.

§60.160. Failure to Attend Hearing and Default.

§60.170. Reporters and Transcripts.

§60.171. The Record.

§60.172. Evidence.

§60.173. Offer of Proof.

§60.174. Formal Exceptions Not Required.

§60.190. Proposals for Decision.

§60.191. Filing of Exceptions and Replies.

§60.192. Final Orders, Motions for Rehearing, and Emergency Orders.

Subchapter E. Administration

§60.200. Assignment and Use of Agency Vehicles.

§60.201. Employee Training and Education.

TRD-200400502
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2004

Texas Motor Vehicle Board

Title 16, Part 6

The Texas Motor Vehicle Board (Board) will review and consider for readoption, revision or repeal Title 16, Texas Administrative Code, Part 6, Texas Motor Vehicle Board, Chapter 101, Practice and Procedure; Chapter 103, General Rules; Chapter 105, Advertising; Chapter 107, Warranty Performance Obligations; Chapter 109, Lessors and Lease Facilitators; and Chapter 111, General Distinguishing Numbers. The review is in accordance with Texas Government Code, §2001.039 regarding agency review of existing rules.

A preliminary assessment of these chapters indicates that the reasons for initially adopting the rules continue to exist. Proposed new §103.2 is pending and §107.6 has amendments pending (both to be published in the February 6, 2004, edition of the *Texas Register*), which will be considered at the Board's March 25, 2004 meeting, along with the rule review.

Comments on the review may be submitted in writing within to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas, 78768-2293, or faxed to (512) 416-4890. The deadline for furnishing comments is 5:00 p.m., March 8, 2004. For further information concerning this proposal, please call (512) 416-4899.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Board.

TRD-200400471
Brett Bray
Director
Texas Motor Vehicle Board
Filed: January 23, 2004

Adopted Rule Reviews

Texas Building and Procurement Commission

Title 1, Part 5

In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission readopts Chapter 114, Payment for Goods and Services, with amendments, as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10977).

Chapter 114 regulates the payment for goods and services, and sets forth the process for invoicing, making payments, compliance with the prompt pay process, and handling disputed payments and debt collection.

Amendments to Chapter 114, considered and adopted contemporaneously, are published elsewhere in this issue.

The Commission conducted a review and determined that the reasons for the rules in Chapter 114 continue to exist. The rules are needed to provide the public with information on procedures for payment for goods and services.

The public comment period closed January 5, 2004. No comments were received.

This concludes the review of Chapter 114, Payment for Goods and Services.

TRD-200400437

Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: January 21, 2004

In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) readopts Chapter 115, Facilities Leasing Program, Subchapter A, State Leased Property as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10977).

Chapter 115 regulates definitions, receipt and processing of requisitions for leased space, lease requests from non-private public sources, leasing from a private entity, lease amendments, transfer of leased property, potential lessors listing, delegation of leasing authority, use of private firms and report on noncompliance.

The Commission conducted a review and determined that the reasons for the rules in Chapter 115 continue to exist. The rules are needed to provide the public with information on procedures for payment of goods and services.

The public comment period closed January 5, 2004. No comments were received on the rule review; however, comments were received from Texas Department of Banking and Texas Department of Transportation on previously proposed amendments and will be addressed in a future edition of the *Texas Register*.

This concludes the review of Chapter 115, Subchapter A, §§115.1-115.12.

TRD-200400513
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: January 27, 2004

State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the *Texas Register* (28 TexReg 8387), September 26, 2003, the Texas State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part VII of the Texas Administrative Code, in accordance with Texas Government Code, Section 2001.039: Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these Chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapters 107, 127, and 131.

This concludes the review of 7 TAC Chapters 107, 127, and 131.

TRD-200400485
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: January 23, 2004

Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of intent to review published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10782), the Texas Water Development Board (the board) has reviewed and considered for readoption 31 TAC, Part 10, Chapter 364, Model Subdivision Rules, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. Comments on the proposed rule review were received from Scot Campbell from the Texas Land Developers Association.

Mr. Campbell submitted a letter stating that the Texas Land Developers Association is in opposition to some of the items in the new proposed Model Subdivision Rules. Mr. Campbell states that the proposed requirements for the water well use are not beneficial to either the developer or the lot buyer.

BOARD RESPONSE: The board believes that this comment is intended to address the changes to §§364.32(a)(2), 364.32(b), 364.52(1)(A), and 364.52(1)(B). These sections relate to the criteria that will be applied when the proposed residential subdivision intends to rely on groundwater for the drinking water supply. The amendments to these sections apply the requirements that the commission recommends for counties in other areas of the state in which there is concern about the groundwater availability. The board adopts these sections to be consistent with the commission requirements in order to establish a consistent standard for counties and municipalities that enforce groundwater availability certifications throughout the state.

Mr. Campbell comments that the rules do not properly interpret the requirement to bond or install on-site sewer facilities when plating a new subdivision. Mr. Campbell states that Local Government Code §232.032 only requires the lots in the subdivision be approved by an appropriate government authority as being adequately and legally served by septic systems. Mr. Campbell comments that therefore the Local Government Code provision does not require that septic tanks either be installed or a financial guarantee be provided to insure installation of septic tanks.

BOARD RESPONSE: The amendments proposed by the board do not amend the existing provisions that require that subdivider to either construct septic tanks or provide financial guarantees to insure the construction of septic tanks to obtain final plat approval. The board does not agree that the cited statutory provision is subject to the interpretation provided by Mr. Campbell or that these rules are subject to any limitations that may be created by the Local Government Code. The authority of the board to adopt these rules is derived from the Water Code, §16.343. The Water Code requires the board to develop rules that will insure the provision of adequate water and sewer service in order to prevent the creation of new residential subdivisions lacking these essential services. From the inception of these model subdivision rules in 1991 the board has sought to require that septic tanks either be installed or financial guarantees be provided to insure installation of septic tanks. The board concludes that these rules are required to fulfill the purposes and intent of the Water Code.

Mr. Campbell further comments that the statutes do not include a requirement that a subdivider pay for the costs of water meters, water rights, or membership fees as a part of the water service infrastructure.

BOARD RESPONSE: The current amendments proposed by the board do not affect the existing rule provisions that impose this requirement. The board recognizes that there is not an explicit statutory requirement to require that the payment of these fees be included in the costs of completing water infrastructure for new residential subdivisions. The board, however, adopted this provision in 2000 because it is necessary to have all the costs related to the water infrastructure paid in order to prevent residential areas from being occupied without access to these services. The board continues this provision in order to fulfill the purpose and intent of the Water Code.

Finally, Mr. Campbell also comments that the requirements for letters of credit or bonds in the County Subdivision Contract are not clear and leave room for misinterpretation and that it was not the legislature's intent to create a requirement that would be impossible to achieve.

BOARD RESPONSE: The compliance history with this provision does not indicate that it is either being misinterpreted or that compliance is impossible. Without greater specificity as to the provisions that remain unclear, the board does not believe that amendments related to the letters of credit are appropriate.

As a result of the review, the board determined that the rules are still necessary and readopts the sections to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met. As a result of the review, the board adopts amendments to §§364.2, 364.18, 364.32, 364.33, 364.34, 364.36, 364.52, 364.54, 364.55, and 364.91.

This completes the board's review of 31 TAC Chapter 364.

TRD-200400426
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: January 21, 2004

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

Texas Health and Safety Code and 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 the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the 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 the State of Texas v. Jose Jesus Sampogna, Individually and d/b/a Aldine Oaks Mobile Home Community and Humberto Sampogna, Individually and d/b/a Aldine Oaks Mobile Home Community, Cause No. 2003-09343, 157th Judicial District Court of Harris County, Texas

Nature of Defendant's Operations: Defendants Jose Jesus Sampogna, individually and d/b/a Aldine Oaks Mobile Home Community and Humberto Sampogna, individually and d/b/a Aldine Oaks Mobile Home Community (collectively "Sampognas"), operate a mobile home park in Houston, Texas that has no legal or effective way to treat sewage generated by its residents.

Proposed Agreed Judgment: The Agreed Final Judgment provides for civil penalties against the Sampognas in the amount of $33,000 with $5,500 of the civil penalties being permanently abated pursuant to the terms of the Agreed Final Judgment. The Judgment further provides for attorney's fees in the amount of $4,500. All amounts are to be split evenly between the State of Texas and Harris County. All court costs are to be paid by Defendants.

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 Lisa Sanders Richardson, 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-200400517
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: January 27, 2004

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 16, 2004, through January 22, 2004. The public comment period for these projects will close at 5:00 p.m. on February 27, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Neumin Production Company; Location: The project is located in E/2 ST 99 in San Antonio Bay, approximately 2.5 miles southwest of Seadrift, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Mosquito Point, Texas. Approximate UTM Coordinates: Zone 14; Easting: 721500; Northing: 3137000. Project Description: The applicant seeks a permit amendment to include an after-the-fact authorization to retain a production structure with attendant facilities necessary for oil and gas production for Well No. 3a. No fill material was placed to construct a pad for the drilling rig. Deep-water access is available from the GIWW to the site (-5.1 to -5.8 feet mean low tide); therefore, no dredging for channels is proposed. A 4-inch-outside-diameter pipeline to convey petroleum products from the platform to the applicant's existing Well No. 2 in ST 99 has been installed. The line is approximately 550 feet long and was buried 3 feet below the mudline. Preliminary surveys conducted in the project area for Well No. 3 determined that no seagrasses or oysters were present that would have been impacted by these activities. CCC Project No.: 04-0011-F1; Type of Application: U.S.A.C.E. permit application #22988(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Freeport LNG Development, L.P.; Location: The project is located on Quintana Island in Brazoria County, Texas, along the Freeport Harbor Channel (Channel) and the Gulf Intracoastal Waterway (GIWW). The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates: Zone 15; Easting: 275192; Northing: 3203304. Project Description: The applicant proposes to construct, operate, and maintain structures and equipment necessary for a liquefied natural gas (LNG) receiving and transportation facility. The Project is designed for the importation, storage, and delivery of foreign-source LNG to natural gas markets. The Project will be located near Freeport, Texas, and surrounding areas,

and much of it will be on property leased from the Brazos River Harbor Navigation District, Port of Freeport, on Quintana Island. Large LNG ships (generally greater than 1,000 feet in length) will off-load LNG at a new marine terminal to be constructed by expanding an existing dredged harbor on Quintana Island. The terminal will have the capability of unloading up to 200 ships per year.

LNG will be transported by vacuum-jacketed, cryogenic service pipe to cryogenic service storage tanks where it will be stored in a liquefied state at atmospheric pressure. To condition the LNG for the intrastate pipeline market, the LNG will be pressurized by pumps and vaporized in heat exchangers to pipeline quality natural gas. No additional compression will be required above the exchanger output pressures for gas transport. Natural gas will be sent out of the terminal facilities at a rate of up to 1.5 billion cubic feet per day (Bcf/d) via a 9.58-mile long, 36-inch diameter natural gas send out pipeline. The send out pipeline will transport the natural gas to the meter station located near Stratton Ridge approximately 9 miles northeast of Quintana Island.

The Project will consist of four (4) primary components:

Marine terminal and LNG transfer lines;

LNG storage and vaporization facility;

Natural gas send out pipeline, metering stations, and associated appurtenances; and

138 kV electric utility line.

The proposed 45.69-acre marine terminal site located on Quintana Island at the convergence of the GIWW and the Channel and will include a docking slip, maneuvering area, unloading dock, and two LNG transfer lines. These transfer lines will traverse a distance of 0.9 miles, carrying LNG from the marine terminal to the storage and vaporization facility site, which is the second component of the project. The storage and vaporization facilities will be constructed on a 140.39-acre plot that lies southwest of the marine terminal on Quintana Island, bordering the GIWW to the north. The third component is a 9.58-mile, 36-inch diameter send-out pipeline that transports vaporized natural gas from the storage and vaporization site to a 3.8-acre metering station near Stratton Ridge, Texas. The fourth component of the project involves the construction of a 3.9 mile 138 kV electric utility line required to service the LNG terminal that will cross the GIWW adjacent to and above the FM 1495 bridge. Construction of the marine terminal will involve an expansion of the existing 16.27-acre docking slip and maneuvering area to accommodate large LNG ships. The existing slip is currently eight to 12 feet deep and located at the GIWW-Channel convergence. This area will be expanded to 24.79 acres by dredging 8.52 acres of adjacent upland. The expanded slip will be 1,550 feet long and will range in width from 1,200 feet at the entrance to 450 feet at the end. However, most of the slip dredging will be in the slip area perpendicular to the Channel to increase its depth to -45 mean low tide (MLT). Construction of the docking slip will require the relocation of a portion of the existing storm protection levee (SPL) toward the south. Approximately 103,000 cubic yards (yds3) of earth will be relocated to recreate the SPL. The currently submerged maneuvering area, which is located to the north of the Channel and opposite from the slip, will also be dredged to a depth of -45 MLT to match the depth of the Channel.

Expansion of the docking slip and maneuvering area will generate approximately two million yds3 and approximately 200,000 yds3 of dredged material respectively. The top few feet (approximately 150,000 yds3) of the upland area within the slip expansion are expected to be mechanically excavated and transported to the storage and vaporization facility to be used as fill. The remaining areas will be hydraulically dredged using a pipeline dredge that will excavate and pump dredged material to one of the three existing Port controlled dredge material placement areas (DMPAs), for which dredged material deposition has been authorized by the U.S. Army Corps of Engineers (USACE). The dredged material will consist mostly of stiff virgin clays with some sands and silts.

The marine terminal will also include reinforced concrete breasting and mooring dolphins, which will be required to safely berth and moor the full range of ships potentially using the slip area. The LNG unloading dock will be a one-level reinforced concrete beam and slab structure approximately 92 feet wide by 114 feet long supported on piles. Six mooring dolphins and four breasting dolphins will be constructed. The dock will be curbed and its surface will be sloped to a collection point to confine LNG spillage. Construction of docking and unloading facilities will occur in a previously disturbed area.

To facilitate construction of the storage and vaporization units, a 200-foot-long sheet pile dock will be built at the northeast corner of the LNG storage and vaporization site for offloading of the large quantities of bulk materials. The proposed dock location is approximately 200-250 feet off of the GIWW. The area between the dock and the GIWW will be hydraulically dredged to minus 12 feet MLT with one foot of allowable over-depth. The approximately 185,000 yds3 of dredged material will be pumped to an existing DMPA operated by the Port and authorized by the USACE. The construction dock will be a permanent installation for use in any possible future expansion of the site facilities.

The natural gas pipeline will originate at the pig launcher within the storage and vaporization facility and traverse a distance of approximately 9.58 miles to its terminus at the gas meter station near Stratton Ridge, Texas. The Natural gas pipeline will be a 36-inch outside diameter, carbon steel pipe. An open-cut method of construction will be used for approximately 4.3 miles of the pipeline route. Three waterbody crossings and one marsh crossing will be accomplished using Horizontal Directional Drilling (HDD) methods to minimize impacts to these areas.

Construction of a 138 kV electric utility line will be required to service the LNG terminal with electric power. The electric line route originates at the intersection of SH 288 and FM 1495 at the Center Point Energy substation. The corridor follows FM 1495 south to CR 793. This portion of the route is collocated with existing utilities along the west side of FM 1495. The electric line will cross the GIWW adjacent to and above the existing bridge on FM 1495. Along CR 793, the power supply route will be collocated with existing utilities along the north side of CR 793 to the storage and vaporization site. The total route length will be approximately 3.90 miles.

IMPACTS TO JURISDICTIONAL WETLANDS AND WATERS: The project will impact approximately 89.68 acres of jurisdictional wetlands, which includes 47.88 acres of wetlands that will be permanently impacted and 41.80 acres of wetlands that will be temporarily impacted during construction activities. The breakdown of impacts to wetlands is as follows:

12.50 wetland acres will be dredged during construction of the marine terminal consisting of 6.51 acres of palustrine and 5.99 acres of estuarine wetlands. An additional 4.07 acres of estuarine wetlands will be temporarily impacted during construction activities of the marine terminal.

35.38 acres of palustrine wetlands will be filled during the development of the storage and vaporization site.

28.92 acres of wetland will be temporarily excavated and restored during construction of the 36-inch send-out pipeline.

8.81 acres of wetland will be temporarily impacted during placement of the electric line poles consisting of 2.75 acres of impact to estuarine

wetlands and 6.06 acres of impact to mud/salt flats adjacent to an existing DMPA.

Open cut method of pipeline construction will also temporarily impact two unnamed tributaries of Salt Bayou less than 10 feet in width and 1.8 miles of open water in the borrow ditch along the Velasco SPL along CR 690. Other pipeline impacts will be avoided by using HDD instead of open-cut construction for crossing 5,200 feet of marsh, the Freeport Harbor Channel, GIWW, and Oyster Creek.

A six-acre wetland at the proposed storage and vaporization facility will be recreated from an existing wetland area after construction is complete. This wetland will be located between Lamar Street and the new storm protection levee at the storage and vaporization site. Vaporization of LNG will generate condensed atmospheric water, the amount of which will vary greatly depending mainly on ambient air temperature, humidity, and LNG throughput. The volume of fresh water generated is approximately 1 million gallons per 24-hour period during peak summer output. The temperature of the water produced will be between 50 and 65 degrees Fahrenheit. The water will be discharged into the recreated wetland. At peak output, the average volume of discharge would add the equivalent of about one-quarter-inch depth to the wetland. Should all of the output for 1 day (1 million gallons) occur in a single hour, the water would add the equivalent of approximately 6 inches of depth.

The applicant maintains that temperatures of discharged waters are not expected to impact fishery and wildlife resources within the wetland. The wetland is designed to bring the water to ambient temperature as quickly as possible upon entering the wetland system. The wetland design includes a shallow pond located at the wetland discharge point. From the pond, the water would sheet out across a freshwater palustrine wetland. By maintaining a reduced water depth and sheeting it out thinly over a larger grassed area, it will gain thermal input from solar incidence, solar radiation, soils, and from ambient air and will reach near ambient temperatures rather quickly.

By design the wetland will maintain a hydric regime and utilize as much of the water internally as possible, thus reducing the discharge of water to the GIWW. Factors such as evaporation, absorption into the soils, and evapotranspiration through plant material will further reduce the amount of water that will make its way out of the system. During non-peak periods, water will be maintained in the ponded area and percolate into the surrounding wetland area, thus picking up heat from the soil.

WETLAND MITIGATION: A wetland mitigation plan has been developed to address the disturbance and/or loss of wetlands and habitat from construction and operation of the proposed facilities. To enhance shoreline habitat at the Project site, Freeport LNG proposes to establish stands of smooth cordgrass (*Spartina alterniflora*) in two locations for a total of 14.1 acres. The primary objective for the proposed mitigation sites is to stabilize shorelines and prevent erosion; however creation of marshlands in these areas also will create and improve habitat for fish and wildlife species.

The first of the proposed shoreline enhancement areas is located along the southern edge of the GIWW at the storage and vaporization site. This area is tidally influenced and shallow, maintaining only a few feet of depth until reaching the dredged portion of the GIWW. *S. alterniflora* has been used successfully throughout the Texas and Louisiana Gulf coast for both habitat enhancement and erosion control. The current shoreline at the project site has eroded considerably and substrate within the intertidal area is mostly unvegetated. Establishing a dense stand of *S. alterniflora* would greatly improve the functional value of this wetland area.

The second on-site mitigation area is located near the proposed marine terminal. The area consists of a sparsely vegetated, man-made, brackish pond. Construction of the berthing area would require this area to be opened to the GIWW and Channel, creating opportunity for establishing wetland vegetation within the pond, which currently supports little to no vegetation. In addition, shoreline areas outside of the actual docks and berthing areas will also be planted with *S. alterniflora.*

S. alterniflora will be planted using established transplant methods. Specific performance targets for area and density will be established based on consultations with the Corps of Engineers and as specified in the anticipated 404 permit.

A proposed off-site mitigation plan includes the preservation of an approximate 76.75-acre tract that includes approximately 57.57 acres of wetland and 19.18 acres of upland habitats on the southern end of Follets Island, adjacent to Drum Bay, in Brazoria County, Texas. Follets Island is a barrier island located across San Luis Pass, southwest of Galveston Island (at 29°03' N, 95°10' W). The site is located approximately 12 miles east of the impact area and within the same ecological region. The general goal for mitigation at the off-site mitigation area is to preserve and enhance wildlife habitat associated with Drum Bay and the coastal marsh habitats adjacent to the site.

PIPELINE MITIGATION: Freeport LNG will conduct pre-construction surveys of the proposed right-of-way in wetlands to determine pre-project contours, elevations, vegetation types and vegetative cover. This survey will also include aerial photography of the right-of-way and an area 150 feet wide on either side of the right-of-way with a GIS analysis overlay of the ground truthed surveys. The purpose of the additional aerial survey 150 feet outside of the right-of-way is to document existing conditions, in case impacts exceed the area identified as the work corridor.

After construction, the pipeline right-of-way, including all vehicle tracks inside and outside the identified work corridor, will be restored to pre-project contours and elevations. The impacted wetlands will also be replanted with appropriate native vegetation on 6-foot centers. A survey of the transplants will be conducted 60 days postplanting to determine percent survival. If 50 percent survival of the transplanted material is not achieved, then a second planting effort will be conducted.

Aerial photography and an elevation survey of the restored right-of-way will be conducted within one month upon completion of restoration activities. This information will be evaluated in a GIS analysis that compares pre-project conditions. Upon completion of the survey, a report detailing the restoration activities and the resulting contours and elevations will be submitted to NOAA Fisheries.

Aerial photography and post-construction elevation and vegetation surveys will also be conducted two years (end of second growing season) after pipeline installation to determine the success of the restoration activities. These surveys will be compared to the pre-project surveys in a GIS analysis to determine acreage of marsh restored and impacted. If the right-of-way is not restored to pre-project conditions, then either remedial actions or mitigation will be conducted. For areas that are not at suitable elevations, remedial measures to restore the wetlands elevations will be conducted. If practicable remedial measures are not available, then Freeport LNG will mitigate all wetland impacts off site at a 2:1 creation to impact ratio. NOTES: This public notice is being issued based on information furnished by the applicant. This information has not been verified.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is required. The Federal Energy Regulatory Commission (FERC) is the Federal agency responsible for authorizing applications to construct and operate LNG import facilities. As

such, the FERC is the lead Federal agency for the preparation of an EIS in compliance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40, Code of Federal Regulations (CFR) 1500-1508) and the FERC's regulations implementing NEPA (18 CFR 380). The USACE, U.S. Fish and Wildlife Service, and NOAA Fisheries are cooperating agencies for the EIS. A cooperating Federal agency has jurisdiction by law or special expertise with respect to environmental impacts involved with the proposal.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet website (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number (CP03-75). Be sure you have selected an appropriate date range. The Draft EIS was issued on November 7, 2003. For assistance with eLibrary, the eLibrary help line can be reached at 1-866-208-3676, TTY (202) 502-8659 or at FERCONLINESUPPORT@FERC.GOV. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

CCC Project No.: 04-0014-F1; Type of Application: U.S.A.C.E. permit application #23078 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200400545
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 28, 2004

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapters 403, 2305; Section 2305.037; and Chapter 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #167d) for development of a teacher education and workshop training program for the Renewable Energy Demonstration Program (REDP). Successful Respondent(s) will be asked to develop the teacher education and workshop training series for incorporation into the classroom setting (K-12) statewide. Successful Respondent(s) will be expected to begin performance of any contract(s) resulting from this RFP on or about April 2, 2004.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, February 6, 2004, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Texas Marketplace after Friday, February 6, 2004, 10:00 a.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Monday, February 23, 2004. Non-Mandatory Letters of Intent must be addressed to Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will be posted electronically on Friday, February 27, 2004, on the Texas Marketplace at: http://esbd.tbpc.state.tx.us. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Monday, March 8, 2004. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, February 6, 2004, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Monday, February 23, 2004, 2:00 p.m. CZT; Posting of Official Responses to Questions - Friday, February 27, 2004; Proposals Due - Monday, March 8, 2004, 2:00 p.m. CZT; Contract Execution - April 2, 2004, or as soon thereafter as practical; Commencement of Project Activities - April 2, 2004, or as soon thereafter as practical.

TRD-200400528
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 28, 2004

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Notice of Request for Qualifications

Pursuant to Senate Bill 1458, 77th Texas Legislature codified in Subchapter A, Chapter 111, §111.0045, Texas Tax Code, the Comptroller of Public Accounts (Comptroller) issues this Request for Qualifications (RFQ #167h) from qualified independent persons or firms to perform certain services. As a clarification, as used in this RFQ #167h and the Comptroller's rules codified at 34 TAC §3.3, the services under any contracts resulting from this RFQ mean tax compliance examination services; such services do not include any attestation services or rendition of an opinion of any nature by any such contractors.

The Comptroller issued this RFQ #167h by posting it on the Texas Marketplace on February 6, 2004, and, by publishing this RFQ #167h in this issue of the *Texas Register*. The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas

Government Code from persons or firms that are interested in contracting with the Comptroller to perform examinations that meet the requirements of §111.0045, Texas Tax Code, administrative rules adopted and procedures established by the Comptroller under that statute, and other applicable law. The Comptroller has adopted a rule governing contract examiners as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. No minimum amount of examinations or compensation is guaranteed to any selected contractor.

The Comptroller solicits Statements of Qualifications in response to this RFQ from existing contract examiners as well as qualified persons or firms not currently or previously under contract with the Comptroller. All respondents, including contract examiners selected under previous RFQs (#130c, 137d, 148b, and 157b), must meet all qualifications of this RFQ and attend Mandatory Orientation conducted by the Comptroller prior to receipt of any examination packages under any contract awarded under this RFQ.

By this contract examination program, the Comptroller intends to increase the number of examinations of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with §111.0045, Texas Tax Code the Comptroller's administrative rules and procedures and other applicable law.

The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

(i) a bachelor's degree from an accredited senior college or university with a minimum of 24 hours of accounting, including six hours of intermediate accounting and three hours of auditing; and

(ii) one year of experience in Texas tax auditing, accounting, or other Texas tax services.

For state fiscal year 2004, the Comptroller will select, in its sole discretion, those qualified contract examiners to perform examinations on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract examiners with a preliminary examination package containing the identity and requisite information for each taxpayer that will be examined under the contract. The contracts will provide for one or more awards of $22,500 firm fixed price payment to the examiner upon successful completion of the assigned examinations (final examination package) and the Comptroller's written acceptance of the examination report and other contract deliverables, including workpapers. Awards shall be based on the qualifications of the examiners proposed in the Statement of Qualifications submitted. Individual examiners submitting Statements of Qualification who have no other examiner employees shall be considered, in the Comptroller's sole discretion, for one $22,500 award and individual examiners with at least one employee examiner and firms in the form of any business entity that may lawfully perform examinations and which have two or more examiners may be considered, in the Comptroller's sole discretion, for multiple awards of $22,500. Barring unforeseen circumstances only one round of awards will be made at the beginning of the state fiscal year 2004 contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the said contract term. Payment will be made in accordance with the terms of the contract. Each $22,500 contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 480 person hours of work to complete at the rate of $46.88 per hour. Examiners will be paid for assigned work completed to date in $11,250 increments (except the last payment, if applicable) upon completion of a set number of the examinations assigned as determined by the Comptroller and, upon submission to and acceptance by Comptroller as provided in the contract

For state fiscal year 2005, the Comptroller will select, in its sole discretion, those qualified contract examiners to perform examinations on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract examiners with a preliminary examination package containing the identity and requisite information for each taxpayer that will be examined under the contract. The contracts will provide for one or more awards of $60,000 or $75,000 firm fixed price payment to the examiner upon successful completion of the assigned examinations (final examination package) and the Comptroller's written acceptance of the examination report and other contract deliverables, including workpapers. Awards shall be based on the qualifications of the examiners proposed in the Statement of Qualifications submitted. Individual examiners submitting Statements of Qualification who have no other examiner employees shall be considered, in the Comptroller's sole discretion, for one $60,000 or $75,000 award and individual examiners with at least one employee examiner and firms in the form of any business entity that may lawfully perform examinations and which have two or more examiners may be considered, in the Comptroller's sole discretion, for multiple awards of $60,000 or $75,000. Barring unforeseen circumstances only one round of awards will be made at the beginning of the one year contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the one year contract term. Payment will be made in accordance with the terms of the contract. Each $60,000 contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 1280 person hours of work to complete at the rate of $46.88 per hour and each $75,000 contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 1600 person hours of work to complete also at the rate of $46.88 per hour. Examiners will be paid for assigned work completed to date in $10,000 increments (except the last payment, if applicable) upon completion of a set number of the examinations assigned as determined by the Comptroller and, upon submission to and acceptance by Comptroller as provided in the contract.

In performing assigned examinations and for the contracted lump sum payments, selected contract examiners will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the examination report. Selected contract examiners will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

Under this RFQ, the maximum contract amount paid to any individual examiner without additional examiner employees, an individual examiner with additional examiner employees or a firm with multiple examiners will not exceed $150,000.00 each for either FY 2004 or FY 2005 or $300,000 combined total for both fiscal years.

Selected contract examiners must complete all work and submit all examination reports, workpapers and other deliverables no later than required under the terms of the proposed contract.

Selected contract examiners must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned examination.

Regarding prior employment with the Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ.

Section 2252.901, Texas Government Code reads as follows:

"(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

Pursuant to the above statute, an individual employed by the Comptroller during the last 12 months may be employed by another Contractor but shall not work on projects or perform examinations on taxpayers he or she examined while employed by the Comptroller. That is, the Comptroller interprets "projects" within §2252.901 to include specific examinations performed or worked on by the former employee. Additionally, it is the Comptroller's policy that if a former employee of the Comptroller of the type described above is employed by or associated with a business entity in which such employee holds any equity interest, then the firm may not contract with the Comptroller within the 12 month period. The 12 month period is determined by working back from the effective date of the proposed contract.

Section 572.054, Texas Government Code reads in pertinent part as follows:

"(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

This §572.054(b) prohibition against working on matters that the former employee participated in while employed by the Comptroller applies without limitation to any such past actions by the employee even if longer than 12 months, if the employee's compensation exceeded $33,000 annually while employed by the Comptroller at any time during that employee's employment with the Comptroller. Again, it is the Comptroller's policy interpretation that "matter" includes specific examinations of taxpayers.

Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no later than May 2004 for state fiscal year 2004 and September 2004 for state fiscal year 2005 both upon completion of orientation or other timelines established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple master contracts as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same master contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample contract. Any resulting contracts are non-exclusive and the Comptroller may issue additional solicitations for the contracted services at any time. The Comptroller is not obligated to assign any examinations to recipients of master contract awards.

Questions; Proposed Contract: Questions concerning this RFQ must be in writing and submitted via hand delivery or facsimile no later than February 13 2004, 2:00 p.m., Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 East 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 475-0973. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the Texas Marketplace notice as soon as possible after receipt; the Comptroller expects to post these official responses no later than February 20, 2004 or as soon thereafter as practicable. Respondents should note that the Official Response to Questions may contain information modifying the terms and conditions of the RFQ, revising or amending the RFQ and/or other documents attached to the RFQ. For these reasons, respondents should carefully review and consider the Official Response to Questions, amendments or modifications before submitting their Statements of Qualification. A copy of the sample master contract, the standard form vita described below, mandatory Execution of Statement of Qualifications Form, and Required Checklist for Statements of Qualification are all attached to this RFQ for reference and use by respondents.

Closing Date: An original with original ink signatures on each document within the Statement of Qualifications requiring signatures and ten copies of each Statement of Qualifications must be hand delivered to and received in the Office of the Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. (CZT), on March 8, 2004. Statements of Qualifications received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

Content: Statements of Qualifications must include all of the following information in order to be considered:

1. Checklist in format of Exhibit G to this RFQ.

2. Transmittal letter that

(a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax examinations; and

(b) outlines the respondent's understanding of §111.0045 Texas Tax Code other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these examinations on an as needed basis;

3. Physical address of firm's or individual's business offices and each local examination facility and primary contact person;

4. Vita for each individual who will be involved in the project. The Vita must be on the form contained on the addenda to the Texas Marketplace notice of issuance of this RFQ. This response to the RFQ must disclose all personnel who will perform professional services under the terms of the Master Agreement. Respondent understands only those persons disclosed by the Vita will be admitted to the required orientation classes. This provision will be strictly enforced." All information on the vita form must be fully filled out and complete in all respects. Evaluation of respondents will be based in part on the information on

this form and it is vitally important that the information be fully complete and accurate. Failure to submit a complete, separate, and signed Vita by each person who applies to perform examination services shall result in disqualification of the Statement of Qualifications.

5. A sample Examination Plan providing a list of the examination procedures and resources that will be utilized to conduct these examinations on an as needed basis if selected by the Comptroller. The Examination plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate examination procedures necessary for verification of correct amounts of tax. The sample Examination Plan must include all items contained in the General Audit Checklist section of the Comptroller's Auditing Fundamentals Manual, Chapter 3, and all items contained in the Audit Plan published in Chapter 4 of the Comptroller's Sales Tax Audit Policy/Procedures Manual. The sample examination plan should include all necessary procedures and instructions for completing those procedures in sufficient detail to allow any person who meets the one year experience requirement in 34 TAC §3.3 to properly perform a sales and use tax examination with minimal supervision. If portions of any Comptroller publication, manual, or other document are used to prepare the examination plan or incorporated into the plan, the most current version must be used. The Comptroller's audit manuals may be found at the following internet location:

http://www.window.state.tx.us/taxinfo/audit/audit.htm

6. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the examinations after assignment, including

(a) methods for deploying personnel and equipment to perform the examinations timely and otherwise in accordance with each contractual requirement;

(b) methods for making personnel available for orientation and examination;

(c) date availability for each of the personnel to perform assigned examinations;

(d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying the Comptroller prior to accepting or beginning an assignment; and

(e) an understanding of the Audit Flowchart Timelines contained in the appendix of the Comptroller's Audit Fundamentals Manual.

7. Disclosures of any partners, associates, employees or individual practitioner who have been employees of the Comptroller within the past twelve months prior to the date of submission of the Statement of Qualifications, and any individuals that hold an equity interest as provided in the above prohibition against employees that have been employed by the Comptroller within the past twelve months prior to the contracting date;

8. Statement of whether the respondent is a Historically Underutilized Business (HUB) and its efforts and willingness of the respondent to comply with the HUB requirements of Texas law and administrative rules and regulations;

9. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned examinations;

10. Confirmation of understanding of and willingness to adhere to all provisions of the sample contract, including, without limitation, the proposed fee arrangements, as posted on the Texas Marketplace; and

11. Completed and Signed Execution of Statement of Qualifications Form.

12. Signed Nondisclosure Agreement on the form set out on Exhibit E to this RFQ.

13. Signed letter or letters from a qualified insurance agent or agents containing quotations for ALL OF the required insurance coverages set out in Section VIII of the Master Agreement for Professional Services and stating that the coverages are available to the respondent upon selection, if any, of the contract examiner pursuant to this RFQ. In the alternative, respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of the Respondent's selection. Time is of the essence and no Agreements will be executed without the coverage required. A successful Respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by the Comptroller.

14. Signed Statement of representation that the respondent and all persons listed as examiners in its Statement of Qualifications are neither respondents under any other Statement of Qualifications responding to this RFQ, nor are employed by, contracted with, and do not own any equity or debt interest in any other respondent to this RFQ.

15. Compliance with any amendments, modifications, or other requirements and changes to the RFQ set out in the Official Response to Questions in connection with this RFQ and posted by Comptroller on the Texas Marketplace prior to the Closing Date for this RFQ.

The above 15 items shall be submitted in the respondent's Statement of Qualification as separate and independent numbered sections corresponding to the above items. Failure to properly label and fully respond to each of the 15 items above shall result in disqualification of the respondent.

Mandatory Orientation Session: Respondents must attend, at their sole cost and expense, mandatory orientation sessions to be conducted by the Comptroller in Austin during April 2004. Questions regarding this mandatory session should be submitted prior to the deadline for submission of other written questions on this RFQ. A contract examiner responding to this RFQ who has previously attended orientation offered by the Comptroller in connection with any of the four prior RFQs for contract examiners shall not be required to attend the above orientation session.

Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on qualifications, experience, Workplan and agreement to the sample contract and fees. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of the Comptroller and the State of Texas. Notice of contract awards will be published in the Texas Marketplace as soon as possible after all contracts, if any, resulting from this Statement of Qualifications, are fully executed. The Comptroller staff is unable to give out information regarding the status of contract awards before they are posted on the Texas Marketplace. The Texas Marketplace may be accessed online at: http://esbd.tbpc.state.tx.us/1380/sagency.cfm.

Protests. Protests regarding this RFQ or actions taken under it shall be governed by the Comptroller's rule located at 34 TAC §1.72, Protests of Agency Purchases.

Limitations: The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller reserves the further right to evaluate individual examiners employed by a firm or who are employees of a respondent and approve of contract examiners on an individual basis based on the evaluation criteria. The Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ. The Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as the Comptroller determines are necessary to ensure an adequate number of examiners for any assigned examination under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller reserves the right to award contracts on the basis of the need to achieve appropriate examination coverage in all geographical areas of the State of Texas and/or nationwide and to evaluate respondents in a manner that will best achieve this need.

Summary of Schedule: The anticipated schedule is as follows:

Issuance of RFQ, including sample contract, on Texas Marketplace--February 6, 2004, 2:00 p.m. CZT;

Questions--February 13, 2004, 2:00 p.m. CZT;

Posting of Official Responses to Questions--February 20, 2004, 5:00 p.m. CZT or as soon thereafter as practical;

Statements of Qualifications Due--March 8, 2004, 2:00 p.m. CZT;

Contract Execution--April 16, 2004, or as soon thereafter as practical;

Notice of Contract Awards posted on Texas Marketplace--April 20, 2004 or as soon thereafter as practical;

Mandatory Orientation--April 28, 2004; and

Beginning of Examinations--May 3, 2004 upon completion of Orientation, or as soon thereafter as practical.

TRD-200400531
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: January 28, 2004

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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, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/02/04 - 02/08/04 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/02/04 - 02/08/04 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 [3] for the period of 02/01/04 - 02/29/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 02/01/04 - 02/29/04 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200400512
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 27, 2004

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Texas Council for Developmental Disabilities

Request for Proposal

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to establish up to six projects to provide Local Advocacy Training in Texas. The new Local Advocacy Training projects will be awarded to increase opportunities for individuals with developmental disabilities and their families to participate effectively in public policy advocacy and/or leadership roles at the local, regional, and state levels. Each project will provide training and support to develop leadership and advocacy skills of people who have developmental disabilities, their families, and other advocates in local communities throughout Texas. Funds of up to $65,000 per project per year are available, for up to three years.

Additional information concerning this request for proposal or more information about TCDD may be obtained through TCDD's website at http://www.txddc.state.tx.us. All questions pertaining to this RFP should be directed to Joanna Cordry, email Joanna.Cordry@txddc.state.tx.us or phone (512) 437-5410 (voice), (512) 437-5431 (TDD).

The application packet may be obtained on TCDD's Website, by mail, fax or E-mail. Requests may be mailed to Barbara Booker, Grants Management Technician, Texas Council for Developmental Disabilities, 6201 E. Oltorf Street, Suite 600, Austin, Texas, 78741-7509; faxed to (512) 437-5434; or E-mailed to Barbara.Booker@txddc.state.tx.us.

Deadline: Two hard copies, one with the original signatures, should be submitted. All proposals must be received by TCDD not later than 4:00 PM, Central Standard Time, April 2, 2004, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to the attention of Barbara Booker at 6201 East Oltorf, Suite 600, Austin, Texas, 78741-7509. Faxed proposals cannot be accepted.

TCDD also requests that applicants send an electronic copy at the same time the hard copies are submitted. Electronic copies should be addressed to Barbara.Booker@txddc.state.tx.us.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct a series of Workshops around the state to help potential applicants understand the grant application process. For more information on the Grant Proposer's Workshops and the scheduled locations, see our website at http://www.txddc.state.tx.us.

TRD-200400549
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: January 28, 2004

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Employees Retirement System of Texas

Consultant Contract Award--Renewal

This award for consulting services is being filed pursuant to the provisions of the Texas Government Code Annotated §2254.030. The consultant will assist and advise Employees Retirement System of Texas (ERS) in matters concerning statutes, regulations, legislative documents and historical information relating to Texas public retirement issues. Services to be performed by contractor are necessary to the performance of the ERS Board of Trustees' fiduciary duties under the state constitution, as contemplated by Texas Government Code §2254.024(a)(6). The contractor is Craig Hudgins, Austin, Texas. The total cost for the contract is not to exceed $20,000.00, and the term of the contract ends on December 31, 2004.

TRD-200400541
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: January 28, 2004

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Texas Commission on Environmental Quality

Notice of Comment Period and Announcement of Public Meeting on Draft Standard Permit for Concrete Batch Plants with Enhanced Controls

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning a draft standard permit for concrete batch plants with enhanced controls proposed for issuance under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195 and §382.05198 and 30 Texas Administrative Code (TAC), Chapter 116, Subchapter F.

DRAFT PERMIT

The draft standard permit for concrete batch plants with enhanced controls is applicable to those facilities and associated equipment which produce concrete, and comply with enhanced pollution control requirements and public notice requirements as specified by this standard permit. General requirements concerning distance limits, registration requirements, and recordkeeping are also contained in the standard permit.

The New Source Review Program under 30 TAC Chapter 116 requires any person who plans to construct any new facility or to modify any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, satisfy the de minimis criteria of 30 TAC §116.119, or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction or modification of new or existing facilities which are similar in terms of operations, processes, and emissions.

A draft standard permit is subject to the procedural requirements of §116.603, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person who may be affected by the emission of air pollutants from facilities that may be registered under the standard permit is entitled to submit written or verbal comments regarding the proposed standard permit.

PUBLIC MEETING

A public meeting on the draft standard permit for concrete batch plants with enhanced controls will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff members will be available to discuss the draft standard permit for concrete batch plants with enhanced controls 30 minutes prior to the meeting and staff will also answer questions after the meeting. The public meeting will be held on March 8, 2004 at 1:30, at the Texas Commission on Environmental Quality in Building F, Room 2210, 12100 Park 35 Circle, Austin.

PUBLIC COMMENT AND INFORMATION

Copies of the draft standard permit for concrete batch plants with enhanced controls may be obtained from the TCEQ Web site at *http://www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/files/cbpec.pdf* or by contacting the Office of Permitting, Remediation, and Registration, Air Permits Division, Texas Commission on Environmental Quality, at (512) 239-1240. Comments may be mailed to Blake Stewart, Office of Permitting, Remediation, and Registration, Air Permits Division, Texas Commission on Environmental Quality, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the draft standard permit for concrete batch plants with enhanced controls. Comments must be received by 5:00 p.m. on March 8, 2004. To inquire about the submittal of comments or for further information, contact Blake Stewart at (512) 239-6931.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1240. Requests should be made as far in advance as possible.

TRD-200400521
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 28, 2004

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 8, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should

be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 8, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: C. J. Yun, Inc. dba Ace Mart; DOCKET NUMBER: 2003-0129-PST-E; TCEQ ID NUMBER: 0019982; LOCATION: 4750 Leopard Street, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $1,050; STAFF ATTORNEY: Snehal R. Patel, Litigation Division, MC R-12, (713) 422-8928; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412- 5503, (361) 825-3100.

(2) COMPANY: Grover Bruce; DOCKET NUMBER: 2002-1186-LII-E; TCEQ ID NUMBER: none; LOCATION: 3544 Bonnie Drive, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: landscape irrigation system business; RULES VIOLATED: 30 TAC §334.4(a) and TWC, §34.007(a), by failing to obtain an irrigator's license prior to completing installation of an irrigation system with connection to a water supply; PENALTY: $625; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Pyarali Hooda dba Howdy Doody #15; DOCKET NUMBER: 2002-0849-PST-E; TCEQ ID NUMBER: 16526; LOCATION: 1025 Dallas Drive, Denton, Denton County, Texas; TYPE OF FACILITY: retail gasoline station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to submit, upon request by the TCEQ, the appropriate forms documenting proof of financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.21, by failing to pay outstanding UST fees; PENALTY: $1,050; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Ruben's Vacuum and Hydrojetting Services, Inc.; DOCKET NUMBER: 2002- 1131-SLG-E; TCEQ ID NUMBER: 22386; LOCATION: Trosper Road, approximately 0.25 miles north of the intersection of Trosper Road and State Highway 107, Alton, Hidalgo County, Texas; TYPE OF FACILITY: sludge transportation service; RULES VIOLATED: 30 TAC §312.144(a) and (f), by failing to properly mark and identify all vacuum pump trucks, tanks, or containers used for the collection and/or over-the-road transportation of regulated waste, and failing to apply the authorization stickers on the motor vehicles, and failing to prominently mark all discharge valves and ports; 30 TAC §312.144(d), by failing to properly maintain the site gauges on containers used to transport liquid wastes in a manner which can be used to determine whether or not a vehicle is loaded and the approximate capacity; 30 TAC §312.145(a), by failing to include in the trip tickets the accurate date and place where the waste was deposited, identification of the facility where the waste was deposited, and name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received; 30 TAC §312.142(c) and (e)(2), by failing to maintain a copy of the registration authorization, as annotated by the executive director with an assigned registration number, at the designated place of business and in each vehicle operated under that registration, and by failing to submit a new registration application within 15 days of changes in operation or management methods; and 30 TAC §312.145(b)(4)(C), by failing to submit an annual summary of activities for the previous period showing the amounts and types of waste delivered to each facility; PENALTY: $15,510; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200400511
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2004

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

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 (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 8, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 8, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1)COMPANY: Eutemia Medina dba O.A. Gingrich; DOCKET NUMBER: 2002-0488-PST-E; TCEQ ID NUMBER: 46358; LOCATION: 121 North Vineyard, Sinton, San Patricio County, Texas; TYPE OF FACILITY: convenience store with four underground storage tanks (UST); RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the USTs; 30 TAC §334.50(b)(1)(A) and (2)(A) and TWC, §26.3475, by failing to monitor USTs for releases at a frequency of at least once per month and failing to monitor the piping connected to the UST system in a manner designed to detect releases from any portion of the UST piping system; 30 TAC §334.7(d)(3), by failing to amend, update, or change

the UST registration information in order to reflect current operational status within 30 days from the date on which the owner and/or operator became aware of the change; 30 TAC §334.49(a) and TWC, §26.3475, by failing to provide corrosion protection for the UST system; and 30 TAC §334.22(a), by failing to pay the required outstanding annual UST fees; PENALTY: $600; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825- 3100.

(2) COMPANY: Mohammed Adil Aquil dba Two Way Quick Stop; DOCKET NUMBER: 2002- 1154-PST-E; TCEQ ID NUMBER: 0060018; LOCATION: 8430 Fulton Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service any components that were not brought into timely compliance from the existing UST system; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at least once per month; 30 TAC §334.7(d)(3), by failing to amend UST registration information within 30 days from the date on which the owner or operator first became aware of the change or addition; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; and 30 TAC §334.22(a), by failing to pay outstanding UST registration and associated late fees; PENALTY: $600; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Ransom Industries, L.P. dba Tyler Pipe Company; DOCKET NUMBER: 2002- 0079-AIR-E; TCEQ ID NUMBERS: SK-0041-T, 01793, and 26516; LOCATION: U.S. Highway 69 North, four miles north of Loop 323, near Tyler, Smith County, Texas; TYPE OF FACILITY: gray iron foundry; RULES VIOLATED: 30 TAC §101.221(a), TCEQ New Source Permit Number 26516, Special Condition Number 6.D., and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that the duct work serving the air pollution control equipment was in good working order; 30 TAC §305.125(1), TCEQ Water Quality Permit Number 01793, Interim Effluent Limitations and Monitoring Requirements Number 1, and TWC, §26.121, by failing to comply with the whole effluent toxicity limit of 38% No observed effect concentration for grab samples collected; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to provide timely notification of seven upset events; 30 TAC §§101.20, 101.221(a), and 116.115(b)(2)(G), TCEQ New Source Permit Number 26516, Special Conditions Numbers 1 and 3, 40 CFR §60.732(a), and THSC, §382.085(b), by failing to comply with the hourly and annual emission limitations for the sand reclamation and core machines baghouse; THSC, §382.085(a), by failing to prevent unauthorized emissions during six upset events; and 30 TAC §101.201(a)(2)(G) and THSC, §382.085(b), by failing to report emissions associated with two upset events from the sand reclamation system by compound descriptive type; PENALTY: $112,250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200400510

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 27, 2004

Notice of Public Hearing--30 TAC Chapter 70, Enforcement

The Texas Commission on Environmental Quality will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 70, concerning Enforcement, new §§70.201 - 70.206, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bill 1265, 78th Legislature, 2003, and establish procedures for Texas peace officers to use when referring alleged environmental violations for criminal enforcement review.

A public hearing on this proposal will be held in Austin on March 11, 2004 at 2:00 p.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2003-061-070-AD. Comments must be received by 5:00 p.m., March 15, 2004. For further information, please contact Michael Bame, Policy and Regulations Division, (512) 239-5658.

TRD-200400538

Paul Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 28, 2004

Requests for Comments on the January 2004 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2004 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's

approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft January 2004 WQMP update may be found on the commission's Web site located at *http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 8, 2004. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at nvignali@tceq.state.tx.us.

TRD-200400466
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 23, 2004

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General Land Office

Notice of Approval of Coastal Boundary Survey - Aransas County

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by Jerald L. Brundrett Jr., Aransas County Surveyor, conducted on December 29, 2003, locating the following shoreline boundary:

Plat showing survey of the mean high water boundary seaward of Lots 8, 9, 10, 11,12 and 13, of the Sea Shell Shores Subdivision, C. O. D. Gilliland Survey, Abstract 70, Aransas County, Texas, according to the map recorded in Volume 4, Page 151, Map Records of Aransas County, Texas.

For a copy of this survey filed as Aransas County NCR Art. 33.139 Sketch 3, counter #80138, contact Archives & Records, Texas General Land Office at 512-463-5277.

TRD-200400544
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 28, 2004

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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 03-26, Amendment 661 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act, effective October 16, 2003. This amendment updates the reimbursement methodology for the pharmacy dispensing fee.

The proposed amendment is expected to result in savings in state matching funds of $3,101,391 in fiscal year 2004 and $4,477,426 in fiscal year 2005.

To obtain copies of the proposed amendment, interested parties may contact Winnie Rutledge, by mail at Health and Human Services Commission, 1100 West 49th Street, H-200, Austin, Texas 78756-3199 or by telephone (512) 338-6967.

TRD-200400495
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: January 26, 2004

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Public Notice Statement

The Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services TN 03-32, Amendment 667 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 West 49th Street, Austin, Texas 78756-3199 or by telephone (512) 491-1320.

TRD-200400494
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: January 26, 2004

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Public Notice Statement

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 04-03, Amendment Number 670, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. Amendment Number 670 provides for a supplemental payment for publicly owned hospital or hospital affiliated with a hospital district in Midland county for inpatient services. The supplemental payment shall not exceed the difference between total annual Medicaid payments and the federal upper payment limits established in 42 CFR 447.272. The purpose of the supplemental payment is to recognize the unique role of urban public safety-net hospitals play in the Texas healthcare delivery system for the Medicaid population. As a result, the State seeks to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

The proposed amendment is to be effective February 7, 2004. The proposed amendment is estimated to result in increased expenditures of approximately $541,188 for fiscal year 2004, and $603,866 for fiscal year 2005.

Copies of the proposed change in methodology will be available for public review at local offices of the Texas Department of Human Services.

Comments, questions or requests for additional information should be forwarded to Scott Reasonover, Texas Health and Human Services

Commission, 1100 West 49th Street, Austin, Texas 78756, (512) 491-1348.

TRD-200400536
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: January 28, 2004

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) #529-04-289 for consulting services to conduct a feasibility study and develop policy options to decrease the number of children placed in institutions and increase the options for community based treatment for children with serious emotional disorders.

The contractor selected as a result of this RFP will assist HHSC in achieving the following goals:

Conduct a feasibility study that produces three recommendations: 1) a 1915(c) waiver, 2) a demonstration project using federal or other funds, and 3) a state funds only approach; all of which would use integrated funding, coordinated services, and a comprehensive provider base;

Create a detailed financing, implementation and evaluation plan for each of three recommendations identified in the feasibility study; and

Develop a final report for public stakeholders that describes the feasibility study's findings, including summarizing the research, opportunities and potential barriers associated with each of the three recommended proposals.

The RFP will be posted with the Texas Marketplace: http://www.marketplace.state.tx.us on or about February 2, 2004. After February 2, 2004, the full content of the RFP will be available on the HHSC web site at: http://www.hhsc.state.tx.us/medicaid/rfp/52904289/rfp_home.html

The successful respondent will be expected to begin performance of the contract on or after March 26, 2004. Parties interested in submitting a proposal may contact Kim McPherson, Policy Analyst, Health and Human Services Commission, 11209 Metric Boulevard, Austin, Texas 78758, telephone number: (512) 491-1461, fax: (512) 491-1983, e-mail: 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 February 16, 2004. HHSC will post all written questions received with HHSC's responses on its web site on February 23, 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 March 2, 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--February 2, 2004

Vendor Questions Due--February 16, 2004

Vendor Proposals Due--March 2, 2004

Anticipated Contract Award--March 16, 2004

Anticipated Contract Start Date--March 26, 2004

TRD-200400537
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: January 28, 2004

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Single Family Mortgage Revenue Refunding Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 507 Sabine Street, Room 436, Austin, Texas, at 12:00 noon on March 8, 2004, with respect to an issue of tax-exempt single family mortgage revenue refunding bonds (the "Bonds") to be issued in an aggregate face amount of not more than $180,000,000.

The proceeds of the Bonds will be used to refund all or a portion of the Department's outstanding Single Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series A (AMT) and Single Family Mortgage Revenue Tax-Exempt Commercial Paper Notes, Series C (AMT), thereby making funds available to make single family residential mortgage loans. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income first-time home buyers for the purchase of homes located within the State of Texas, and are expected to be in an aggregate estimated amount of $180,000,000.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. The Department anticipates setting aside approximately 30% of the funds made available for borrowers of very low income (60% of area median income) for approximately one year. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years. Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Matt Pogor at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 9th Floor, Austin, Texas 78701; (512) 475-3987.

Persons who intend to appear at the hearing and express their views are invited to contact Matt Pogor in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Matt Pogor prior to the date scheduled for the hearing.

TDHCA WEB SITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Matt Pogor at (512) 475-3987 at least three days before the meeting so that appropriate arrangements can be made.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Bonds.

TRD-200400540
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 28, 2004

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by OWL INSURANCE COMPANY, a domestic Life, Accident and/or Health company. The home office is in Amarillo, Texas.

Application to change the name of ANTHEM ALLIANCE HEALTH INSURANCE COMPANY to ONENATION INSURANCE COMPANY, a foreign Life, Accident and/or Health company. The home office is in Indianapolis, Indiana.

Application to change the name of PODIATRY INSURANCE COMPANY OF AMERICA (RISK RETENTION GROUP), A MUTUAL COMPANY to PODIATRY INSURANCE COMPANY OF AMERICA, A MUTUAL COMPANY, a foreign Fire and or Casualty company. The home office is in Springfield, Illinois.

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-200400522
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 28, 2004

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Nationwide Mutual Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting various flex percentages benchmark (1.00) to +2.41 by coverage, class, and territory. The overall rate change is -0.70%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 25, 2004.

TRD-200400523
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 28, 2004

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Nationwide Mutual Fire Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages 0.97 to +2.17 by coverage, class, and territory. The overall rate change is -0.68%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 25, 2004.

TRD-200400524
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 28, 2004

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Nationwide Property and Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages benchmark (1.00) to +2.41 by coverage, class, and territory. The overall rate change is +0.63%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 25, 2004.

TRD-200400525
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 28, 2004

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Nationwide General Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages benchmark (1.00) to +2.34 by coverage, class, and territory. The overall rate change is +0.95%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 25, 2004.

TRD-200400526
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 28, 2004

Texas Lottery Commission

Instant Game Number 397 "LUCKY LIZARD"

1.0 Name and Style of Game.

A. The name of Instant Game No. 397 is "LUCKY LIZARD". The play style is "match three with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 397 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 397.

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 - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $3.00, $5.00, $10.00, $15.00, $30.00, $100, $300, $1,000, $3,000, and LIZARD SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and 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. 397 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$30.00	THIRTY
$100	ONE HUND
$300	THR HUND
$1,000	ONE THOU
$3,000	THR THOU
LIZARD SYMBOL	TRIPLE

E. Retailer Validation Code - Three (3) 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. 397 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00

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 boxed four (4) digit Security Number 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, $3.00, $5.00, $10.00, or $15.00.

H. Mid-Tier Prize - A prize of $30.00, $100, or $300.

I. High-Tier Prize- A prize of $1,000 or $3,000.

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 (397), 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: 397-0000001-000.

L. Pack - A pack of "LUCKY LIZARD" Instant Game tickets contain 250 tickets, 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 will be on the next page, etc., and tickets 245 to 249 will be on the last page. Tickets 000 will be folded over to expose the front of the ticket in the pack.

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 "LUCKY LIZARD" Instant Game No. 397 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 "LUCKY LIZARD" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) Play Symbols. If the player gets three (3) identical dollar amount Play Symbols, the player will win the prize indicated. If the player gets two (2) identical dollar amount Play Symbols and a LIZARD SYMBOL, the player will win triple 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 nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each Play Symbol must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each Play Symbol must be present in its entirety and be fully legible;

4. Each Play Symbol 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 nine (9) 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 Play Symbol must match exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each Play Symbol 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 four (4) or more like Play Symbols on a ticket.

C. No more than two (2) pairs of like Play Symbols on a ticket.

D. The tripler symbol (LIZARD SYMBOL) will appear according to the prize structure and will only appear once on a ticket.

E. When the tripler symbol (LIZARD SYMBOL) appears on a winning ticket, there will be no more than two like Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY LIZARD" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $15.00, $30.00, $100, or $300, 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 $30.00, $100 or $300 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 "LUCKY LIZARD" Instant Game prize of $1,000 or $3,000, 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 "LUCKY LIZARD" 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.E 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 "LUCKY LIZARD" 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 or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. 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 ticket 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 15,120,000 tickets in the Instant Game No. 397. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 397 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,391,040	10.87
$2	786,240	19.23
$3	725,760	20.83
$5	120,960	125.00
$10	30,240	500.00
$15	60,480	250.00
$30	35,280	428.57
$100	4,536	3,333.33
$300	1,512	10,000.00
$1,000	40	378,000.00
$3,000	35	432,000.00

*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 4.79. 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. 397 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. 397, 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-200400484
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 23, 2004

Instant Game Number 439 "Dominoes"

1.0. Name and Style of Game.

A. The name of Instant Game Number 439 is "DOMINOES." The play style is "key symbol match with a prize legend."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 439 shall be $5.00 per ticket.

1.2. Definitions in Instant Game Number 439.

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--The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: BB, 1B, B2, 3B, B4, 5B, B6, 11, 21, 13, 41, 15, 61, 22, 23, 42, 25, 62, 33, 34, 53, 36, 44, 54, 46, 55, 65, and 66.

D. Play Symbol Caption--the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and 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. 439 - 1.2D

PLAY SYMBOL	CAPTION
TOP BLANK BOTTOM BLANK	BB
TOP 1 BOTTOM BLANK	1B
TOP BLANK BOTTOM 2	B2
TOP 3 BOTTOM BLANK	3B
TOP BLANK BOTTOM 4	B4
TOP 5 BOTTOM BLANK	5B
TOP BLANK BOTTOM 6	B6
TOP 1 BOTTOM 1	11
TOP 2 BOTTOM 1	21
TOP 1 BOTTOM 3	13
TOP 4 BOTTOM 1	41
TOP 1 BOTTOM 5	15
TOP 6 BOTTOM 1	61
TOP 2 BOTTOM 2	22
TOP 2 BOTTOM 3	23
TOP 4 BOTTOM 2	42
TOP 2 BOTTOM 5	25
TOP 6 BOTTOM 2	62
TOP 3 BOTTOM 3	33
TOP 3 BOTTOM 4	34
TOP 5 BOTTOM 3	53
TOP 3 BOTTOM 6	36
TOP 4 BOTTOM 4	44
TOP 5 BOTTOM 4	54
TOP 4 BOTTOM 6	46
TOP 5 BOTTOM 5	55
TOP 6 BOTTOM 5	65
TOP 6 BOTTOM 6	66

E. Retailer Validation Code--Three 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. 439 - 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. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 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 boxed four digit security number placed randomly within the Serial Number. The remaining nine 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 $30.00, $50.00, $75.00, or $100.

I. High-Tier Prize--A prize of $1,000, $5,000, or $75,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (439), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 439-0000001-000.

L. Pack--A pack of "DOMINOES" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one. Ticket 000 will be shown on the front of the pack; the back of ticket 074 will be revealed on the back of the pack. Every other book will reverse, i.e., the back of ticket 000 will be shown on the front of the pack and the front of ticket 074 will be shown on the back of the pack.

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 "DOMINOES" Instant Game Number 439 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 "DOMINOES" Instant Game is determined once the latex on the ticket is scratched off to expose 41 play symbols. The player must scratch off the dominoes in the YOUR DOMINOES play area to reveal 14 play symbol dominoes. The player must then scratch only the dominoes in each of the horizontal lines of the DOMINOES GRID that match the domino play symbols in the YOUR DOMINOES play area. If the player matches all of the dominoes in the same horizontal line in the DOMINOES GRID with the dominoes uncovered in the YOUR DOMINOES play area, 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. Forty-one possible 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 41 possible 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 Play Symbol must match exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each Play Symbol 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 within a book will not have identical patterns.

B. Player can win up to three times.

C. The YOUR DOMINOES Play Area will consist of fourteen DOMINO positions.

D. The DOMINOES GRID Play Area will consist of 27 DOMINO positions.

E. The YOUR DOMINOES and DOMINOES (used in the DOMINOES GRID Play Area) will consist of:

Figure 3: GAME NO. 439 - 2.2E

DOMINO VALUES	
Appears on Top	Appears on Bottom
BLANK	BLANK
ONE	BLANK
BLANK	TWO
THREE	BLANK
BLANK	FOUR
FIVE	BLANK
BLANK	SIX
ONE	ONE
TWO	ONE
ONE	THREE
FOUR	ONE
ONE	FIVE
SIX	ONE
TWO	TWO
TWO	THREE
FOUR	TWO
TWO	FIVE
SIX	TWO
THREE	THREE
THREE	FOUR
FIVE	THREE
THREE	SIX
FOUR	FOUR
FIVE	FOUR
FOUR	SIX
FIVE	FIVE
SIX	FIVE
SIX	SIX

F. A DOMINO cannot appear more than one time in the YOUR DOMINOES Play Area.

G. The DOMINOES GRID Play Area will contain the following (as it appears from top to bottom on ticket): 6 Domino Tiles = $75,000; 5 Domino Tiles = $5,000; 4 Domino Tiles = $1,000; 4 Domino Tiles = $100; 3 Domino Tiles = $50; 2 Domino Tiles = $20; 2 Domino Tiles = $10; 1 Domino Tile = $5.

H. The DOMINOES GRID Play Area (SCENES 1 - 12) will appear as in the Game #439 DOMINOES working papers (both the imaged symbol, caption and the corresponding overprint symbol). Note: Each scene contains one triple set of tiles across three different prize rows, three double sets of tiles across two different prize rows and 18 single occurrences for the remaining tiles.

I. Between 12 - 14 YOUR DOMINOES will open a minimum of one square in the DOMINOES GRID Play Area.

J. On all scenes, with respect to the DOMINOES which appear two or three times in the DOMINOES GRID Play Area, at least one of those DOMINOES will match YOUR DOMINOES to be revealed.

K. Each DOMINOES LINE within the DOMINOES GRID Play Area (with three or more DOMINOES) will have at least one DOMINO revealed (i.e. matched).

L. The 14 YOUR DOMINOES will open between 14 - 20 dominoes of the 27 DOMINOES in the DOMINOES GRID Play Area.

2.3. Procedure for Claiming Prizes.

A. To claim a "DOMINOES" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $75.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer

may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "DOMINOES" Instant Game prize of $1,000, $5,000, or $75,000, 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 "DOMINOES" 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 "DOMINOES" 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 or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. 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. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket 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, 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, 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. 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 3,960,000 tickets in the Instant Game Number 439. The approximate number and value of prizes in the game are as follows:

Figure 4: GAME NO. 439 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	580,800	6.82
$10.00	316,800	12.50
$15.00	211,200	18.75
$20.00	52,800	75.00
$30.00	1,650	2,400.00
$50.00	52,800	75.00
$75.00	660	6,000.00
$100	495	8,000.00
$1,000	40	99,000.00
$5,000	8	495,000.00
$75,000	4	990,000.00

*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 3.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 439 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 Number 439, 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-200400438
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 22, 2004

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Texas Department of Mental Health and Mental Retardation

Pre-application Orientation (PAO) for Enrollment of Medicaid Waiver Program Providers

The Texas Department of Mental Health and Mental Retardation (TDMHMR), pursuant to Texas Administrative Code, Title 25 §419.704, will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-Based Services (HCS) Program.

The PAO will be held from 8:30 a.m. to 4:30 p.m., Thursday, May 6, 2004, at the J. J. Pickle Center, 10100 Burnet Rd., Austin, Texas. Persons wanting to attend the PAO must request a registration form by letter or by fax. Requests should be addressed to Bill Fordyce, Enrollment/Sanctions Manager, Medicaid Administration, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668. The fax number is (512) 206-5725.

Upon receipt of an applicant's written request, TDMHMR will provide the applicant with information regarding the provider application and enrollment processes and a registration form for the PAO. To attend the PAO, an applicant must submit, on time, a completed registration form to TDMHMR. A completed registration form will be considered submitted on time only under the following conditions:

(1) if mailed via the US Postal Service, the completed registration form bears a postmark date no later than April 6, 2004;

(2) if sent via a common or contract carrier, a receipt by the carrier shows that it was placed in the hands of the carrier no later than April 6, 2004; or

(3) if hand delivered, it is delivered directly to the Office of Medicaid Administration, TDMHMR, 909 W. 45th Street, Building 4, Austin, TX, no later than April 6, 2004.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Helen Rayner by calling (512) 206-5249 or the TTY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the PAO. You may also contact Helen Rayner for additional information concerning the PAO.

TRD-200400478
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: January 23, 2004

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Public Utility Commission of Texas

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

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 9, 2004, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 29144.

The Application: The company is requesting ETC designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. Dobson Cellular Systems, Inc. seeks ETC designation in the study areas served by Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., Ganado Telephone Company, Inc., and Industry Telephone Company.

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 February 26, 2004. 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 29144.

TRD-200400519
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2004

Notice of Application for Interim Update of Wholesale Transmission Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 9, 2004, for approval of interim update of wholesale transmission rates pursuant to P.U.C. Substantive Rule 25.192(g)(1).

Docket Title and Number: Application of Brazos Electric Power Cooperative, Incorporated for Interim Update of Wholesale Transmission Rates Pursuant to P.U.C. Substantive Rule 25.192(g)(1). Docket Number 29143.

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 February 13, 2004. 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 29143.

TRD-200400444
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2004

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 January 20, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Local Telecom Systems, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 29192 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance service.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 11, 2004. 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 29192.

TRD-200400449
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2004

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 January 22, 2004, 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 TXU Communications Transport Company for a Service Provider Certificate of Operating Authority, Docket Number 29214 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 11, 2004. 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 29214.

TRD-200400518
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2004

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 20, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, incorporated's request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, incorporated for Waiver of NANPA Denial for the Glendale rate center. Docket Number 29187.

The Application: ionex telecommunications, incorporated requested the Commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Glendale rate center.

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 February 20, 2004. 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 29187.

TRD-200400445
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2004

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 20, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, incorporated's request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, incorporated for Waiver of NANPA Denial for the Forney rate center. Docket Number 29188.

The Application: ionex telecommunications, incorporated requested the Commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Forney rate center.

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 February 20, 2004. 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 29188.

TRD-200400447
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2004

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 20, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, incorporated's request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, incorporated for Waiver of NANPA Denial for the Ennis rate center. Docket Number 29190.

The Application: ionex telecommunications, incorporated requested the Commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Ennis rate center.

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 February 20, 2004. 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 29190.

TRD-200400448
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2004

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 21, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, incorporated's request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, incorporated for Waiver of NANPA Denial for the Mansfield rate center. Docket Number 29203.

The Application: ionex telecommunications, incorporated requested the commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Mansfield rate center.

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 February 23, 2004. 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 29203.

TRD-200400467
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2004

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 21, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, incorporated's request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, incorporated for Waiver of NANPA Denial for the Red Oak rate center. Docket Number 29204.

The Application: ionex telecommunications, incorporated requested the commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Red Oak rate center.

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 February 23, 2004. 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 29204.

TRD-200400468
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2004

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 21, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, incorporated's request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, incorporated for Waiver of NANPA Denial for the Waxahachie rate center. Docket Number 29205.

The Application: ionex telecommunications, incorporated requested the commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Waxahachie rate center.

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 February 23, 2004. 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 29205.

TRD-200400469
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2004

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 21, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of ionex telecommunications, inc.'s request for a thousands block to offer local two way calling.

Docket Title and Number: Application of ionex telecommunications, inc. for Waiver of NANPA Denial for the Taylor rate center. Docket Number 29207.

The Application: ionex telecommunications, inc. requested the commission to waive the NANPA or Neustar denial of its request for a thousands block to offer local two way calling service in the Taylor rate center.

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 February 23, 2004. 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 29207.

TRD-200400504
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2004

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Notice of Application to Transfer Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 18, 2003, for approval to transfer retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of First Choice Power, Inc. to Transfer its Retail Electric Provider (REP) Certification to First Choice Power Special Purpose Entity and for Other Relief, Docket Number 29081 before the Public Utility Commission of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 13, 2004. 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 29081.

TRD-200400505
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 26, 2004

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Public Notice of Interconnection Agreement

On January 20, 2004, Valor Telecommunications of Texas, LP, doing business as Valor Telecom, and Rosebud Cotton Company, doing business as Rosebud Telephone, LLC, 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 29184. 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 29184. 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 February 20, 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 29184.

TRD-200400432
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2004

Public Notice of Interconnection Agreement

On January 20, 2004, Valor Telecommunications of Texas, LP, doing business as Valor Telecom, and CenturyTel Fiber Company II, LLC, doing business as Lightcore, 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 29185. 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 29185. 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 February 20, 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 29185.

TRD-200400433
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2004

Public Notice of Interconnection Agreement

On January 20, 2004, Sprint Communications Company, LP, and Sugar Land Telephone Company, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement and 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 29193. 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 29193. 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 February 20, 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 29193.

TRD-200400434
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2004

Public Notice of Interconnection Agreement

On January 20, 2004, United Telephone Company of Texas, Incorporated, doing business as Sprint, Central Telephone Company of Texas, doing business as Sprint, and Cat Communications International, 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 29194. 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 29194. 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 February 20, 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 29194.

TRD-200400435
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2004

Public Notice of Interconnection Agreement

On January 20, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Allegiance Telecom of Texas, 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 29195. 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 29195. 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 February 20, 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 29195.

TRD-200400436
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2004

Public Notice of Workshop on Rulemaking to Amend Substantive Rules §26.32 (Protection Against Unauthorized Charges) and §26.130 (Selection of Telecommunications Utilities)

The staff of the Public Utility Commission of Texas (commission) will hold a workshop on Tuesday, February 17, 2004, at 1:30 p.m. at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, regarding proposed amendments to PUC Substantive Rule §26.130, relating to Selection of Telecommunications Utilities, also known as "Slamming." The proposed amendments were approved for publication at the October 23, 2003 Open Meeting. Project Number 28324, *Rulemaking to Amend Substantive Rules §26.32 (Protection Against Unauthorized Charges) and §26.130 (Selection of Telecommunications Utilities)*, has been established for this proceeding.

Questions concerning the workshop or this notice should be referred to Jaime Slaughter, Enforcement Attorney, Legal and Enforcement Division, (512) 936-7345. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200400542
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 28, 2004

Office of Rural Community Affairs

Feasibility Study Grant - FY 2004

The Office of Rural Community Affairs (Office) announces the availability of the Feasibility Study Grant to assist small rural hospital determine the financial and non-financial impact of the Critical Access Hospital (CAH) designation.

PROGRAM PURPOSE

The purpose of the Feasibility Study Grant Program is to assist small rural hospitals in Texas assess the impact and benefit of converting to a Critical Access Hospital. The Office provides funding assistance to support studies that evaluate the financial and non-financial impact of the CAH designation, including identifying opportunities and strategies for improving financial performance and growth, increasing operational efficiency and productivity, enhancing systems and processes to improve quality of care, and positioning programs and services to meet current and future community needs.

AWARD AMOUNT

Funds for the Feasibility Study Grant are made available through the Rural Medicare Hospital Flexibility (Flex) Program. The Office has made available $100,000 for the Feasibility Study Grant Program. Awards will be given in amounts not exceeding $5,000 per grant to pay for the cost of conducting the feasibility study; however, the Office will only reimburse grantees for the actual cost of the study up to $5,000.

USE OF FUNDS

Funds may only be used to pay for the cost of the feasibility study. The Office will reimburse the grantee for the actual cost of the study up to $5,000. Funds cannot be used to pay for costs incurred for work performed by the Board or staff of the hospital/facility. The Office will not reimburse for any cost incurred by the applicant prior to the date of the executed contract, which is the date that the contract is signed by the Executive Director of the Office or his designee.

ELIGIBILITY REQUIREMENTS

All hospitals located in a non-metropolitan (rural or frontier) county (see Rural-Metro County Designation map at www.orca.state.tx.us/maps/index.htm) as defined by the federal Office of Management and Budget (OMB) are eligible to apply for the Feasibility Study Grant. Preference will be given to hospitals located in a frontier area and those with 50 or fewer beds. Facilities that have been awarded the Feasibility Study Grant in the past and those that have submitted an application requesting the CAH designation are not eligible for funding consideration.

APPLICATION DEADLINE

Applications must be received by the Office of Rural Community Affairs by 2/27/04 to be considered for funding. Applications submitted electronically or by facsimile transmission will not be accepted.

If funds are left over after awards have been made, the Office will accept additional applications for a second round of funding considerations until all funds apportioned for this program are spent. The application availability will be announced on 3/10/04. The application deadline for the second round of funding consideration is 4/12/04.

PROGRAM CONTACT

The program guide and application for Feasibility Study Grant is available at: www.orca.state.tx.us. Address questions and submit the completed, signed application to:

Quang Ngo

CAH/Flex Program Coordinator

Office of Rural Community Affairs

1700 N. Congress, Suite 220

Phone: (512) 936-6729

Email: qngo@orca.state.tx.us

TRD-200400514
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: January 27, 2004

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Texas Department of Transportation

Notice of Intent - Environmental Impact Statement (TTC-35)

Pursuant to 43 TAC §2.43(e)(3), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that a Tier One Environmental Impact Statement (EIS) will be prepared for a proposed multimodal transportation facility to extend south from the Texas-Oklahoma state line, north of the Dallas/Fort Worth metropolitan area, through central Texas, to the Texas-Mexico international border and/or the Texas Gulf Coast. The proposed facility (TTC-35) is a priority segment of the statewide Trans-Texas Corridor system, as conceptually outlined in the June 2002 plan adopted by the Texas Transportation Commission entitled "Crossroads of the Americas: Trans Texas Corridor Plan."

Using a tiered approach, TxDOT, in cooperation with the Federal Highway Administration (FHWA), will prepare a Tier One EIS for the selection of a corridor for the proposed construction of the TTC-35 multimodal transportation facility. As currently envisioned, the proposed TTC-35 facility would include highway lanes for passenger vehicles; separate lanes for trucks; and rail lines (one in each direction serving freight, commuter and high speed passenger traffic). Interchanges or grade separations would be constructed at thoroughfares and direct connector ramps would be provided at selected facilities. The width of the typical section for the proposed facility would be approximately 1,000 to 1,200 feet, including a 200-foot wide utility zone that could ultimately accommodate lines for water, petroleum, natural gas, electricity, data, and other commodities. The overall length of the proposed corridor is approximately 800 miles but the actual length is dependent upon the corridor selected during the Tier One EIS and subsequent route location studies for specific facilities that will occur during Tier Two. For much of its length, it is anticipated that the proposed TTC-35 facility would generally parallel existing Interstate Highway 35. However, to maximize flexibility in determining a southern terminus at the Texas-Mexico international border and/or the Texas Gulf Coast, much of south Texas and the Rio Grande Valley will be analyzed in the Tier One EIS.

TxDOT anticipates utilizing a combination of traditional and innovative financing options to fund construction of the proposed project. These options include state and federal transportation funds, public/private partnerships, and tolling.

The Tier One EIS will focus on broad issues such as general location and area wide air quality and land use implications of the major alternatives. Alternatives to be considered in the Tier One EIS will include corridor location alternatives and the no-action alternative. Anticipated decisions to be made during the Tier One study include identification of a preferred corridor location alternative; refinement of modal concepts; identification of preliminary segments of independent utility; and identification of areas that may warrant corridor preservation. The Tier One EIS and subsequent record of decision, once issued, will not authorize construction of any portion of the proposed TTC-35 facility.

Documents prepared during Tier Two will retain the no-action alternative for consideration and comparison with the reasonable build alternatives, further refine the selected corridor, address site specific details on specific facility project impacts and cost and mitigation measures, and would rely upon and utilize the environmental analysis in the Tier One EIS. Tier Two documents could be in the form of Environmental Assessments, categorical Exclusions, or EISs depending on the type, scope, and complexity of the proposed second tier specific facility projects.

As a priority segment of the Trans-Texas Corridor system, the proposed project is considered necessary to enhance the Texas transportation system by facilitating management of congestion in urbanized areas, improving safety of hazardous materials transport, and creating economic development opportunities.

Public scoping meetings will be held for the proposed project; however, dates for the meetings have not yet been determined. Notices of the public scoping meetings will be published in newspapers of general circulation in the project area at least 30 days prior to the meetings, and again 10 days prior to the meetings. In addition to the public scoping meetings, letters describing the proposed action and soliciting comments to be considered during the scoping process will be sent to appropriate federal, state and local agencies, and to private organizations, individuals and stakeholders who have previously expressed or are known to have an interest in this proposal. Public meetings and public hearings will be held during appropriate phases of the project development process. Public notices will be given of the date, time, and location of each.

A second priority segment of the Trans-Texas Corridor system, the proposed extension of I-69 in Texas, is also under development and a Tier One EIS will be prepared for that facility. A separate Notice of Intent for that EIS was published in the January 23, 2004 issue of the *Texas Register*. Although the I-69 facility and TTC-35 are separate and distinct actions, with each having logical termini and independent utility,

each of the proposed facilities shares the need to terminate along the Texas-Mexico International Border or Texas Gulf Coast, resulting in overlap of study areas. In the overlapping areas, care will be taken to closely coordinate the development of the two facilities in order to minimize duplication of effort and inconvenience to the public, resource agencies, and other stakeholders. Both projects will be considered in the cumulative impacts analysis for each of the facilities.

To ensure that the full range of issues related to this proposed action is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Tier One EIS should be directed to Doug Booher, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701. Mr. Booher can be reached by telephone at (512) 936-0980.

TRD-200400529
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 28, 2004

Public Notice--Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 1-800-68-PILOT.

TRD-200400463
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 22, 2004

Public Notice of DEIS

Pursuant to Title 43, Texas Administrative Code, §2.43(e)(4)(B), the Texas Department of Transportation is advising the public of the availability of the Draft Environmental Impact Statement (DEIS) for the proposed construction of Segment F-2 of State Highway 99 (the Grand Parkway) northwest of Houston in Harris County, Texas. Comments regarding the DEIS should be submitted to Ms. Robin Sterry at the Grand Parkway Association located at 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or Mr. Pat Henry, P.E., at the Texas Department of Transportation's Houston District Office located at 7721 Washington Avenue, Houston, Texas prior to 5:00 p.m. on Friday, May 7, 2004. The Texas Department of Transportation's mailing address is P.O. Box 1386, Houston, Texas 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment F-2 at the corridor level (four corridors), transportation mode level (No Build, Transportation System Management Alternatives (TSM), Travel Demand Alternatives (TDM), and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access freeway from SH 249 to IH 45 in Harris County, a distance ranging from 11.9 to 13.0 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane at-grade controlled access divided freeway with intermittent frontage roads within a 400-foot (ROW) width. A total of five build alternative alignments, in addition to the No-Build alternative, have been presented in the DEIS. All five alternative alignments lie between SH 249 and IH 45 in an east-west direction. Alternative Alignment A begins at SH 249 and traverses mainly through the center of the study area. This alignment alternative ends at IH 45, approximately 0.6 miles north of Spring Stuebner Road and is 12.5 miles in length. Alternative Alignment B starts at the same location as Alternative Alignment A but traverses mainly through the middle and southern portion of the study area. Alternative Alignment B ends 0.1 miles south of the Hardy Toll Road and IH 45 intersection, and is 13.0 miles in length. Alternative Alignment C begins at the same location as Alignments A and B and traverses mainly through the north and middle portion of the study area. Alternative Alignment C ends at the same location of Alternative Alignment A and is 12.2 miles in length. Alternative Alignment D begins at Boudreaux Road approximately 0.3 miles northeast of FM 2920 and traverses 7.0 miles before ending at the alignment connection with Alternative Alignment C. Alternative Alignment E begins at the same location as Alternative Alignment D and traverses 6.8 miles before ending at the alignment connection with Alternative Alignment B.

The preferred corridor and transportation mode, and recommended alignment, were proposed after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments received from a comprehensive agency/public outreach program. The recommended build alternative alignment that has emerged from the study was proposed on the basis of its ability to best facilitate the project's Purpose and Need while minimizing impacts to the natural, physical, and social environments. The Recommended Build Alternative Alignment is B, B, D, C and is 11.9 miles in length. The recommended alternative alignment for Segment F-2 would require the taking of new ROW, the adjustment of utility lines, and the filling of aquatic resources including approximately 0.4 acres of jurisdictional wetlands. Four potential historic sites, three business and twenty-two residential displacements would occur, and no archeological sites or endangered species are expected to be affected. Although a Recommended Alternative Alignment is presented, selection of the final Preferred Alternative Alignment will not be made until after the public comment period is completed, comments on the DEIS are received and considered, and the environmental effects are fully evaluated.

Copies of the DEIS and other information about the project may be obtained at the Texas Department of Transportation's Houston District Office at the previously mentioned address. For further information, please contact Robin Sterry at (713) 965-0104 or Pat Henry, P.E. at (713) 802-5241. Copies of the DEIS may also be reviewed at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; at the Texas Department of Transportation's Houston District Office located at 7721 Washington Avenue, Houston, Texas, at the Houston Public Library in the Texas Room, 500 McKinney, Houston, Texas; at the Harris County Public Library, Barbara Bush Branch, 6817 Cypresswood Drive, Spring, Texas, Harris County Public Library, Tomball Branch, 1226 W. Main St., Tomball Texas; and the Montgomery County Library, South Branch, 2101 Lake Robbins Dr., The Woodlands, Texas.

TRD-200400493

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 23, 2004

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Public Notice - Public Transportation Funding Allocation Listening Session

The Texas Department of Transportation (the department) will hold a statewide video teleconference regarding the allocation of state and federal funding for public transportation in accordance with House Bill 3184, 78th Texas Legislature, Regular Session, 2003.

Public input will assist the department in developing the state and federal formulas used to allocate funding for public transportation in rural and small urbanized areas of the state. Citizens of Texas are encouraged to join the department at the listening session held in their area to express comments on this topic.

A statewide video teleconference will be held at the following department district offices on Tuesday, February 10, 2004, from 5:30 p.m. - 7:30 p.m. (Central Standard Time) in the following cities and locations:

Abilene - 4250 N. Clack, Abilene, Texas

Amarillo - 5715 Canyon Drive, Bldg H, Training Conference S. Room, Amarillo, Texas

Atlanta - 701 E. Main Street, Atlanta, Texas

Austin - 200 E. Riverside Drive, Room D, Austin, Texas

Beaumont - 8350 Eastex Freeway, Beaumont, Texas

Brownwood - 2495 Highway 183 North, Brownwood, Texas

Bryan - 1300 North Texas Avenue, Bryan, Texas

Childress - 7599 U.S. Highway 287, Childress, Texas

Corpus Christi - 1701 South Padre Island Drive, Corpus Christi, Texas

Dallas - 4777 E. Highway 80, Mesquite, Texas

El Paso - 1430 Joe Battle Blvd., East Area Office, El Paso, Texas

Fort Worth - 2501 S.W. Loop 820, Computer Training Room, Fort Worth, Texas

Houston - 7721 Washington Ave., Houston District Office, VTC Conference Bldg., Houston, Texas

Laredo - 1817 Bob Bullock Loop, VTC Meeting Room, Laredo, Texas

Lubbock - 135 Slaton Road, Training Center, Lubbock, Texas

Lufkin - 1805 N. Timberland, Lufkin, Texas

Odessa - 3901 E. Highway 80, Large Conference Room, Odessa, Texas

Paris - 1365 N. Main St., Training Center, Paris, Texas

Pharr - 600 West Expressway 83, Pharr, Texas

San Angelo - 4502 Knickerbocker Rd., Building 5-A, San Angelo, Texas

San Antonio - 4615 N.W. Loop 410, San Antonio, Texas

Tyler - 2709 W. Front St., Training Center, Tyler, Texas

Waco - 100 South Loop Dr., District Training Facility, Waco, Texas

Wichita Falls - 1601 Southwest Parkway, Wichita Falls, Texas

Yoakum - 403 Huck, Training Room, Yoakum, Texas

Questions concerning the meeting or this notice should be referred to Don Henderson, Public Transportation Division, (512) 416-2820 or Ginnie Grayson, Public Transportation Division, (512) 416-2867.

TRD-200400543
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 28, 2004

♦ ♦ ♦

The University of Texas System

Notice of Entering into Major Consulting Services Contract

The University of Texas System in accordance with provisions of *Texas Government Code*, Chapter 2254, has entered into a contract for consulting services described in the Notice of Intent to Seek Consulting Services published in the *Texas Register* on November 28, 2003 (28 TexReg 10830). The consultant will provide the U. T. System Board of Regents with reliable and up-to-date market data on total compensation, including base pay, incentive/bonus pay, supplemental retirement plans, and other benefits for executive officers reporting directly to the Board, Chancellor and Executive Vice Chancellors.

The name and address of the consultant are as follows:

Mellon Consultants, Inc.

14911 Quorum Drive

Dallas, Texas 75240

The University will pay a fixed fee of $85,000. The contract will run from January 2, 2004 until December 31, 2006. Any reports required will be due no later than April 20, 2004.

Any questions regarding this posting should be directed to:

Mr. Arthur Martinez

Assistant Secretary

Office of the Board of Regents

The University of Texas System

201 West 7th Street, Suite 820

Austin, Texas 78701

Voice: 512/499-4402

Email: Amartinez@utsystem.edu

TRD-200400480
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 23, 2004

♦ ♦ ♦

Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission proposed amendments to 28 TAC §42.105, concerning medical cost evaluation. The notice was published in the January 16, 2004, issue of the *Texas Register* (29 TexReg 449).

The section heading contained a typographical error. The last word should display strikethrough marks to indicate that the word "Guideline" is proposed for deletion.

The section heading should read as follows.

§42.105. Medical Fee Guidelines and Pharmaceutical Benefits [~~Guideline~~].

TRD-200400550

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.

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 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 16, April 9, July 9, and October 8, 2004). 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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