TEXAS REGISTER

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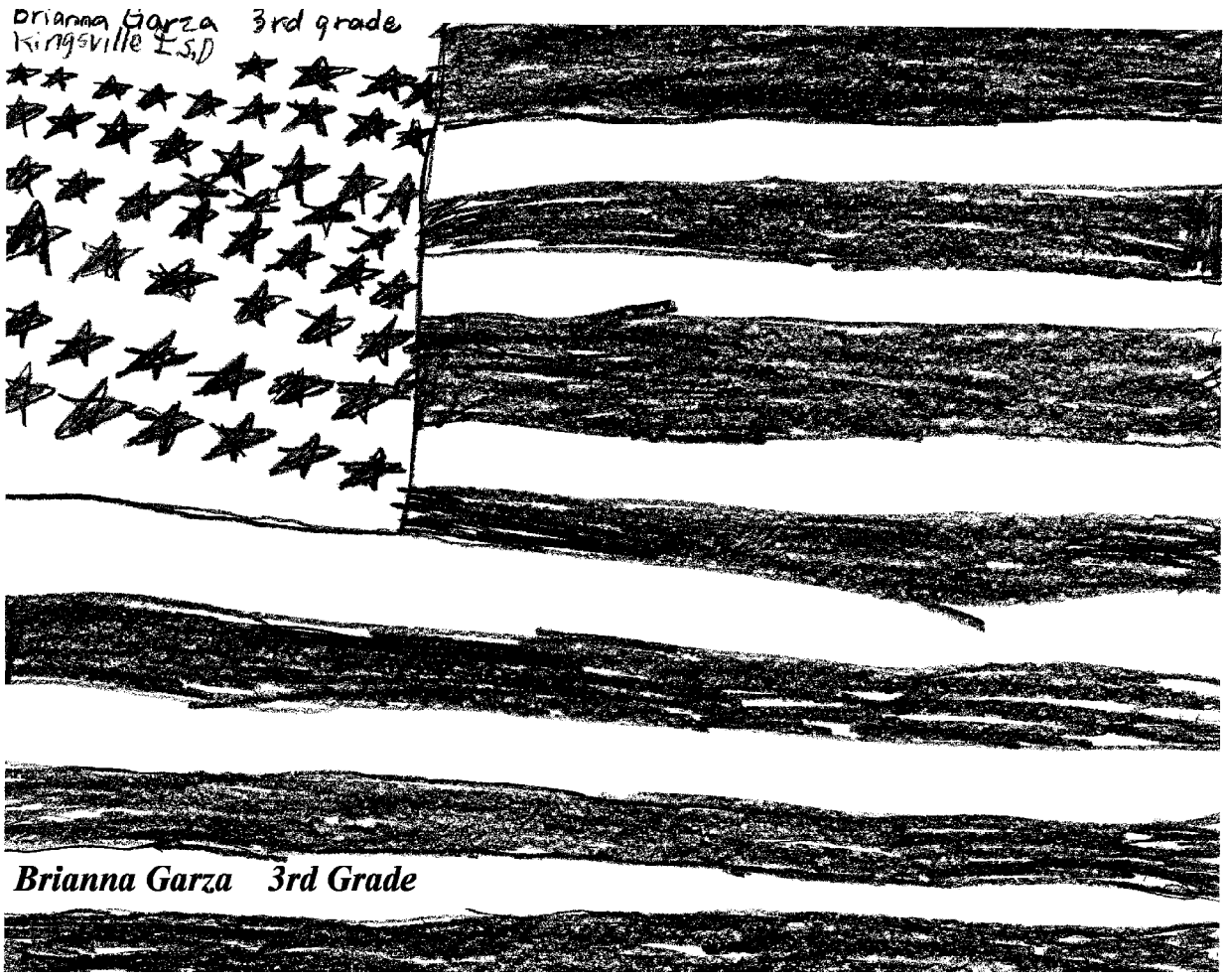

Brianna Garza 3rd Grade

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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 May 18, 2004

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2005, Earnest Gibson, III of Houston (replacing Willard Jackson who resigned).

Appointed to the School Land Board for a term to expire August 29, 2005, Todd F. Barth of Houston (replacing Edward Houghton of El Paso whose term expired).

Designating Gordon Earl Landreth of Corpus Christi as Chairman of the Texas Board of Architectural Examiners for a term at the pleasure of the Governor. Mr. Landreth will replace Steven Ellinger of Abilene as chairman.

Appointed to the Nursing Facility Quality Assurance Team, pursuant to HB 2292, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Robert Benjamin Cole of Austin.

Appointed to the Texas Council on Environmental Technology for a term to expire February 1, 2009, Richard William Tock of Lubbock.

Appointed to the Texas Council on Environmental Technology for a term to expire February 1, 2009, Randall J. Charbeneau of Austin.

Appointed to the Texas Council on Environmental Technology for a term to expire February 1, 2009, Deborah June Roberts of League City.

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2005, Ann Maria Pfeiffer of San Antonio (replacing Martha Freeman who resigned).

Rick Perry, Governor

TRD-200403471

♦ ♦ ♦

Appointments

Appointments for May 20, 2004

Appointed as Border Commerce Coordinator for a term at the pleasure of the Governor, Assistant Secretary of State Luis Saenz of Austin. Assistant Secretary Saenz is replacing Gwyn Shea.

Appointed to the Texas Military Facilities Commission for a term to expire April 30, 2009, Larry W. Jackson of Temple (replacing Constance Linbeck of Houston whose term expired).

Appointed to the Texas Polygraph Examiners Board for a term to expire June 18, 2009, Priscilla Jane Kleinpeter of Amarillo (replacing Robert Kruckemeyer of Houston whose term expired).

Appointments for May 21, 2004

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2009, Mark A. Ellis of Houston (replacing Cynthia Meyer who is deceased).

Appointed to the Grayson County Regional Mobility Authority, pursuant to Transportation Code, Section 370.251 for a term to expire February 1, 2009, Raymond Jerdy Gary of Denison. Mr. Gary will serve as Chairperson of the authority.

Appointed as Administrator of the Interstate Compact on Juveniles for a term at the pleasure of the Governor, Dwight Harris of Austin. Mr. Harris will replace Steve Robinson of Austin who retired from the Texas Youth Commission.

Rick Perry, Governor

TRD-200403565

♦ ♦ ♦

THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0216-GA

Requestor:

Mr. Glenn Parker, Executive Director

State Board of Barber Examiners

5717 Balcones Drive, Suite 217

Austin, Texas 78731

Re: Whether the Texas State Board of Barber Examiners may participate in the online license renewal program in light of the requirement of §1601.402(d), Occupations Code, that an applicant for renewal present a health certificate from a physician (Request No. 0216-GA)

Briefs requested by June 14, 2004

RQ-0217-GA

Requestor:

The Honorable Rob Baiamonte

Goliad County Attorney

Post Office Box 24

Goliad, Texas 77963

Re: Whether county jail inmates may be permitted to perform service for nonprofit organizations (Request No. 0217-GA)

Briefs requested by June 14, 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-200403474
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 21, 2004

♦ ♦ ♦

Opinions

Opinion No. GA-0189

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002-1700

Re: Constable's authority in the county outside of the constable's own precinct; permissible scope of interlocal agreements concerning law enforcement (RQ-0136-GA)

S U M M A R Y

A constable may perform law enforcement services on property that extends into another precinct of the county.

A county may not by agreement extend its law enforcement jurisdiction into another county. Counties may agree for the deputy sheriffs of one county to perform law enforcement services in another county, but only as officers of the latter county, subject to the command of the latter county's law enforcement authorities.

Opinion No. GA-0190

The Honorable Mike Krusee

Chair, Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a county may lease airport land without engaging in competitive bidding (RQ-0137-GA)

S U M M A R Y

Government Code chapter 263 requires a county commissioners court to lease county land at a public auction or by a sealed-proposal or sealed-bid procedure. When a county leases county airport land under Local Government Code section 263.051 or Transportation Code section 22.024(a), it must comply with Local Government Code chapter 263. When it leases airport land pursuant to Transportation Code section 22.020 or 22.021, the county is not required to comply with Local Government Code chapter 263.

Opinion No. GA-0191

Bob Hillman, D.V.M.

Executive Director

Texas Animal Health Commission

Post Office Box 12966

Austin, Texas 78711-2966

Re: Whether the Texas Animal Health Commission may charge a fee for reviewing and processing health certificates after their completion by a private practitioner (RQ-0140-GA)

S U M M A R Y

The Texas Animal Health Commission is not authorized to charge a fee for reviewing and processing health certificates after their completion by a private practitioner.

Opinion No. GA-0192

The Honorable Florence Shapiro

Chair, Education Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Validity of a local ordinance that allows a nonconforming sign to be replaced with a new nonconforming sign (RQ-0129-GA)

S U M M A R Y

A local sign ordinance that allows a permit to be issued to replace a nonconforming sign with a new nonconforming sign is not invalid under state law, but state law supercedes such local provisions in areas along highways that are subject to the federal Highway Beautification Act. Such provisions do not place federal funding for Texas highways in jeopardy. It is not possible to determine in the abstract that the nonconforming use belongs to either the sign owner or the land owner. Interests in the nonconforming use must be evaluated in terms of the applicable statues, regulations, ordinances, and contracts.

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

TRD-200403485
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 24, 2004

♦ ♦ ♦

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.503, concerning reimbursement methodology for the Community-Based Alternatives waiver program, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to correct inaccurate rule citations concerning reimbursement methodology for the Emergency Response Services (ERS) and Home-Delivered Meals (HDM) programs.

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.

Ed White, Director, Rate Setting and Forecasting, 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 contracted providers can access accurate guidelines governing reimbursement methodology for the ERS and HDM programs. 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 imposes no new requirements on businesses of any size. 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 Victor Perez at (512) 491- 1375 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit-105, 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, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. 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 affects the Government Code, §§531.033 and 531.021(b).

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program.

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

(d) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.

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

(3) Monthly reimbursement ceilings. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with 40 TAC §52.504 (relating to Reimbursement Methodology for Emergency Response Services (ERS)). The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with 40 TAC §55.45 [~~§48.9806~~] (relating to Reimbursement Methodology for Home-Delivered Meals).

(4) - (7) (No change.)

(e) - (h) (No change.)

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

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403493
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 438-3734

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §1.10, concerning the Department's Public Comment Procedures and Topics at Public Hearings and Meetings. This section is proposed to implement new legislation enacted by the 78th Legislative Session and now codified as §2306.0661(f), Texas Government Code.

Edwina P. Carrington, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Carrington has also determined that for the first five-year period the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow for more meaningful public input to the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Ms. Sarah Anderson, Director, Center for Housing Research, Planning, and Communications, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711-3941, sarah.anderson@tdhca.state.tx.us, or by fax 512/475-3746 within thirty days of this notice.

This section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

§1.10. Public Comment Procedures and Topics at Public Hearings and Meetings.

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

(e) Topics. The Department shall consider the following topics in relation to a proposed housing development:

(1) - (8) (No change.)

(9) zoning and other land use considerations; [~~and~~]

(10) any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code; or [~~other topics that the board by rule determines to be appropriate.~~]

(11) other good cause as determined by the Board.

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

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

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403499
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 475-4595

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CHAPTER 80. MANUFACTURED HOUSING

SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.201, §80.209

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes amendments §§80.201 and 80.209. New subsection §80.201(d) provides provisions for correcting Statements of Ownership Location and in §80.209(a) the Application for Statement of Ownership and Location form is revised to allow retailers to report homes that are in their inventory.

Figure: 10 TAC §80.209(a)- Revised Blocks 3 and 6 to allow retailers to report homes that are in their inventory.

Figure: 10 TAC §80.209(b)- No change.

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

Mr. Irvine also has determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of enforcing the sections will be clarification of Statement of Ownership and Location procedures and records. There will be no economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The Division will conduct a hearing on the proposed rules on Tuesday, July 6, 2004 at 1:00 p.m. at the Austin Headquarters located in the Waller Creek Office Building at 507 Sabine, 4th Floor Boardroom, Austin, Texas 78701.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail to tim.irvine@tdhca.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.201. Issuance of Statements of Ownership and Location.

(a) Initial Statements.

(1) The Department will issue an initial Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.

(2) In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

(A) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;

(B) The required fee;

(C) If one or more liens are to be reflected on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;

(D) If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include, but would not be limited to, evidence that the relocation was effected with a TxDoT approved move or a statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes.

(b) Revised Statements.

(1) The Department will issue a revised Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.

(2) In order to be deemed complete, an application for a revised Statement of Ownership and Location must include, as applicable:

(A) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;

(B) The required fee;

(C) If one or more liens are to be reflect on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;

(D) If one or more existing liens are to be released or transferred, appropriate supporting documentation, including a properly executed and completed release of lien form;

(E) If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use only or salvage, evidence of a satisfactory habitability inspection by the Department, accompanied by the required fee;

(F) If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include but would not be limited to, evidence that the relocation was effected with a TxDoT approved move, a paid taxes certificate from the county tax assessor for the county where the home was located prior to the move, or an original, signed statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes;

(G) In instances where title to a manufactured home is conveyed in a transaction other than a transaction requiring a license under the Standards Act, such as testamentary and non-testamentary transfers, private sales not requiring a license, voluntary or court-ordered partitions, etc, originals or certified copies of appropriate documentation to support any such transfer, as required by the Department; and

(3) Any change in a Statement of Ownership and Location shall result in a new Statement of Ownership and Location being issued, and the new Statement of Ownership and Location shall specify the effective date which shall be either the date of the submission of the completed application or such other date as the Director may determine is appropriately supported by the information provided.

(c) Replacing a Document of Title.

(1) Upon receipt of a written request, applicable fee(s), and any necessary additional information, including a notarized statement of election of real or personal property status, the Department will replace a document of title with a Statement of Ownership and Location.

(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.

(d) Corrections to Statements of Ownership and Location.

(1) If a correction is required as a result of a department error, it will be corrected at no charge.

(2) If an error was made for another reason, it will be corrected upon receipt of all documentation needed to support the correction.

(3) If a correction is requested because of an error made by a party other than the department, the correction will not be made until the department receives the following:

(A) A complete corrected application for Statement of Ownership and Location,

(B) Any necessary supporting documentation, and

(C) The required fee of $25, which can be reduced or waived by the director for good cause.

§80.209. Statement of Ownership and Location Forms.

(a) Application for Statement of Ownership and Location:
Figure: 10 TAC §80.209(a)

(b) Form B (Release of Lien, Foreclosure of Lien or Lien Assignments):
Figure: 10 TAC §80.209(b) (No change.)

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

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

TRD-200403472
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 475-2206

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code ("TAC"), §§76.10, 76.201, 76.204 - 76.206, 76.600, 76.800, 76.900, and 76.1000 and the repeal of §76.707 regarding the water well drillers and water well pump installers program.

Amendments to the above-referenced rules primarily are intended to update the rules in response to the agency's use of new examinations and a new exam procedure, which creates a need to change certain license designations and fees, and one unnecessary rule is repealed.

The amendments are necessary for the following reasons: to harmonize terminology in a definition with that used in new examinations for water well drillers and pump installers and also, as a result, definitions were re-numbered; to correct typographical errors; to ensure certain rule provisions met the contingencies of the new examination process; and to achieve conformity between water well drillers and pump installers regarding license designations and fees. The repeal removes §76.707 that is redundant since another provision in the rules, §76.900, addresses the same subject matter.

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

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and repeal are in effect, the public benefit will be clearer examination rules for water well drillers and pump installers, resulting in drillers and pump installers whose areas of expertise are more evident to the public.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments and repeal. There will be a minor economic cost to installers who choose to pursue a general pump installer license due to an increase in the exam fee.

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

16 TAC §§76.10, 76.201, 76.204 - 76.206, 76.600, 76.800, 76.900, 76.1000

The amendments are proposed under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed amendments are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the proposed amendments.

§76.10. Definitions.

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

(1) Abandoned well--A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well which contains the casing, pump, and pump column in good condition; or

(B) non-deteriorated well which has been capped.

(2) Annular space--The space between the casing and borehole wall.

(3) Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(4) Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(5) Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(6) Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(7) Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing--New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(8) Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(9) Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(10) Closed Loop Geothermal Well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(11) [~~(10)~~] Commission--The Texas Commission of Licensing and Regulation.

[(11) Commissioner--means the commissioner of licensing and regulation.]

(12) Complainant--A person who has filed a complaint with the Texas Department of Licensing and Regulation (Department) against any party subject to the jurisdiction of the Department. The Department may be the complainant.

(13) Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering undesirable water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(14) Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains undesirable water.

(15) Completed water well--A water well, which has sealed off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.

(16) Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(17) Continuing Education--Four (4) hours of education per year required, including one (1) hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course as a condition of license or registration renewal under the Code and/or Rules.

(18) Continuing Education Program--A formal offering of instruction or information to licensees, registrants, or certificate holders for the purpose of maintaining skills necessary for the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps or pumping equipment or water well monitoring. A school, clinic, forum, lecture, course of study, educational seminar, workshop, conference, convention, or short course approved by the Department, may offer such programs.

(19) Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(20) Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(21) Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, Williamson, and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(23) Executive Director-- means the executive director of the Department.

(24) Flapper--The clapper, closing, or checking device within the body of the check valve.

(25) Foreign substance--Constituents that includes recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(26) Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

[(27) Geothermal closed heat loop well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.]

(27) [(28)] Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(28) [(29)] Groundwater conservation district--Any district or authority to which Chapter 36, Water Code, applies and that has the authority to regulate the spacing or production of water wells.

(29) [(30)] Injection well includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(30) [(31)] Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(31) [(32)] Monitoring well--An artificial excavation constructed to measure or monitor the quality and/or quantity or movement of substances, elements, chemicals, or fluids beneath the surface

of the ground. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells. The term shall not include any well that is used in conjunction with the production of oil, gas, coal, lignite, or other minerals.

(32) [~~(33)~~] Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(33) [~~(34)~~] Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(34) [~~(35)~~] Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(35) [~~(36)~~] Plugging--An absolute sealing of the well bore.

(36) [~~(37)~~] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(37) [~~(38)~~] Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects. For purposes of this chapter, water may be rendered potable by adding chlorine bleach at the rate of one (1) gallon of bleach for every 500 gallons of water.

(38) [~~(39)~~] Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.

(39) [~~(40)~~] Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Commission on Environmental Quality.

(40) [~~(41)~~] Recovery well--A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(41) [~~(42)~~] Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(42) [~~(43)~~] Test well--A well drilled to explore for groundwater.

(43) [~~(44)~~] Undesirable water--Water that is injurious to human health and the environment or water that can cause pollution to land or other waters.

(44) [~~(45)~~] Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(45) [~~(46)~~] Well--A water well, test well, injection well, dewatering well, monitoring well, closed loop geothermal [~~closed heat loop~~] well, piezometer well, observation well, or recovery well.

(46) [~~(47)~~] State of Texas Well Report (Well Log)--A log recorded on forms prescribed by the Department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the Executive Director.

§76.201. Requirements for Issuance of a License.

(a) A completed application, accompanied by the required examination fee, must be submitted by each person desiring to obtain a well driller's and/ or pump installer's license.

(b) After [~~Within 90 days after~~] approval, each applicant desiring a well driller's and/or pump installer's license must pass the General Well Driller and/or General Pump Installer examination(s) and any designated well driller and/or pump installer examination(s) for license issuance eligibility [~~an examination~~].

(c) Upon passing the examination(s) [~~examination~~], an applicant must submit the required license fee to the Department.

(d) A licensee, not licensed to perform all types of well drilling and pump installation, may apply for designation for additional types of well drilling or pump installation. Applications for additional designations shall be accompanied by the appropriate application fee, and shall contain all information required by these rules for an initial license. Upon examination of the applicant's qualifications, the Executive Director shall deny or grant additional grades of licensure.

(1) An applicant who has demonstrated competency in all types of well drilling shall be deemed qualified for a master driller's license. [~~the specific well drilling field shall be deemed qualified for licensing for either Water Well drilling, Dewatering Well drilling, Injection Well drilling, Monitoring Well drilling, or Geothermal closed heat loop drilling or a combination thereof, which are regulated under these Rules.~~]

(2) An applicant who has demonstrated competency in all types of pump installation shall be deemed qualified for a master pump installer's license.

§76.204. License and Apprentice Registration Renewal.

(a) On or before the expiration date of the license or registration, the licensee or registrant shall pay an annual renewal fee to the Department and submit an application for renewal.

(b) To renew a license, the licensee is required to show proof of four (4) hours of continuing education with one (1) hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course.

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

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

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

(1) be submitted in writing to the Department;

(2) contain a detailed explanation of the conditions under which the waiver is requested,

(3) be accompanied by the renewal fee, and

(4) be inactive for a minimum of one (1) year.

(f) To re-instate a driller and/or pump installer license to supervise and/or contract with the public, the driller and/or pump installer must submit four (4) hours of continuing education with one (1) hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course.

§76.205. Registration for Driller and/or Pump Installer Apprenticeship.

(a) A person who wishes to undertake a Department approved apprentice program under the supervision of a licensed well driller and/ or a licensed pump installer who has been licensed for a minimum of two (2) years, must submit a registration form to the Department and provide proof that the licensed well driller and/ or pump installer has agreed to accept the responsibility of supervising the training. A driller or pump installer may not supervise more than three apprentices at any one time. Persons [~~Person's~~] with both a well driller and a pump installer license may register a maximum of six apprentices (three of each type) at any one time.

(b) A registered pump installer apprentice shall represent his supervising pump installer during operations at the well site.

(c) The Department shall review driller and /or pump installer apprentice registration forms.

(d) A registered pump installer apprentice may not perform, or offer to perform, any services associated with procedures employed in the placement and preparation for operation of equipment and material used to obtain water from a water well except under the direct supervision of a licensed pump installer and according to the supervising pump installer's express directions. A pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(e) Registration forms shall include:

(1) the name, business address, and permanent mailing address of the apprentice in training;

(2) the name, business address, and license number of the licensed driller and/ or pump installer who will supervise the training;

(3) a detailed description of the training program, including the types of wells to be drilled and/or the classifications of pumps to be installed, equipment used, safety training and procedures, and experience, knowledge, and qualification benchmarks while under the apprenticeship;

(4) the effective commencement and termination date of the training program;

(5) a statement by the licensed driller and/ or pump installer accepting financial responsibility for the activities of the apprentice associated with the training program or undertaken on behalf of the licensed driller or pump installer; and

(6) the signatures of the apprentice and the licensed driller and/ or pump installer and the sworn statement of both that the information provided is true and correct . [~~; and~~]

[~~(7) an attached one (1) hour Certificate of Completion of the Water Well Driller/Pump Installer Statutes and Rules course.~~]

(f) If the application conforms to the rules and the apprentice program meets Department requirements, the Department will notify the apprentice and the supervising driller and/ or pump installer that the applicant has been accepted as a registered driller and/ or pump installer apprentice and that the registration form shall remain in the Department's files for the stated duration of the apprentice period.

(g) If the application and apprentice program do not conform to the rules or is not approved, the Department shall notify the apprentice and the apprentice's supervising driller and/or pump installer of the disapproval.

§76.206. Responsibilities of the Apprentice and Supervising Driller and/or Pump Installer.

(a) A registered driller/pump installer apprentice shall:

(1) represent his supervising driller/pump installer during operations at the well site;

(2) driller apprentice shall co-sign state well reports with the supervising driller; and

(3) perform services associated with drilling, deepening, or altering a well under the direct supervision of the supervising driller.

(b) A registered driller/pump installer apprentice may not perform, or offer to perform, any services associated with drilling, deepening, installing a pump or altering a well except under the direct supervision of a licensed driller/pump installer and/or according to the supervisor's express directions. A driller/pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(c) Upon completion of a training program of at least two (2) years, an apprentice may apply to obtain a well driller's and/ or pump installer's license or renew the status as an apprentice. The supervising driller, pump installer, or apprentice may terminate the training program by written notice to the Department. A reason for termination is not required. Upon receipt of the notice, the Department shall terminate the apprentice's status as a registered apprentice.

(d) Upon renewal of an apprentice registration, the supervising driller and/or pump installer shall provide the Department a written progress report on the aforementioned training segments in §76.205(e) [~~(f)~~] (3) pertaining to the apprentice's stated training program.

(e) A one (1) hour Certificate of Completion of the Water Well Driller/Pump Installer Statutes and Rules course shall accompany each apprentice registration renewal.

(f) The licensed driller and/ or licensed pump installer shall be present at the well site at all times during all operations or may be represented by a registered apprentice capable of immediate communication with the licensed driller or licensed pump installer at all times, provided that the licensed driller and /or licensed pump installer is less than one hour arrival time from the well site. The licensed driller shall visit the well site at least once each day of operation to direct the manner in which the operations are conducted.

(g) The supervising licensed driller and/ or licensed pump installer is responsible for compliance with the Texas Occupations Code, Chapters 1901 and 1902 and Department Rules.

(h) If the supervising driller or pump installer is unavailable, he may be represented by any other licensed driller or licensed pump installer employed by the same company who can be at the well site within one (1) hour.

§76.600. Responsibilities of the Department--Certification by the Executive Director.

(a) The Department shall evaluate the qualifications of license applicants.

(b) In assessing an applicant's qualifications, the Department shall examine the applicant's experience and competence in well drilling and/ or pump installing.

(c) An applicant, at the discretion of the Department, may not be certified for up to one-year following the revocation of the applicant's license or a finding that the applicant operated without a license.

(d) After assessing the qualifications of an applicant, the Department shall determine the type(s) of well drilling or pump installation, the applicant is competent to perform. Types of drilling , with license designations, include: (W) - water well; (M) - monitoring well; (C) - closed loop geothermal well; (N) - injection well; (D) - dewatering well; and (A) - master well driller which includes all designations previously listed [include water well, monitoring well, geothermal heat loop well, injection well, and dewatering well]. Types of pump installation, with license designations, include: (L) - windmills, hand pumps, and pump jacks; (P) - single phase pumps [fractional to five horsepower]; (K) - three phase pumps [submersible five horsepower and over]; (T) - line-shaft turbine pumps; and (I) - master water well pump installer which includes all designations previously listed.

(e) The Executive Director shall issue licenses to applicants who qualify.

§76.800. Fees.

(a) Exam Fees.

(1) General Well Driller exam fee is $100.

(2) [(1)] Water Well Driller exam fee is $50 [$100].

(3) [(2)] Monitor Well Driller exam fee is $50 [$100].

(4) Closed Loop Geothermal Well Driller exam fee is $50.

(5) [(3)] General Pump Installer exam fee is $100 [$50].

(6) [(4)] Windmills, Hand Pumps and Pump Jacks exam fee is $50.

(7) [(5)] Pump Installer Single Phase [Fractional to 5 Horse Power] exam fee is $50.

(8) [(6)] Pump Installer Three Phase [5 Horse Power and Over] exam fee is $50.

[(7) Closed Loop Geothermal Well Driller exam fee is $50.]

(9) [(8)] Line Shaft Turbine Pumps exam fee is $50.

(b) Original [Annual] License , Registration, and Annual Renewal Fees.

(1) Driller's license is $215.

(2) Installer's license is $215.

(3) A combination Driller and Installer license is $325.

(4) Apprentice registration is $65.

(5) A combination Driller and Installer Apprentice registration is $115.

[(c) License Renewal Fees.]

[(1) Driller's renewal license is $215.]

[(2) Installer's renewal license is $215.]

[(3) A combination Driller and Installer renewal license is $325.]

[(4) Apprentice renewal registration is $65.]

[(5) A combination Driller and Installer Apprentice renewal registration is $115.]

(c) [(d)] Lost, revised, or duplicate license $25.

(d) [(e)] Variance request fee is $100.

§76.900. Disciplinary Actions.

If a person violates the Texas Occupations Code, Chapters 51, 1901 and 1902, or a rule or order, of the Executive Director or Commission relating to the Code, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Code or Texas Occupations Code, Chapter 51, and Chapter 60 of this title (relating to the Texas Commission of Licensing and Regulation).

§76.1000. Technical Requirements--Locations and Standards of Completion for Wells.

(a) (No change.)

(b) In all wells where plastic casing is used, except when a steel or polyvinyl chloride (PVC) sleeve or pitless adapter, as described in paragraph (3) of this subsection, is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

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

(5) The annular space of a closed loop geothermal [closed heat loop] well used to circulate water or other fluids shall be backfilled to the total depth with impervious bentonite or similar material, closed loop injection well where there is no water or only one zone of water is encountered you may use sand, gravel or drill cuttings to back fill up to thirty (30) feet from the surface. The top thirty (30) feet shall be filled with impervious bentonite or similar materials and meets the standards pursuant to Texas Commission on Environmental Quality 30 TAC, Chapter 331.

(c) - (l) (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 May 24, 2004.

TRD-200403496
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 463-7348

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16 TAC §76.707

(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 Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the repeal.

§76.707. Responsibilities of the Licensee--Adherence to Statutes and Codes.

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 May 24, 2004.

TRD-200403497
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.54

The Texas Higher Education Coordinating Board proposes amendments to §4.54(a)(1)(A) and (B) and (a)(3) of Board rules concerning exemption from the requirements of the Texas Success Initiative. Specifically, these amendments exempt high school students who achieve certain standards on the Mathematics and/or English/Language Arts sections of the exit-level Texas Assessment of Knowledge and Skills from state-mandated testing for college readiness for the corresponding sections. Also, amendments were made that would allow students who achieve certain standards on sections of the ACT and the SAT to be exempt from the assessment required under this title for those corresponding sections.

Mr. Michael L. Collins, Assistant Commissioner, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Collins has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a greater alignment of secondary and post-secondary academic standards. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Michael L. Collins, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or by email at michael.collins@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the Texas Register.

The amendments are proposed under the Texas Education Code, §51.3062 and Texas Education Code, §51.307, which provide the Coordinating Board with the authority to propose rules concerning the Success Initiative.

The amendments affect the Texas Education Code, §51.3062.

§4.54. Exemptions/Exceptions.

(a) The following students shall be exempt from the requirements of this title:

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards:

(A) ACT: composite score of 23 with a minimum of 19 on [~~both~~] the English test and/or the mathematics test shall be exempt for those corresponding sections [~~tests~~];

(B) Scholastic Assessment Test (SAT): a combined verbal and mathematics score of 1070 with a minimum of 500 on [~~both~~] the verbal test and/or the mathematics test shall be exempt for those corresponding sections [~~tests~~]; or

(2) (No change.)

(3) For a period of three (3) years from the date of testing, a student who is tested and performs on the Eleventh grade exit-level Texas Assessment of Knowledge and Skills (TAKS) with a minimum scale score of 2200 on the math section and/or a minimum scale score of 2200 on the English Language Arts section with a writing subsection score of at least 3, shall be exempt from the assessment required under this title for those corresponding sections.

(4) - (9) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on May 18, 2004.

TRD-200403364
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 15, 2004
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.9

The Texas State Board of Examiners of Psychologists proposes amendments to §463.9, Licensed Specialist in School Psychology. These amendments are being proposed to correct a technical error omitted from a 2001 proposed rule change.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rule simpler. There will

be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.9. Licensed Specialist in School Psychology.

(a) (No change.)

(b) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid National Certified School Psychologist (NCSP) certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, and have completed at least 60 graduate level semester credit hours, also from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

(1) - (7) (No change.)

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on May 18, 2004.

TRD-200403354
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7700

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22 TAC §463.14

The Texas State Board of Examiners of Psychologists proposes amendments to §463.14, Written Examinations. These amendments are being proposed to correct a technical error which involves the conversion of a 55% passing score to a scaled score. The correct conversion of 55% passing score to a scaled score would make the scaled score 350. This amendment does not constitute any change in the passing score for licensed psychological associates on the national psychology examination.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rule simpler. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.14. Written Examinations.

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

(f) Cutoff Scores. The minimum acceptable score for the EPPP is seventy percent (70%) of questions scored for psychologist licensure applicants and fifty-five percent (55%) of questions scored for psychological associate licensure applicants on the pencil and paper version of the test. For computer-delivered EPPP examinations, the cutoff scaled scores are 500 and 350 [~~450~~] respectively. Applicants for licensure as a psychological associate must receive a minimum score of eighty percent (80%) of [~~a~~] questions scored on the Board's Jurisprudence Examination. All other applications for licensure must receive a minimum score of ninety percent (90%) of questions scored on the Board's Jurisprudence Examination. The exam score of applicants for licensure who have already taken the EPPP must satisfy the requirements of the Board as of the date of application to 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 May 18, 2004.

TRD-200403355
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7700

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.55

The Texas State Board of Public Accountancy (Board) proposes new §501.55, concerning Definition of Acronyms.

The new §501.55 will list and explains some of the acronyms used in the rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the acronyms will be explained in the rules.

The probable economic cost to persons required to comply with the new rule will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the use of acronyms do not cause any one any costs.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.55. Definition of Acronyms.

The following acronyms, when used in Title 22, Part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings:

(1) "AICPA" means the American Institute of Certified Public Accountants;

(2) "CPA" means Certified Public Accountant;

(3) "CPE" means continuing professional education;

(4) "NASBA" means the National Association of State Boards of Accountancy;

(5) "PCAOB" means the Public Company Accounting Oversight Board;

(6) "SEC" means the United States Securities and Exchange Commission.

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

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403426
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.93

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.93, concerning Responses.

The amendment to §501.93 will allow the board to require responses to its inquiries sooner than 30 days, will require licensees to report their telephone numbers and will reimburse non-party deponents for their deposition travel costs.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the changes either do not cost anything or do not cost anything additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that depending upon the circumstances the board may require responses in a short time period, licensees' telephone numbers will be current, and it will be clear that non-party deponents' deposition travel expenses are reimbursable.

The probable economic cost to persons required to comply with the amendment will be zero because the changes either do not cost anything or do not cause any additional cost.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the changes either do not cost anything or do not cost anything additional.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.93. Responses.

(a) An applicant, certificate or registration holder shall substantively respond in writing to any communication from the board requesting a response, within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the communication was mailed, delivered to a courier or delivery service, faxed or e-mailed [~~of the mailing or faxing of such communication by registered or certified mail or facsimile~~] to the last address, [~~or~~] facsimile number, or e-mail address furnished to the board by the applicant, certificate or registration holder.

(b) An applicant, certificate or registration holder shall provide copies of documentation and/or working papers in response to the board's request at no expense to the board within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the request was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number or e-mail address furnished to the board by the applicant, certificate or registration holder. [~~of the date of transmission of the facsimile or of the mailing of such a request by registered or certified mail to the last address furnished to the board by the applicant, certificate or registration holder.~~] An applicant, certificate or registration holder may comply with this subsection by providing the board with original records for the board to duplicate. In such a circumstance, upon request the board will provide an affidavit from the custodian of records documenting custody and control of the records.

(c) Failure to timely respond substantively to written board communications, or failure to furnish requested documentation and/or working papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(d) Each applicant, certificate holder and each person required to be registered with the board under the Act shall notify the board, in writing, of any and all changes in either such person's mailing address or telephone number and the effective date thereof within 30 days before or after such effective date.

(e) An applicant, certificate or registration holder who is a party to a contested case in a disciplinary action brought by the board may be deposed at the board's offices in Austin, Texas. If the deponent is not a party to a contested case, the board will reimburse the deponent for reasonable expenses incurred to attend the deposition in accordance with §2001.103 of the Texas Government Code. Any deponent [~~such party~~] may seek a protective order concerning the place of deposition on grounds stated in Texas Rule of Civil Procedure 192.6.

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 May 20, 2004.

TRD-200403427
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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CHAPTER 505. THE BOARD

22 TAC §505.8, §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.8, concerning Board Meetings and §505.10, concerning Board Committees.

The amendment to §505.8 will delete absolute language regarding an annual meeting and will recognize that the location of the board meeting is dictated by statute. The amendment to §505.10 will replace chairman with chair several times, place emergency suspensions and cease and desist orders within the Executive Committee's duties, create two non-board member advisory positions in the Qualifications, Licensing, Technical Standards Review, Peer Review, Rules, Major Case Enforcement, and Peer Assistance Oversight committees, reword the Behavioral Enforcement Committee's job description, remove the requirements that the Technical Standards Review Committee's non-Board members have specific exposure, will increase to three the number of board members on the Rules Committee and prohibit committee members from advocating for a party in a disciplinary matter pending before the board while serving on a board committee.

These amendments are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, Part 22, Chapter 505 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendments will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendments will be zero because the changes do not cost anything or do not cause any additional cost.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendments will be zero because the changes do not cost anything or do not cause any additional cost.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendments will be zero.

Mr. Treacy has determined that for the first five-year period the amendments are in effect the public benefits expected as a result of adoption of the proposed amendment to §505.8 will be that absolute language will be removed from the Board's rules and the public benefits to §505.10 will be that the board's committees will have advisory members and that a potential conflict of interest for committee members will be eliminated.

The probable economic cost to persons required to comply with the amendments will be zero because the changes do not cost anything or do not cause any additional cost.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendments will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendments from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendments will not have an adverse economic effect on small businesses because the changes do not cost anything or do not cause any additional cost.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendments will have an adverse economic effect on small business; if the amendments are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendments are to be adopted; and if the amendments are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendments under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendments are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.1525 regarding Board Committees, §901.153 regarding Enforcement Committees, §901.5045 regarding Emergency Suspension, §901.601 regarding Cease and Desist Order and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

§505.8. Board Meetings.

(a) (No change.)

(b) Board meetings as required by statute shall take place at the headquarters of the board or, if the convenience of the public or the parties to a hearing will be better served thereby, at such place as the board may designate.

~~[(c) An annual meeting shall be held each year, not later than July 31, and written notice of at least 10 days shall be given to each member of the time and place of such meeting.]~~

(c) [~~(d)~~] Special meetings may be held upon the call of the presiding officer, or upon call of a majority of the members of the board, after reasonable notice.

§505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Public Accountancy Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair [~~chairman~~] of the executive committee.

(b) (No change.)

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair [~~chairman~~], and a report to the board at its next regularly scheduled meeting shall be made by such chair [~~chairman~~] or, in the absence of the chair [~~chairman~~], by another board member serving on the committee.

(d) (No change.)

(e) Standing committee structure and charge to committees. The standing committees shall consist of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) litigation;

(B) emergency suspensions pursuant to board rule §519.43 of this title;

(C) cease and desist orders pursuant to board rule §518.2 of this title and violations of cease and desist orders pursuant to board rule §518.3 of this title;

(D) [~~(B)~~] proposed changes in the board rules of professional conduct (the rules);

(E) [~~(C)~~] amendments to the Act;

(F) [~~(D)~~] responses/positions relating to papers, reports, and other submissions from national associations or boards;

(G) [~~(E)~~] legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization and;

(H) [~~(F)~~] special issues.

(2) The continuing professional education committee shall be comprised of at least two board members, one of whom shall serve as chair [~~chairman~~], assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) - (E) (No change.)

(3) The qualifications committee shall be comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity [~~chairman~~]. The committee shall make recommendations to the board regarding:

(A) - (E) (No change.)

(4) The licensing committee shall be comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity [~~chairman~~]. The committee shall make recommendations to the board regarding:

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

(5) The behavioral enforcement committee shall be comprised of at least two board members, one of whom shall serve as chair[~~chairman~~], assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) study complaints [~~from any source~~] involving suspected [~~possible~~] violations of the Act and the board's rules and make recommendations to the board as appropriate [~~by certificate or registration holders and others~~];

[~~(B) study possible violations by certificate or registration holders of the behavioral standards within the rules;~~]

[~~(C) make recommendations to the board concerning the disposition of such possible violations;~~]

(B) [~~(D)~~] follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) [~~(E)~~] make recommendations to the board concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be comprised of at least two board members, one of whom shall serve as chair, assisted by [~~chairman, and~~] at least three non-board members who shall serve in an advisory capacity [~~with recognized experience in industry, government, and education~~]. The committee shall:

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

(7) The peer review committee shall be comprised of at least two board members, one of whom shall serve as chair [~~chairman~~], assisted by at least two [~~any number of~~] non-board members who shall serve in an advisory capacity. The committee shall:

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

(8) The board rules committee shall be comprised of at least three [~~two~~] board members, one of whom shall serve as chair [~~chairman, assisted by any number of non-board members who shall serve in an advisory capacity~~]. The committee shall make recommendations to the board and propose changes regarding board rules. All committees shall endeavor to consult with the board rules committee concerning proposed rules.

(9) The major case enforcement committee shall be comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity [~~chairman~~]. At least one committee member shall be a public member of the board. The committee shall make recommendations to the board regarding legal matters on litigation or potential litigation, and other major cases to which the board is a party. The committee shall have the authority to act on behalf of the board in instances where disclosure of facts to the full board could cause the board's objectivity to be jeopardized, subject to final approval by the board. The board shall have sole authority to determine whether cases shall be heard by the major case enforcement committee or other enforcement committee.

(10) The peer assistance oversight committee shall be comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity [~~chairman~~]. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, Chapter 467.001(B), and insure that the minimum criteria as set out by the Texas Commission on Alcohol and Drug Abuse are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a quarterly basis, by case number, on the status of the program.

(11) The constructive enforcement committee shall be comprised of at least two board members, one of whom shall serve as chair [~~chairman~~], assisted by non-board CPA members who shall also serve as investigators. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) - (E) (No change.)

(f) (No change.)

[~~(g) Definition of terms. As used in this section, the terms "chairman" and "chairmen" are used for convenience and are intended to include persons of either sex.~~]

(g) [~~(h)~~] Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board. A Committee member is not in violation of this rule by reason of testimony given or a report prepared as part of a litigation support engagement in another forum being considered by a committee of the board in an

enforcement action; provided however, the board's rules on recusal of that committee member apply.

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 May 20, 2004.

TRD-200403428
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §§512.1 - 512.7

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of Chapter 512, §512.1, concerning Certification as a Certified Public Accountant by Reciprocity; §512.2, concerning Application for Certification by Reciprocity from National Association of State Boards of Accountancy Approved Jurisdictions; §512.3, concerning Requirements for Certification by Reciprocity by an Individual; §512.4, concerning Qualifications for Certification by Reciprocity; §512.5, concerning Evaluation of Foreign Credentials by the International Qualifications Appraisal Board; §512.6, concerning Examination Authorization; and §512.7, concerning Reciprocal Fee.

The proposed repeal of Chapter 512, §§512.1 - 512.7 will repeal rules that are being rewritten.

The repeal is the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, Part 22, Chapter 512 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that these rules will have been repealed and replaced.

The probable economic cost to persons required to comply with the repeal will be zero because the proposed rules are a continuation of current rules and are not intended to effect costs or revenue.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the proposed rules are a continuation of current rules and do not effect costs.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

§512.1. Certification as a Certified Public Accountant by Reciprocity.

§512.2. Application for Certification by Reciprocity from National Association of State Boards of Accountancy Approved Jurisdictions.

§512.3. Requirements for Certification by Reciprocity by an Individual.

§512.4. Qualifications for Certification by Reciprocity.

§512.5. Evaluation of Foreign Credentials by the International Qualifications Appraisal Board.

§512.6. Examination Authorization.

§512.7. Reciprocal Fee.

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

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403429
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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22 TAC §§512.1 - 512.6

The Texas State Board of Public Accountancy (Board) proposes new §512.1, concerning Certification as a Certified Public Accountant by Reciprocity; §512.2, concerning National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions; §512.3, concerning Evaluation of Foreign Credentials by the International Qualifications Appraisal Board; §512.4, concerning Application for Certification by Reciprocity; §512.5, concerning Examination Authorization; and §512.6, concerning Reciprocal Fee.

Section 512.1 will contain the conditions that must be satisfied by domestic and foreign jurisdiction applicants for certification by reciprocity. Section 512.2 will accept NASBA's verification of a domestic jurisdiction as substantially equivalent for individuals' licensure by reciprocity. For non-NASBA verified domestic jurisdictions, the board will accept an individual's verification by NASBA for purposes of registration under Chapter 513. Section 512.3 will accept IQAB's determination that a foreign jurisdiction is substantially equivalent for certification by reciprocity and will honor IQAB's reciprocal agreements as may be required by a US treaty. Section 512.4 describes the procedure and required documentation for reciprocity by applicants from domestic jurisdictions that have been NASBA and board approved as substantially equivalent, from domestic jurisdictions that have not been NASBA and board approved as substantially equivalent, and from foreign jurisdictions that have been IQAB and board approved as substantially equivalent. Section 512.5 approves IQEX as qualification for a reciprocal certificate from a foreign jurisdiction. Section 512.6 requires all fees to be paid, describes refunds, and imposes a six month time limit for satisfaction of all requirements.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, TAC, Part 22, Chapter 512 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be increased use of substantial equivalency and IQEX for licensure by reciprocity.

The probable economic cost to persons required to comply with the new rules will be a $100 application processing fee. Successful applicants will pay annual license and professional fees as required by Chapter 521.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rules will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because $100 is a small amount of money.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rules will have an adverse economic effect on small business; if the new rules are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rules are to be adopted; and if the new rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rules under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed new rules.

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to any person who is qualified under §901.259 or §901.260 of the Act. The person's certificate or credentials in the original jurisdiction must be in good standing when the application is submitted and remain in good standing until the person's application for certification by reciprocity has been approved and a certificate has been issued to the person by this board.

(b) A person from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the person holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this title (relating to National

Association of State Boards of Public Accountancy Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the person holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the Uniform Accountancy Act by NASBA; or

(C) the person meets all requirements for issuance of a certificate set forth in the Act other than the provision requiring proof of grades to be eligible to take the uniform CPA examination; or

(D) the person met the requirements in effect for issuance of a certificate in this state on the date the person was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the uniform CPA examination, the person has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) the person meets the CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(c) A person from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education. examination and experience contained in the Act; and

(B) grants credentials by reciprocity to persons certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination covering the laws, rules and code of professional conduct in effect in this state that has been approved by the board.

§512.2. National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions.

(a) NASBA's National Qualification Appraisal Service may verify that the education, examination and experience requirements for certification of another domestic jurisdiction are comparable to or exceed the education, examination and experience requirements for certification contained in the Uniform Accountancy Act.

(b) The board finds that the education, examination and experience requirements for certification contained in the Uniform Accountancy Act are comparable to or exceed the education, examination and experience requirements for certification contained in the Act. The board designates each domestic jurisdiction verified by NASBA as being substantially equivalent pursuant to subsection (a) of this section as an approved domestic jurisdiction for certification by reciprocity under this chapter and for registration of out-of-state practitioners with substantially equivalent qualifications under Chapter 513 of this title (relating to Registration).

(c) A person who has a valid certificate to practice as a certified public accountant from a domestic jurisdiction that has not been verified as substantially equivalent to the Uniform Accountancy Act by NASBA may obtain a verification from NASBA's National Qualification Appraisal Service that his personal education, examination and experience are comparable to or exceed the education, examination and experience requirements for certification contained in the Uniform Accountancy Act. The board shall consider a person whose personal education, examination and experience has been verified by NASBA to be substantially equivalent as being from an approved substantially equivalent domestic jurisdiction for certification by reciprocity under this chapter and for registration of out-of-state practitioners with substantially equivalent qualifications under Chapter 513 of this title.

§512.3. Evaluation of Foreign Credentials by the International Qualifications Appraisal Board.

(a) The board recognizes the existence of the International Qualifications Appraisal Board (IQAB), a joint body of the National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants, which is charged with:

(1) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(2) negotiating principles of reciprocity agreements with the appropriate professional and/or governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(b) Upon determination by the IQAB that a foreign jurisdiction had education, examination and experience requirements that are comparable to or exceed those requirements in effect in this state on the date the foreign credential was granted and the foreign jurisdiction issues credentials by reciprocity to holders of a certificate issued by the board, the board shall designate that foreign jurisdiction as being substantially equivalent for certification by reciprocity under this chapter.

(c) The board shall honor the terms of all reciprocity agreements issued by IQAB and shall issue a certificate by reciprocity to the extent required by a United States treaty.

§512.4. Application for Certification by Reciprocity.

(a) A person seeking certification by reciprocity must apply for certification on a form prescribed by the board and submitted to the executive director. The application must be accompanied by the requisite fee and shall include written authorization from the applicant empowering the board to obtain all information concerning the applicant's qualifications and present standing.

(b) An applicant for certification by reciprocity from a domestic jurisdiction that has not been approved as being substantially equivalent by NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) an interstate exchange of information form documenting the credits under the domestic jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(3) documentation of qualifying work experience if applying under §901.259(a)(1)(E) of the Act;

(4) if not applying under §901.259(a)(1)(E) of the Act, official college transcripts;

(5) recent photograph of the applicant;

(6) completion of an examination on the Rules of Professional Conduct;

(7) evidence of completion of 120 hours of CPE during the last three years, including a board-approved four-hour ethics course; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);

(8) an FBI fingerprint card to be used for a criminal background investigation; and

(9) any other information requested by the board.

(c) An applicant for certification by reciprocity from a domestic jurisdiction that has been approved as being substantially equivalent by NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing as a certified public accountant from a domestic jurisdiction approved by NASBA and the board as being substantially equivalent;

(2) a certificate of verification of substantial equivalency of the domestic jurisdiction of origin from NASBA;

(3) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(4) a recent photograph of the candidate;

(5) evidence of completion of 120 hours of CPE during the last three years, including a board-approved four-hour ethics course on the Rules of Professional Conduct; in compliance with Chapter 523 of this title;

(6) an FBI fingerprint card to be used for a criminal background investigation; and

(7) any other information requested by the board.

(d) An applicant for certification by reciprocity from a foreign jurisdiction that has been approved as being substantially equivalent by IQAB and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing of credentials to practice public accountancy from the foreign jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(3) a recent photograph of the applicant;

(4) documentation of the attainment of a passing grade on a board approved international qualifying examination (IQEX);

(5) documentation of the attainment of a passing grade on a board approved examination on the Act and the board's rules, including the Rules of Professional Conduct;

(6) documentation of the completion of a board-approved four-hour ethics course; and

(7) any other information requested by the board.

(e) All correspondence and supporting documentation submitted to the board shall be in English or accompanied by a certified translation into English of such documents.

§512.5. Examination Authorization.

The board approves the International Qualification Examination (IQEX), written and graded by the American Institute of Certified Public Accountants as a measure of professional competency satisfactory to obtain a Texas certificate by reciprocity from a foreign jurisdiction.

§512.6. Reciprocal Fee.

(a) A person making application for a certificate by reciprocity must submit a processing fee and a professional fee as stated in §521.3 of this title (relating to Fee for Certification by Reciprocity). If the application is approved by the board, the individual must then pay the license fee upon receipt of the license notice.

(b) All the requirements for certification must be completed by the applicant within six months after board's date of receipt of the application. If all the requirements are not completed within six months, the application will be void. The professional fee will be refunded to the applicant. The processing fee paid will not be refunded to the applicant.

(c) If the applicant does not meet the requirements of the board for a certificate by reciprocity the application shall be denied. The professional fee will be refunded to the applicant. The processing fee paid will not be refunded to the applicant.

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 May 20, 2004.

TRD-200403430
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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CHAPTER 513. REGISTRATION

SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §§513.1 - 513.3, 513.5, 513.6

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.1, concerning Application; §513.2, concerning Approval by the Board; §513.3, concerning Registration; §513.5, concerning Restrictions Concerning Members

of Partnerships and Corporations; and §513.6, concerning Non-Resident Substantially Equivalent.

The proposed repeal of Chapter 513, Subchapter A, §§513.1 - 513.3, 513.5 and 513.6 will remove rules that are being rewritten.

The repeal is the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, TAC, Part 22, Chapter 513 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that these rules will have been removed and rewritten.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal will not cause anyone to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

§513.1. Application.

§513.2. Approval by the Board.

§513.3. Registration.

§513.5. Restrictions Concerning Members of Partnerships and Corporations.

§513.6. Non-Resident Substantially Equivalent.

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 May 20, 2004.

TRD-200403431
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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22 TAC §§513.1 - 513.6

The Texas State Board of Public Accountancy (Board) proposes new §513.1, concerning Registration of Foreign Practitioners with Substantially Equivalent Qualifications; §513.2, concerning Application for Registration of Foreign Practitioners; §513.3, concerning Board Approval of Foreign Practitioner Registration; §513.4, concerning Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications; §513.5, concerning Notice for Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications; §513.6, concerning Board Acceptance of Out-of-State Practitioner Registration.

New §513.1 was re-written to recognize substantial equivalency of foreign jurisdictions. New §513.2 was rewritten to recognize and accommodate substantial equivalency of foreign jurisdictions, to list requirements, and to delete obsolete language. New §513.3 was rewritten to recognize and accommodate substantial equivalency of foreign jurisdictions, to allow registration of resident individuals with this board, to describe how registered individuals will announce their professional designation and to describe their annual registration renewal requirements. New §513.4 was rewritten to recognize and accommodate substantial equivalency of domestic jurisdictions and to allow substantially equivalent non-resident individuals to register with this board to practice in Texas. New §513.5 was rewritten to describe the registration procedures for substantially equivalent domestic jurisdiction non-resident individuals, and to describe the exemptions from registration. New §513.6 was rewritten to describe how registered non-resident substantially equivalent domestic jurisdiction individuals will announce their professional designation, to state the registration fee, and to state the requirement of a continuingly valid domestic jurisdiction certificate.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code

§2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, TAC, Part 22, Chapter 513 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero because the new rules are a rewrite of previously existing rules to accommodate substantial equivalency and should not have an impact on either cost or revenue.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero because the new rules are a rewrite of previously existing rules to accommodate substantial equivalency and should not have an impact on either cost or revenue.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero because the new rules are a rewrite of previously existing rules to accommodate substantial equivalency and should not have an impact on either cost or revenue.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be that the board and its licensees will be recognizing and using substantial equivalency.

The probable economic cost to persons required to comply with the new rules will be $100 per year.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rules will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because the cost is minimal ($100) and is imposed only on those who elect to conduct business in Texas.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rules will have an adverse economic effect on small business; if the new rules are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rules are to be adopted; and if the new rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rules under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

§513.1. Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

A person who holds a valid certificate or other credential issued by a foreign jurisdiction that allows the person to practice public accountancy in the issuing jurisdiction may, if that certificate or credential remains in good standing in the issuing jurisdiction, make application for registration with the board upon a prescribed form. The application must be accompanied by the requisite fee and must include written authorization empowering the board to obtain all information concerning the applicant's qualifications and the requirements for licensing by the issuing foreign jurisdiction.

§513.2. Application for Registration of Foreign Practitioners.

(a) An application for registration as a certified public accountant of a foreign jurisdiction may, at the discretion of the board, be approved if it determines the standards met by the applicant in the foreign jurisdiction were at least as high as the standards of this state at the time the foreign jurisdiction awarded the certificate or other credential to the foreign practitioner. In making this determination, the board shall consider:

(1) the examination requirement in effect in the foreign jurisdiction at the time the certificate or other credential was issued to the applicant;

(2) the education requirement in effect in the foreign jurisdiction at the time the certificate or other credential was issued to the applicant. In passing upon the qualifications of an applicant, the board shall recognize degrees conferred by and give credit for courses taken at colleges and universities whose credits would be accepted as transfers by the reporting institution in the State of Texas; and

(3) the experience requirements which shall be the same length of time as required to receive a certificate as a certified public accountant; however, the experience requirement shall be at least 12 months of public accounting experience obtained within the United States. This requirement is to demonstrate that the candidate has an understanding of generally accepted accounting principles and generally accepted auditing standards as they are customarily applied in the United States.

(b) An applicant for registration as a foreign practitioner must submit the following along with the completed application form and required fees:

(1) a certificate of good standing of credentials to practice public accountancy from the foreign jurisdiction of origin;

(2) a recent photograph of the applicant;

(3) documentation of the attainment of a passing grade on a board approved examination on the Act and the board's rules, including the Rules of Professional Conduct;

(4) documentation of the completion of a board-approved four-hour ethics course; and

(5) any other information requested by the board.

(c) All correspondence and supporting documentation submitted shall be in English or accompanied by a certified English translation of such documents.

§513.3. Board Approval of Foreign Practitioner Registration.

(a) Upon approval of the application, the board shall register the foreign practitioner in the permanent records of the board and issue a license to the foreign practitioner pursuant to §901.355 of the Act.

(b) A foreign practitioner registered with the board shall be allowed to use the title "Certified Public Accountant of _____" (indicating the foreign jurisdiction that issued his credential), or may use the title held in the foreign jurisdiction that issued his credential, provided that the foreign jurisdiction is indicated. This title may not be used unless followed by the name of the foreign jurisdiction.

(c) A foreign practitioner registered with the board must comply with the board's Code of Professional Conduct.

(d) A foreign practitioner registered with the board must renew his registration and license annually in the manner provided for renewal of a license in the Act. The registered foreign practitioner must submit a certificate verifying the continued existence of his foreign certificate or other credential in good standing from the foreign jurisdiction of origin with each renewal. A registration and license issued under §901.355 of the Act is automatically revoked if the foreign practitioner does not continue to hold a current certificate or other credential from the foreign jurisdiction of origin.

§513.4. Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications.

An individual who holds a valid certificate or license as a certified public accountant issued by another state whose requirements for certification or licensure have been determined to be substantially equivalent to those required by this state or whose personal qualifications for certification or licensure have been determined to be substantially equivalent to those required by this state pursuant to §512.2 of this title (relating to National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions) and whose principal place of business is not in this state may, if that certificate or license remains in good standing in the issuing state, register with the board to practice public accountancy within this state without obtaining a certificate from the board. To register with the board as an out-of-state practitioner with substantially equivalent qualifications, the out-of-state practitioner must give notice to the Board in the manner specified in §513.5 of this title (relating to Notice for Registration of Out-of-State Practitioner).

§513.5. Notice for Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications.

(a) To register with the board to practice public accountancy within this state without a certificate issued by the board, an out-of-state practitioner who holds a valid certificate or license from a substantially equivalent domestic jurisdiction must, within 30 days after acceptance of an engagement or assignment to render professional accounting services within this state or offering to render professional accounting services through direct solicitation or other marketing device to persons within this state, submit a notice in the format established by the board and, unless waived by subsection (e) of this section, payment of a $100 processing fee to the board.

(b) An out-of-state practitioner may satisfy the notice requirement of subsection (a) of this section at any time prior to entering this state by, either individually or through his firm, providing a master notice to all participating substantially equivalent jurisdictions including this board by giving notice to the NASBA Qualifications Appraisal Service provided the information in the master notice is maintained by NASBA, accessible to this board, reasonably current and renewed annually. When the master notice is made by the out-of-state practitioner's firm, the firm accepts responsibility for the out-of-state practitioner's compliance with the Act and the board's rules. An out-of-state practitioner who gives notice to the board through a master notice to NASBA must pay a $100 processing fee, unless waived by subsection (e) of this section.

(c) An out-of-state practitioner who complies with this section may commence practice in this state until and unless otherwise notified by the board.

(d) An out-of-state practitioner is not required to register with the board if his activities are limited to the following:

(1) teaching either college or continuing professional education courses,

(2) delivering a lecture,

(3) moderating a panel discussion,

(4) rendering professional accounting services to the individual's employer, including affiliated, parent or subsidiary entities, provided such services are not rendered for the employer's clients.

(e) Processing fees may be waived for out-of-state practitioners from states that reciprocally waive processing fees for Texas certificate holders.

§513.6. Board Acceptance of Out-of-State Practitioner Registration.

(a) Upon receipt of the notice and, if required, processing fee, the board shall register the out-of-state practitioner in the permanent records of the board and issue a practice privilege pursuant to §901.412 of the Act to the out-of-state practitioner.

(b) An out-of-state practitioner registered with the board shall be allowed to use the title "Certified Public Accountant of _____" (indicating the state that issued his certificate) when performing professional accounting services within this state. This title may not be used unless followed by the name of the state that issued his certificate.

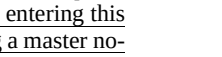
(c) An out-of-state practitioner must renew his registration annually by submitting a completed renewal form in the format specified by the board and, unless from a domestic jurisdiction that waives out-of-state registration fees for Texas certificate holders, a renewal processing fee of $100 to the board.

(d) A registration and practice privilege issued under §901.412 of the Act is automatically revoked if the out-of-state practitioner does not continue to hold a current certificate or license from the domestic jurisdiction of origin.

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 May 20, 2004.

TRD-200403433
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848



SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §§513.7 - 513.13

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

the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.7, concerning Eligibility for Firm License; §513.8, concerning Qualifications for Non-CPA Owners of Firm License Holders; §513.9, concerning Application for Firm License; §513.10, concerning Certification of Corporate Franchise Tax Status; §513.11, concerning Affidavit of Firm; §513.12, concerning Firm Offices; and §513.13, concerning Death of a Sole Proprietor.

The proposed repeal of Chapter 513, Subchapter B, §§513.7 - 513.13 will remove rules that are being rewritten.

The repeal is the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, Part 22, Chapter 513 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that these rules will have been removed and rewritten.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal will not cause anyone to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

§513.7. Eligibility for Firm License.

§513.8. Qualifications for Non-CPA Owners of Firm License Holders.

§513.9. Application for Firm License.

§513.10. Certification of Corporate Franchise Tax Status.

§513.11. Affidavit of Firm.

§513.12. Firm Offices.

§513.13. Death of a Sole Proprietor.

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 May 20, 2004.

TRD-200403432
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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22 TAC §§513.10 - 513.16

The Texas State Board of Public Accountancy (Board) proposes new §513.10, concerning Eligibility for Firm License; §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders; §513.12, concerning Application for Firm License; §513.13, concerning Certification of Corporate Franchise Tax Status; §513.14, concerning Affidavit of Firm; §513.15 concerning Firm Offices; and §513.16, concerning Death of a Sole Proprietor.

Section 513.10 will continue former §513.7 and will contain the eligibility requirements for a firm license; §513.11 will continue former §513.8 and will list the qualifications for someone to become a non-CPA owner of a CPA firm; §513.12 will continue former §513.9 and will contain information regarding applications for firm license; §513.13 will continue former §513.10 and will require certification that a corporate applicant's franchise taxes are current; §513.14 will continue former §513.11's requirement that initial and renewal applications must be accompanied by an Affidavit of Firm; §513.15 will continue former §513.12's requirements of a license for each office and a resident manager for

each office; §513.16 will continue former §513.13 and address the situation when a sole proprietor dies.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, Part 22, Chapter 513 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be zero because the proposed rules are a continuation of current rules and are not intended to effect costs or revenue.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be zero because the proposed rules are a continuation of current rules and are not intended to effect costs or revenue.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be zero because the proposed rules are a continuation of current rules and are not intended to effect costs or revenue.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be the existence of rules addressing these subjects.

The probable economic cost to persons required to comply with the new rules will be zero because the proposed rules are a continuation of current rules and are not intended to effect costs or revenue.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rules will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because the proposed rules are continuations of current rules and do not effect costs.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rules will have an adverse economic effect on small business; if the new rules are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rules are to be adopted; and if the new rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rules under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by these proposed new rules.

§513.10. Eligibility for Firm License.

(a) To be eligible for a firm license, the firm must show:

(1) that a majority of the ownership of the firm, in terms of both financial interests and voting rights, belongs to persons who hold certificates issued under this chapter or are licensed as a CPA in another state; and

(2) that all attest services performed in this state are under the supervision of a person who holds a certificate issued by the board or by another state.

(b) Financial interests shall include but shall not be limited to stock shares, capital accounts, capital contributions, and equity interests of any kind. Financial interests also include contractual rights and obligations similar to those of partners, shareholders or other owners of an equity interest in a legal entity.

(c) Voting rights shall include but shall not be limited to any right to vote on the firm's ownership, business, partners, shareholders, management, profits, losses and/or equity ownership.

§513.11. Qualifications for Non-CPA Owners of Firm License Holders.

(a) A firm which includes non-CPA owners may not qualify for a firm license unless every non-CPA owner of the firm:

(1) is a natural person;

(2) is actively involved in the firm or an affiliated entity; and

(3) is of good moral character as demonstrated by a lack of history of dishonest or felonious acts.

(b) Each of the non-CPA owners who are residents of the State of Texas must also:

(1) pass an examination on the rules of professional conduct as determined by board rule;

(2) comply with the rules of professional conduct;

(3) maintain professional continuing education applicable to license holders including the Board approved ethics course as required by board rule;

(4) hold a baccalaureate or graduate degree conferred by a college or university within the meaning of §511.52 of this title (relating to Recognized Colleges and Universities) or equivalent education; and

(5) maintain any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication.

(c) "Actively involved" means providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm.

(d) "Owner" includes any person who has any financial interest in the firm or any voting rights in the firm.

§513.12. Application for Firm License.

(a) Application for a firm license must be made upon a form prescribed by the board and submitted to the executive director. The application must be accompanied by affidavit of an individual owner who holds a license to practice public accountancy in this state affirming that all statements are true and correct.

(b) A firm shall notify the board not later than the 31st day after the date on which information in the affidavit is changed, including information regarding the admission or withdrawal of an owner or resident manager.

§513.13. Certification of Corporate Franchise Tax Status.

(a) Each corporation or professional limited liability company required to obtain a firm license shall certify in its application for a license, that the corporation's Texas franchise taxes are current.

(b) The making of a false statement as to corporate franchise tax status on any license application or renewal as described in subsection (a) of this section is grounds for suspension or revocation of the license.

§513.14. Affidavit of Firm.

(a) Each applicant for issuance or renewal of a firm license shall submit an affidavit on a form provided by the board certifying whether the firm and/or its owners have been defendant(s) in legal proceedings and/or administrative proceedings relating to professional services performed within the State of Texas during the three-year period immediately preceding the date of the affidavit and the disposition of each proceeding.

(b) The affidavit must be executed by the individual shown on the board's records as the firm's general partner, officer, incorporator, or person in charge. The affidavit must show the civil actions referred to in subsection (a) of this section involving the firm and/or a partner, officer, director, or shareholder as a defendant, and must provide sufficient factual documentation for the board to determine the need for further action as described in Chapter 519 of this title (relating to Practice and Procedure) and Chapter 525 of this title (relating to Criminal Background Investigations).

(c) This rule does not apply to complaints before the board that have been formally closed.

§513.15. Firm Offices.

(a) A Certified Public Accountancy Firm must hold a license for each office in which the firm offers services to the public in Texas.

(b) Each office of a firm must be under the direct supervision of a resident manager who is directly responsible for the supervision of the professional services of that office at all times. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

§513.16. Death of a Sole Proprietor.

Upon written authorization from the executive director, a sole proprietorship may continue to operate for a period of up to 15 months following the death of the sole proprietor. The executive director, subject to ratification at the next board meeting, may permit the continued operation of the sole proprietorship when he has been provided with:

(1) a certified copy of the sole proprietor's death certificate;

(2) a copy of the power of attorney from the sole proprietor's executor, administrator, or heir designating a certificate or registration holder in good standing with the board to manage the sole proprietorship on behalf of such party. When such party is not a certificate or registration holder, the power of attorney must authorize a certificate or registration holder to manage the sole proprietorship on behalf of such party; and

(3) written evidence that a disruption in the continuation of the sole proprietorship would jeopardize the survivability of the firm.

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 May 20, 2004.

TRD-200403434
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.130, concerning Board Rules and Ethics Course.

The amendment to §523.130 will provide the transition from a 3-year reporting cycle to a 2-year reporting cycle.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the ethics reporting cycle will be transformed to a 2-year reporting cycle.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande

Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment merely provides for the transition from one reporting cycle to another reporting cycle.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.130. Board Rules and Ethics Course.

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

(c) Beginning on January 1, 2005, every licensee must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) every two years. Licensees shall report completion of the course on the annual license renewal notice at least every second year [~~and have until their first license renewal date after January 1, 2007 in which to report completion of the four hour course~~].

(d) For the license renewal due in 2007, every certificate or registration holder must have taken and reported a 4-hour ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005). To transition from the 3-year reporting cycle contained in subsection (b) of this section to the 2-year reporting cycle contained in subsection (c) of this section, those certificate or registration holders that would have been required to report the taking of an ethics course for their license renewal due in 2005 under the 3-year cycle must continue to report the satisfaction of this requirement for their license renewal in 2005; however, either a 2-hour ethics course approved by the board pursuant to §523.133 of this title (relating to Course Content and Board Approval) or a 4-hour ethics course approved by the board pursuant to §523.131 of this title will be accepted in satisfaction of this requirement. Those certificate or registration holders that would have been required to report the taking of an ethics course for their license renewal due in 2006 under the 3-year cycle must report the satisfaction of this requirement for their license renewal in 2006; however, that course must be a 4-hour ethics course approved by the board pursuant to §523.131 of this title.

(e) [~~(d)~~] A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course during the licensee's exempt status. When the exempt status is no longer applicable, the individual must complete an ethics course approved by the board and report it on the license renewal notice if due.

(f) [~~(e)~~] A certificate or registration holder who resides in the state of Texas must take the ethics course in a live instructor format or in an interactive computer-based format as defined in §523.102(b)(5) of this title (relating to CPE Purpose and Definitions).

(g) [~~(f)~~] A certificate or registration holder who does not reside in the state of Texas must take the course in either a live instructor format or a computer-based interactive format as defined in §523.102(b)(5) of this title (relating to CPE Purpose and Definitions) or obtain a written exemption from the board.

(h) Interpretive Comment: Only a 4-hour course will be board approved after January 1, 2005. If a licensee needs to report an ethics course in 2005, he may take a board approved 2-hour course prior to January 1, 2005; however, he will still need to take a board approved 4-hour ethics course to report no later than his 2007 license renewal date. For example:
Figure: 22 TAC §523.130(h)

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 May 20, 2004.

TRD-200403435
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.144

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.144, concerning Board Contracted CPE Sponsors after January 1, 2005.

The amendment to §523.144 will change the rule's caption and rule effective date from December 2005 to January 2005.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment only changes the rule's effective date.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment only changes the rule's effective date.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment only changes the rule's effective date.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the rule will have been implemented 12 months sooner.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment only changes the rule's effective date.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 5:00 pm on Friday, June 18, 2004. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment only changes the rule's effective date.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.144. Board Contracted CPE Sponsors after <u>*January 1, 2005*</u> *[~~December 31, 2005~~]*

(a) - (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 May 20, 2004.

TRD-200403436
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 305-7848

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER E. CONTESTED CASES

22 TAC §661.62

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.62, concerning Filing of Documents. This section establishes the requirements and procedures for the filing of complaints, investigation of complaints, Board action regarding complaints, and settlement procedures to be followed in response to complaints filed against Registered Professional Land Surveyors, Licensed State Land Surveyors and non-registered/licensed individuals. This section also provides for the assessment of penalties in order to recover costs spent by the State for administrative hearings.

The proposed amendment adds language to broaden and clarify the procedures to be followed in response to a complaint.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because of the new procedures for the filing of complaints and investigation of complaints as well the new procedures regarding recovery of costs for hearings before the State Office of Administrative Hearings expended by the State.

There will be no effect on small or micro businesses. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, TX 78752. Comments may also be faxed to Ms. Smith at the Board at 512/452-7711 or may be sent electronically to sandy.smith@mail.capnet.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.62. Filing of Documents.

<u>(a)</u> All complaints <u>and</u> [~~, motions, replies, answers, notices,~~] requests for hearings [~~by applicants whose applications the board has rejected, and other pleadings relating to any proceeding pending or to be instituted before the Board~~] shall be filed with the executive director. [~~They shall be deemed filed only when actually received in the Board's office.~~]

<u>(b) Filing of Complaints.</u>

<u>(1) Complaints may be submitted on complaint forms provided by the board or complaints may be submitted in a written format that includes the following information that is reasonably available to the complainant:</u>

<u>(A) name, address and phone number of complainant and surveyor;</u>

<u>(B) nature and description of the complaint;</u>

(C) copies of factual evidence and other information that supports the complaint;

(D) names and addresses of witnesses; and

(E) signature of complainant recognizing the serious nature of the complaint process and consequences of falsifying a government document.

(2) All signed complaints filed will be investigated. Anonymous complaints will be investigated if witnesses or other evidence clearly supports a credible or factual foundation.

(3) Withdrawal of a complaint will not impact an on-going investigation.

(c) Investigations.

(1) The Board will hire an investigator or contract with an investigator to investigate complaints.

(2) Upon receipt of a complaint, the registrant/licensee shall receive a copy of the complaint and have an opportunity to respond.

(3) If investigation fails to substantiate violations of the Act or Board Rules the complaint will be dismissed by the investigator and the board notified at the next scheduled meeting after dismissal.

(4) The person making a complaint that is dismissed may request reconsideration of the dismissal by sending a written request for such within 20 days of receipt of the notice of dismissal.

(5) The investigator may make initial determination of violations.

(6) The investigator may recommend sanctions to the executive director.

(7) The executive director may recommend an administrative penalty.

(8) The board will not consider a previously dismissed complaint.

(d) Determination of Violations. If the executive director finds that a violation of the board's Act or Rules has occurred, the executive director shall send notice to both the registrant/licensee and the board outlining the violation and recommending an administrative penalty and/or sanction and/or restitution.

(e) Request for Administrative Hearing.

(1) A registrant/licensee who is the subject of proposed administrative action by the executive director may appeal the executive director's determination by requesting a contested case hearing within 20 days of receiving notice of the violation. The request must be in a written form that references the cause number of the complaint and indicates that the registrant/licensee's intent to request a contested case hearing. Upon receipt of the request for hearing, the executive director will set a hearing and provide a copy of the complaint and notice of the hearing to the registrant/licensee.

(2) The Complaint and Notice of Hearing shall be sent to the registrant/licensee by registered or certified mail, addressed to the respondent at his/her most recent address as shown in the records of the board. Service of the Complaint and Notice of Hearing shall be completed 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.

(f) Informal Settlement Conferences.

(1) After the executive director has rendered a finding that a registrant/licensee violated the Act or Rules, the registrant/licensee may request an Informal Settlement Conference to present additional evidence or attempt to negotiate a settlement.

(2) Members of the Informal Settlement Conference shall include one public board member, one registered or licensed board member, the executive director, the investigator, and others as deemed necessary.

(3) The Settlement Conference shall be informal and need not follow the procedure established in the State Office of Administrative Hearings (SOAH) rules for contested cases. The registrant/licensee, his/her attorney and conference members may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate.

(4) At the conclusion of the informal settlement conference the complaint may be dismissed or an agreement may be reached regarding a recommendation to be made to the board at the next scheduled meeting or a formal hearing may be scheduled.

(5) The board may order the respondent to pay restitution to a consumer, the amount may not exceed the amount the consumer paid for the service. The board may not require payment of other damages or estimate harm in the restitution order.

(g) Appeal. Appeals shall be in accordance with the Administrative Procedures Act.

(h) Cost of Administrative Hearings.

(1) Default Judgments. In administrative penalty cases brought before the State Office of Administrative Hearings (SOAH), in the event that the Respondent/Licensee is adjudged guilty of an administrative violation by default, the Board has the authority to assess, in addition to the penalty imposed, cost of the administrative hearing in an amount not to exceed Two Hundred ($200) Dollars.

(2) Trial on the Merits. In administrative penalty cases brought before SOAH, in the event that the Respondent/Licensee is adjudged guilty of an administrative violation after a contested case trial on the merits, the Board has the authority to assess, in addition to the penalty imposed, the actual costs of the administrative hearing. Such may include the costs of witnesses, costs of adjudication before SOAH, and any other costs that are necessary for the preparation of the Board's case, including the cost of any transcriptions of testimony.

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

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403498
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 452-9427

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PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

The Council on Sex Offender Treatment (Council) proposes the repeal of §§810.1 - 810.9, 810.31 - 810.34, 810.61 - 810.64, 810.91 - 810.92, 810.121 - 810.122, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241 - 810.242, 810.271 - 810.272; and new sections §§810.1 - 810.9, 810.31 - 810.34, 810.61 - 810.67, 810.91 - 810.92, 810.121 - 810.122, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241 - 810.242, and 810.271 - 810.275, concerning the registration of sex offender treatment providers.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The sections have been reviewed and the council has determined that the reasons for adopting the sections continue to exist in that rules concerning the registration and regulation of sex offender treatment providers are still needed; however, the existing rules are being repealed and proposed as new rules as described in this preamble.

In general, the proposal ensures appropriate subchapter, section, paragraph organization; and clarity; improves spelling, grammar, and punctuation; ensures that the rules reflect current legal and policy considerations; accuracy of legal citations; deletes repetitive, obsolete, or unnecessary language; improves draftsmanship; and will make the rules more accessible, understandable, and usable.

The following changes are proposed relating to the repeal and readoption of Subchapter A (Sex Offender Treatment Provider Registry). Regarding §810.1(c), the rule is proposed to provide a statement of the council's history.

Regarding §810.2, new definitions of ATSA, biennium, client, custodian, guardian, juvenile court, reportable conviction or adjudication, valid court order, ability to give consent, accountability, anti-androgens, aversive conditioning, clarification, containment approach, denial, deviant sexual arousal, deviant sexual behavior, dynamic risk factors, empathy, grooming, HIPAA, juvenile with sexual behavior problems, offense cycle, offense specific, static risk factors, successful completion of treatment are proposed.

Regarding §810.2, the definitions of Act, case management, council, fiscal year, registry, polygraph examination, polygraph examiner, penile plethysmograph, and rehabilitation service are amended in order to correct legal citations, reflect current knowledge of the practice, improve draftsmanship, and clarify ambiguous definitions. Regarding §810.2, the definition of department was deleted as unnecessary.

New §810.3, the rule is proposed to clarify the experience of registrants in the database maintained by the council.

Regarding §810.4, the rules relating to registration renewal are proposed to clarify the continuing education and renewal processes in accordance with the two-year licensing provisions of House Bill 2292, 78th Regular Session, which added Health and Safety Code, §12.0112.

Regarding §810.4, the rules relating to fees are proposed to clarify the licensing fee structure in accordance with the two-year licensing provisions of House Bill 2292, 78th Regular Session. New §810.4(a)(7)-(8) are proposed to collect fees associated with Texas Online services and the Office of Patient Protection, in accordance with Senate Bill 1152, 78th Regular Session, which amended Section 1, Subsection (e), §2054.111, of the Government Code, and House Bill 2985, 78th Regular Session, which amended §1, Chapter 101, Occupations Code, by adding Subchapter G.

Regarding §810.8(a)(1)-(4), new rules are proposed to set out the criteria the council will use in evaluating criminal convictions for registration purposes.

The following changes are proposed relating to the repeal and readoption of Subchapter B (Criminal Background Check.) §810.33 is proposed to correct a punctuation error.

The following changes are proposed relating to the repeal and readoption of Subchapter C (Standards of Practice.) Regarding §810.61, the section is proposed to clarify the introductory statements relating to standards of practice.

Regarding §810.62(a), the rules are proposed to require sex offender treatment providers to be aware of professional and legal obligations; to not make statements that a client is no longer at any risk to reoffend; to refuse referrals for re-evaluations in certain circumstances; to recognize there are no tools to prove or disprove if a client has committed a specific sexual crime; and to facilitate follow-up services.

Regarding §810.62(b), the rules are proposed to clarify that community safety is the greatest consideration for sex offender treatment providers; to clarify what a containment model is; to distinguish between adults and juveniles; to require that treatment plans be completed within 30 days and reassessed at least annually; to require that behavior contracts include provisions to avoid high-risk situations and must be reassessed periodically; to clarify how a provider defines progress in treatment; to communicate certain information to the supervising officer; to require registrant notification to the appropriate authority when a client leaves treatment; to clarify the extent to which the degree of denial is taken into consideration in entering treatment and identifying treatment needs; to clarify the limitations and strengths of the penile plethysmograph; to clarify which polygraph examiners may be utilized and to clarify the strengths of polygraphs in treatment; to clarify decisions regarding contact between clients and children; and to require registrants to assist in the selection and education of potential chaperones for contacts between clients and children. Rules relating to juveniles with sexual behavior problems and clients who are developmentally delayed are moved to the appropriate section.

Regarding §810.63, language is proposed to distinguish between adult and juvenile clients and information to juveniles with sexual behavior problems is moved to the appropriate section.

Regarding §810.63(c), the rule is proposed to clearly define the evaluation procedures.

Regarding §810.63(d), the rule is proposed to clarify the information gathered during the evaluation process.

Regarding §810.64, the section is proposed to provide for a section designated to this topic; to bring together related rules from other sections; and to propose new rules relating to the treatment of juveniles with sexual behavior problems.

Regarding §810.65, the section is proposed to provide for a section designated to this topic and to propose new rules relating to the treatment of adult female sex offenders.

Regarding §810.66, the section is proposed to provide for a section designated to this topic; to bring together related rules from

other sections; and to propose new rules relating to the treatment of developmentally delayed clients.

Regarding §810.67, the section is proposed to clarify treatment components generally accepted as most important to the effective treatment of sexual deviancy.

The following changes are proposed relating to the repeal and readoption of Subchapter D (Code of Professional Ethics.) Regarding §810.92(b)(3), the rule is proposed to provide additional examples of dual relationships. Regarding §810.92(c), the rule is proposed to require registrant compliance with the Health Insurance Portability and Accountability Act and Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records).

The following changes are proposed relating to the repeal and readoption of Subchapter E (General Provisions). Regarding §810.121(c), the rule is proposed to incorporate statutory language concerning the civil commitment program.

Regarding §810.122, new definitions of child safety zone; Global Positioning Satellite Tracking; Interagency Case Management Team; residential facility; and supervision, treatment, and GPS requirements are proposed. Definitions of Act, biennial examination expert, civil commitment, civil commitment case manager, civil commitment treatment provider, multidisciplinary team, penile plethysmograph, clinical polygraph examination, polygraph examiner, repeat sexual offender, and sexually violent predator are proposed in order to correct legal citations, reflect current knowledge of the practice, improve draftsmanship, and clarify ambiguous definitions. Definitions of board, department, sexual arousal and preference assessment, supervised housing, supervision contract and tracking services are proposed for deletion as unnecessary.

The following changes are proposed relating to the repeal and readoption of Subchapter F (Civil Commitment). Regarding §810.151, the rule is proposed to clarify the role of the Council on Sex Offender Treatment in the administration of the Act.

Regarding §810.152, the rule is proposed to clarify that a case manager shall be approved by the council and shall be provided with all documentation relating to the client.

Regarding §810.153, the section is proposed to reflect current knowledge of outpatient treatment and supervision programs.

The following changes are proposed relating to the repeal and readoption of Subchapter G (Civil Commitment Case Manager and Treatment Provider Duties and Responsibilities). Regarding §810.181, the section is proposed to clarify the purpose of the subchapter.

Regarding §810.182, the section is proposed to reflect current knowledge and procedures associated with case manager duties.

Regarding §810.183, the section is proposed to reflect current knowledge and procedures associated with treatment provider duties.

The following changes are proposed relating to the repeal and readoption of Subchapter H (Civil Commitment Review). Regarding §810.211, the section is proposed to update requirements relating to the content and timeliness of the biennial examination.

The following changes are proposed relating to the repeal and readoption of Subchapter I (Petition for Release.) Regarding §810.241 and §810.242, the sections are proposed to reflect current procedures regarding petition for release.

The following changes are proposed relating to the repeal and readoption of Subchapter J (Miscellaneous Provisions.) Regarding §810.271, the section is proposed to reflect statutory language relating to the release and exchange of information.

Regarding §810.272, §810.273, and §810.275, the sections are proposed to comply with the requirements of Senate Bill 871, 78th Regular Session, Article 4, Health and Safety Code, Chapter 841, relating to convictions, expert testimony, and immunity.

Regarding §810.274, the section is proposed to reflect statutory language relating to criminal penalty.

Additionally, the review resulted in minor editorial changes throughout the rules, which are necessary to improve or correct punctuation, verb tense, subject and verb agreement, sentence structure, non-substantive word choice, and other grammatical and structural matters.

The council published a Notice of Intention to Review the sections in the *Texas Register* on April 30, 2004. The council received no comments on these sections as a result of the publication of the notice.

Allison Taylor, Executive Director, Council on Sex Offender Treatment, has determined that for the first five-year period the sections are in effect, there will be no additional fiscal impact to state government as a result of enforcing or administering the sections as proposed. There will be no effect on local government.

Ms. Taylor has also determined that for each of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be to assure that the regulation of sex offender treatment providers continues to identify competent providers, to clarify and update current rules and standards of practice for registered sex offender treatment providers, to increase the quality of sex offender treatment services, and to enhance community safety. There will be no effect on small businesses and micro-businesses, because the requirements apply only to registered individuals and persons who contract with the council to provide civil commitment services. There will be no impact on local employment.

Comments on the proposal may be submitted to Allison Taylor, Executive Director, Council on Sex Offender Treatment, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-4530. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. SEX OFFENDER TREATMENT PROVIDER REGISTRY

22 TAC §§810.1 - 810.9

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.1. Introduction.
§810.2. Definitions.
§810.3. Registry Criteria.
§810.4. Registry Renewal.
§810.5. Fees.
§810.6. Application Availability.
§810.7. Documentation of Experience and Training.
§810.8. Revocation, Denial or Non-Renewal of Registration.
§810.9. Complaints, Disciplinary Actions, Administrative Hearing and Judicial Review

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

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403505
Walter J. Meyer, M.D.
Chairperson
Council on Sex Offender Treatment
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 458-7236

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22 TAC §§810.1 - 810.9

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.1. Introduction.

(a) Purpose. The provisions of this chapter govern the procedures relating to the registration of individuals as sex offender treatment providers in the State of Texas.

(b) Construction. These sections cover definitions, criteria for application, fees, continuing education, complaints and other general procedures, and policies of the Council on Sex Offender Treatment.

(c) History. The Council on Sex Offender Treatment (council) was created by the 68th Legislature (Senate Bill 84) in 1983 under the name of the Interagency Council on Sex Offender Treatment. CSOT was designed to coordinate effective treatment strategies to reduce recidivism of sex offenders and to increase public safety.

§810.2 Definitions.

(a) General Definitions.

(1) ATSA--Association for the Treatment of Sexual Abusers.

(2) Act--§14.005, Subtitle A, Title 3, Texas Occupations Code, is amended to codify Chapter 462, Acts of the 68th Legislature, Regular Session 1983, (Vernon's Texas Civil Statutes, Article 4413(51) by adding Chapter 110.

(3) Biennium--Every two years.

(4) Case Management--The coordination and implementation of activities directed toward supervising, treating, and managing the adult sex offender or juvenile with sexual behavioral problems.

(5) Client(s)--Used interchangeably with adult sex offenders and juveniles with sexual behavior problems.

(6) Council--Council on Sex Offender Treatment. The council consists of 7 members, appointed by the Governor with the advice and consent of the senate.

(7) Custodian--The adult who is responsible for the adult or child.

(8) Fiscal year--September 1 through August 31.

(9) Guardian--The person who, under court order, is the guardian of the person of the adult or the child or the public or private agency with whom the adult or juvenile has been placed by a court.

(10) HIPAA--Health Insurance Portability and Accountability Act, Title 45, Code of Federal Regulations (CFR), Parts 160 and 164.

(11) Juvenile Court--A court designated under the Family Code, Title 3, Juvenile Justice Code, §51.04, to exercise jurisdiction over the proceedings.

(12) Reportable Conviction or Adjudication--A conviction or adjudication, regardless of the pendency of an appeal.

(13) Registered Sex Offender Treatment Provider--A treatment provider listed in the council's registry and is recognized based on training and experience to provide assessment and treatment to adult sex offenders and juveniles with sexual behavioral problems.

(14) Registrant--A person who is listed in the registry.

(15) Registry--A database maintained by the council that contains the names of persons who have met the council's criteria in the treatment of sex offenders and who provide mental health or medical services for the treatment of sex offenders.

(16) Valid Court Order--A court order entered under Title 3 Juvenile Justice Code, §54.04 concerning a child adjudicated to have engaged in conduct indicating a need for supervision.

(b) Treatment Definitions.

(1) Ability to Give Consent--Consent is an expressed agreement. Consent cannot be given by someone who is not of the legal age, is emotionally or cognitively disabled, or under the influence of drugs or alcohol. The legal age to give consent in the State of Texas is 17 years old.

(2) Accountability--Accurate attributions of responsibility, without distortion, minimization, or denial.

(3) Anti-androgens--Medication used to reduce the endogenous levels of testosterone and can reduce the sex drive and may help to control deviant sexual arousal.

(4) Aversive Conditioning--Behavioral techniques that involve pairing deviant sexual arousal with a noxious stimulus in order to reduce deviant sexual arousal.

(5) Clarification--The process designed for the primary benefit of the victim, by which the adult sex offender or juvenile with sexual behavior problems clarifies that the responsibility for the assault/abuse resides with the adult offender or juvenile. The victim has no responsibility for the adult offender or juvenile's behavior. It addresses the harm done to the victim and the family. The victim's participation is never required and is sometimes contraindicated. All contact is victim centered and based on the victim's need.

(6) Containment Approach--A method of case management and treatment that seeks to hold adult sex offenders and juveniles

with sexual behavioral problems accountable through the combined use of both internal and external control measures. A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices.

(7) Denial--Refusal to acknowledge in whole or part sexually deviant arousal, sexually deviant intent, and/or sexually deviant behavior.

(8) Deviant Sexual Arousal--A pattern of physiological sexual responses to inappropriate fantasies, thoughts, objects, and/or persons that may or may not precede a sexual act. Deviant sexual arousal is the most obvious manifestation of deviant sexual interests.

(9) Deviant Sexual Behavior--A sexual act that meets one or more of the subsequent criteria:

(A) is with a person under the legal age of consent (17 years of age);

(B) is with a person who is unable to give consent;

(C) is forced, causes physical harm, is coerced, uses intimidation or deceit, or is paid for; or

(D) is harmful or degrading.

(10) Dynamic Risk Factors--Risk factors that can change over time and are therefore important targets for treatment and supervision. Dynamic risk factors include but are not limited to associations with antisocial peers, deviant sexual fantasies, and substance use.

(11) Empathy--The ability to identify and understand another person's feelings, situation, or ideas.

(12) Grooming--The process of desensitizing and manipulating the victim(s) and/or others for the purpose of gaining an opportunity to commit a sexually deviant act.

(13) Juvenile with Sexual Behavior Problems--A person who is 10 years of age or older and under 17 years of age who commits any sexual interaction with a person of any age against the victim's will, without knowing consent, or in an aggressive, exploitative, or threatening manner (Juvenile Justice Code Title 3, §51.02).

(14) Offense Cycle--The specific sequence(s) of thoughts, feelings, behaviors, and events that precede a sexual offense. The offense cycle is thought to be a precursor to sexual offending and should be addressed in relapse prevention.

(15) Offense Specific--Consistent with current professional practices, and means a long-term comprehensive set of planned therapeutic experiences and interventions to modify sexually abusive thoughts and behaviors. Such treatment specifically addresses the occurrence and dynamics of sexually deviant behavior and utilizes specific strategies to promote change and reduce the chance of re-offending. Sex offense specific programming focuses on concrete details of the actual sexual behavior, the fantasies, the arousal, the planning, the denial, and the rationalizations. The primary treatment modality is cognitive behavioral group therapy.

(16) Polygraph (Clinical) Examination--The employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act and used for the purpose of measuring the physiological changes associated with deception. Five types of polygraphs used in the management of adult sex offenders are the disclosure polygraph, sexual history polygraph, maintenance polygraph, and the monitoring polygraph.

(17) Polygraph Examiner--A licensed person who shall adhere to the standards set forth by the Joint Polygraph Committee on Offender Testing (JPCOT).

(18) Penile Plethysmograph--A diagnostic method to assess sexual arousal by measuring the blood flow (tumescence) to the penis during the presentation of sexual stimuli in a laboratory setting.

(19) Rehabilitation Service--A mental health treatment or medical intervention program designed to treat or remedy a client's mental or medical problem that may relate or contribute to the client's criminal or paraphilic problem.

(20) Sex Offender--A person who:

(A) is convicted of committing or adjudicated to have committed a sex crime under the laws of a state or under federal law, including a conviction of a sex crime under the uniform code of military justice;

(B) is awarded deferred adjudication for a sex crime under the laws of a state or under federal law;

(C) admits to having violated the law of a state or federal law with regard to sexual conduct; or

(D) experiences or evidences a paraphiliac disorder as defined by the current version of the Diagnostic and Statistical Manual (DSM), as published by the American Psychiatric Association Press, including any subsequent revision of the manual, which may place a person at risk for the violation of sex offender laws.

(21) Static Risk Factors--Risk factors that are unlikely to change over time such as number of prior offenses, diagnosis of psychopathy or diagnosis of paraphilia.

(22) Successful Completion of Treatment--Includes but is not limited to admitting and accepting responsibility for all crimes, demonstrating the ability to control deviant sexual arousal, understanding of current and instant offense cycle, increase in pro-social behaviors, increase in support systems, improved social competency, compliance with supervision, compliance with court conditions, increase understanding of victimization, no deception indicated on maintenance and monitoring polygraphs, completing and passing the sex history polygraph, approved safety plans and relapse prevention plans, successful completion of adjunct treatments (i.e. anger management, substance abuse, etc.), and the integration and practical application of the program goals. The Registered Sex Offender Treatment Provider determines successful completion of treatment.

§810.3. Registry Criteria.

The council maintains a database of registrants whose experience in the treatment of adult sex offenders and juveniles with sexual behavior problems may vary. The council shall recognize the experience and training of treatment providers in either one of two categories. These may be "Registered Sex Offender Treatment Provider" or "Affiliate Sex Offender Treatment Provider."

(1) Registered Sex Offender Treatment Provider (RSOTP). The council may waive any prerequisite to registration for an application after receiving the applicant's credentials and determining that the applicant holds a valid registration from another state that has registration requirements substantially equivalent to those of this state. To be eligible as a RSOTP, the applicant must first meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, licensed master social worker-advanced clinical practitioner, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides mental health or medical services for the treatment of sex offenders. The license status must be current and active;

(B) experience and training required as listed in clauses (i)-(ii) of this subparagraph:

(i) possess a minimum of 1000 hours of clinical experience in the areas of assessment and treatment of sex offenders, obtained within a consecutive seven-year period, and provide two reference letters from licensed or certified professionals who have actual knowledge of the applicant's clinical work in sex offender treatment; and

(ii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title (relating to Documentation of Experience and Training), obtained within three years prior to application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours must be in sex offender specific training. Ten hours must be in sexual assault issues and/or sexual assault survivor related training;

(C) submit a complete and accurate description of their treatment program on a form provided by the council;

(D) persons making initial application or renewing their eligibility for the registry shall adhere to Subchapter C, Standards of Practice, and Subchapter D, Code of Professional Ethics, and shall comply with the following:

(i) not have been convicted of any felony, or of any misdemeanor involving a sex offense, nor have received deferred adjudication for a sex offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(ii) not have had licensure revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iii) not have been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iv) not have been determined by the council to have engaged in deceit or fraud in connection with the delivery of services or documentation of registry requirements or registry eligibility;

(v) submit themselves to a criminal history background check. An applicant may be required to submit a complete set of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints must be taken by a peace officer or a person authorized by the council and must be placed on a form prescribed by the Texas Department of Public Safety; and

(vi) not have violated any rule adopted by the council;

(E) submit an application fee defined in §810.5 of this title (relating to Fees);

(F) submit a copy of his or her professional license, as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application before a notary public; and

(H) complete the process within 90 days of the application's receipt in the council office.

(2) Affiliate Sex Offender Treatment Provider (ASOTP). To be eligible as an ASOTP, the applicant must meet all of the following criteria:

(A) licensed or certified to practice as a physician, psychiatrist, psychologist, psychological associate, licensed professional counselor, licensed marriage and family therapist, licensed master social worker, advanced nurse practitioner, licensed marriage and family therapist associate, licensed professional counselor intern, provisionally licensed psychologist, recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for the rehabilitation of sex offenders;

(B) experience and training required as listed in clauses (i)-(iii) of this subparagraph:

(i) possess a minimum of 250 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders, provide two reference letters from licensed or certified professionals who have actual knowledge of the applicant's clinical work in sex offender treatment;

(ii) supervised by an RSOTP in accordance with paragraph (4)(C) of this subsection until RSOTP status is reached; and

(iii) possess a minimum of 40 hours of documented continuing education training, as defined in §810.7 of this title, obtained within three years prior to application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours must be in sex offender specific training. Ten hours must be in sexual assault issues and/or sexual assault survivor related training;

(C) complete and submit an accurate description of their treatment program on a form provided by the council;

(D) persons making initial application or renewing their eligibility for the registry shall adhere to Subchapter C. Standards and Subchapter D. Code of Professional Ethics shall comply with the following:

(i) not have been convicted of any felony, or of any misdemeanor involving a sex offense, nor have received deferred adjudication for a sex offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(ii) not have had licensure revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iii) not have been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(iv) not have been determined by the council to have engaged in deceit or fraud in connection with the delivery of services or documentation of registry requirements of registry eligibility;

(v) submit themselves to a criminal history background check. An applicant may be required to submit a complete set of fingerprints with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. If fingerprints are requested, the fingerprints must be taken by a peace officer or a person authorized by the council and must be placed on a form prescribed by the Texas Department of Public Safety; and

(vi) not have violated any rule adopted by the council;

(E) submit an application fee defined in §810.5 of this title;

(F) submit a copy of his or her professional license or certification as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(G) sign the application form(s) and attest to the accuracy of the application in the presence of a notary public; and

(H) complete the process within 90 days of the application's receipt in the council office.

(3) Specialized Competencies. Registered Sex Offender Treatment Providers with specialized competencies in the assessment and treatment of juvenile, female, and/or mentally handicapped sex offenders may have those competencies listed by their name in the Registry, if they meet the following criteria (certification is required only for the initial publication and not thereafter):

(A) possess at least 250 hours experience in the assessment and treatment of juvenile, female, or mentally handicapped sex offenders; these hours may be part of the original training and experience hours required for the original certification (going back up to 7 years);

(B) possess a minimum of 24 hours of documented continuing education training in the assessment and treatment of juvenile, female, or mentally handicapped sex offenders; these hours may be part of the original training and experience hours required for the original certification (going back up to 7 years); and

(C) pay an annual or biennial fee for each specialty as defined in §810.5 of this title.

(4) Supervision. All ASOTP's providing any sex offender treatment must be supervised. Supervision will include the following.

(A) An ASOTP providing any sex offender treatment is required to be under the supervision of an approved RSOTP supervisor. The ASOTP must provide a notarized copy of supervision documentation annually, to the council during the renewal period.

(B) An RSOTP supervisor that has not been a supervisor prior to the effective date of this rule must meet the following criteria:

(i) five years experience as a RSOTP and one of the following:

(I) designated as a supervisor under their license title;

(II) designated as a licensed psychologist or physician; or

(III) designated as a faculty member or adjunct faculty member in an accredited clinical training program of their discipline; and

(ii) designation as an approved RSOTP supervisor, which will require an annual credentialing fee as defined in §810.5 of this title.

(C) The ASOTP must receive face-to-face supervision at least one hour per month, or if providing more than 20 hours of direct clinical sex offender assessment and treatment per month, the ASOTP must receive one hour of supervision per every 20 hours of sex offender assessment and treatment.

(D) The supervising RSOTP must submit annual documentation to the council at the time of their renewal; the documentation will contain the name(s) of the ASOTP(s) that have been supervised during the year. The supervising RSOTP will be required to use a form provided by the council.

(5) Registration Certificates. Upon successful completion of the application or renewal process, registrants will receive an official certificate from the council. This certificate must be displayed at all locations where sex offender treatment is provided and or provide a copy on initial intake. For a nominal fee, duplicate certificates may be obtained for this purpose.

(A) The Council on Sex Offender Treatment Providers (council) shall prepare and provide to each registrant a certificate, which contains the registrant's name and certificate number.

(B) A registrant shall not display a registration certificate, which has been reproduced or is expired, suspended, or revoked.

(C) Any certificate issued by the council remains the property of the council and must be surrendered to the council upon demand.

(D) The address and telephone number of the council must be displayed at all locations where sex offender treatment is conducted and/or provide a copy on initial intake for the purpose of directing complaints against the registrant to the council.

(6) Application processing. The council shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from a completed application receipt and acceptance date for filing or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

(i) letter of acceptance of application for registry renewal--30 days; and

(ii) letter of initial application deficiency--30 days.

(B) The following times shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

(i) approval of application--42 days; and

(ii) letter of denial of license or registration--90 days.

(7) Refund processing. The council shall comply with the following procedures in processing refunds of fees paid to the council. In the event an application is not processed in the times stated in paragraph (6)(A) of this subsection.

(A) The applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time has been violated or finds that good cause existed for exceeding the time, the request will be denied.

(B) Good cause for exceeding the time is considered to exist if the number of applications for registration or renewal exceeds by 15% or more, the applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon

by the council in the application process caused the delay; or any other condition exists giving the council good cause for exceeding the time.

(C) If the executive director denies a request for reimbursement under subparagraph (A) of this paragraph the applicant may appeal to the council for a timely resolution of any dispute arising from a violation of the times. The applicant shall give written notice to the council at the address of the council that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time. The council shall provide written notice of the decision to the applicant and the executive director. The council shall decide an appeal in favor of the applicant, if the applicable time was exceeded and good cause was not established. If the council decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(D) The times for contested cases related to the denial of registration or renewal are not included with the times listed in paragraphs (6)(A) and (6)(B) of this subsection. The time for conducting a contested case hearing runs from the date the council receives a written hearing request until the council's decision is final and appealable. A hearing may be completed within three to nine months, but may be shorter or longer depending on the particular circumstances of the hearing, the workload of the department and the scheduling of council meetings.

§810.4. Registry Renewal.

In order to maintain eligibility for the registry, the primary license of each renewal must be current and active. All renewal applicants must comply with the following:

(1) Number of continuing education hours. All renewal applicants must submit by the end of every fiscal year, a minimum of 12 hours of continuing education documentation in sex offender treatment of which 3 hours may be in sexual assault victim related training, beginning September 1999. All biennial renewals must submit by the end of the two year cycle, a minimum of 24 hours of continuing education documentation in sex offender treatment of which six 6 hours may be in sexual assault victim related training, beginning September 2005.

(2) Renewal forms. All renewal applicants must submit renewal forms provided by the council and renewal fees defined in §810.5 of this title (relating to Fees).

(3) Registration certificate expiration. All registration certificates expire September 30, no matter the date of initial registration.

(4) Renewal application postmark date. All renewal applications must be postmarked by September 1 or a late fee shall be assessed.

(5) Continuing education activities. Registrants should request pre-approval of hours from the council before attending educational training. Continuing education activities shall be instructor-directed activities such as conferences, symposia, seminars and workshops and must be accepted or approved for continuing education credits by the licensing agencies regulating professionals listed in §810.3 of this title (relating to Registry Criteria).

(6) Home or self-directed study courses. No home or self-directed study courses will be considered for continuing education hours.

(7) Presentation of continuing education. All renewal applicants may count a maximum of four hours per renewal period for the presentation of continuing education training, lectures, or courses in the specific area of sex offender treatment and evaluation, sexual assault issues and/or victim training.

(8) Carrying over continuing education hours. No hours may be carried over from one renewal period to another renewal period.

(9) Continuing education extension.

(A) A registrant who has failed to complete the requirements for continuing education (CE) may be granted a 90-day extension by the executive director.

(B) The request for an extension of the CE period must be made in writing and must be postmarked prior to September 30.

(C) If an extension is needed a late fee equal to one-half of the renewal fee stated in §810.5(4) of this title will be assessed.

(D) The next CE period shall begin the day after the CE has been satisfied.

(E) Credit earned during the extension period cannot be applied toward the next CE period.

(F) A person who fails to complete the CE requirements during the extension or who does not request an extension holds an expired registration and may not use the RSOTP or ASOTP credential or certificate.

(10) Completion of continuing education after extension. A registration may be renewed upon completion of the required CE within the given extension period, submission of the registration form, and payment of the applicable late renewal fee.

(11) Failure to complete continuing education. A person who fails to complete CE requirements for renewal and failed to request an extension to the CE period may not renew the registration. The person may obtain a new registration by complying with the current requirements and procedures for obtaining a license.

§810.5. Fees.

The council has established the following registration fees.

(1) All applicants must submit a non-refundable annual application fee of $200 or a $400 for the biennium and a nominal electronic application fee if applicable, as established by the contracting agency and meet the following requirements for consideration and inclusion in the registry:

(A) return the completed, signed and notarized application form provided by the council;

(B) submit the registration fee in the form of a check or money order; and

(C) submit, within 90 calendar days, any documentation required to complete be submitted.

(2) Additional fees will be charged for Federal Bureau of Investigations and Texas Department of Public Safety criminal background checks. Fees shall be determined by those agencies conducting the investigation.

(3) Applicants that meet the specialized competency criteria and chose to list those competencies listed in the registry will be charged an initial $20 non-refundable fee per specialty annually or $40 per specialty per biennium.

(4) Renewal forms and information will be mailed to each registrant at least 60 days prior to registration expiration and sent to the registrant's last address of record with the council.

(5) Registrants that meet the RSOTP supervisor criteria and want to be designated as an approved supervisor shall pay an annual $20 credentialing fee annually or a $40 credentialing fee per biennium.

(6) To renew, an RSOTP or an ASOTP must submit an annual renewal fee of $100 or a biennial renewal fee of $200 and a nominal electronic renewal fee if applicable, as established by the contracting agency and meet the following requirements.

(A) A person who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required registration fee to the council on or before the expiration date of the registration.

(B) Registrants wanting to continue to list there specialized competencies in the registry will be charged an annual $10 fee or a $20 biennial fee per specialty listed.

(C) If a registration has been expired for 90 days or less, the late renewal fee is equal to one and one-half times the required renewal fee.

(D) If a registration has been expired for longer than 90 days but less than one year, the reinstatement fee is equal to two times the require renewal fee.

(E) If a registration has been expired for one year or longer, the reinstatement fee is two times the required renewal fee.

(7) Effective January 1, 2004, for all applications and renewal applications, the council is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(8) Effective January 1, 2004, for all applications and renewals, the council is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

§810.6. Application Availability.

Applications shall be made available upon receipt of a written or verbal request to the council.

§810.7. Documentation of Experience and Training.

In determining the acceptability of the treatment providers experience and/or training, the council will require documentation of experience and/or training regarding the quality, scope, and nature of the applicants work in sex offender treatment and rehabilitation. This will include 2 reference letters from professionals who can attest to the applicants work in sex offender treatment. The council recognizes continuing education activities that are instructor-directed activities such as conferences, symposia, seminars and workshops and must be accepted or approved for continuing education credits by the licensing agencies regulating professionals listed in §810.3 of this title (relating to Registry Criteria).

§810.8. Revocation, Denial or Non-Renewal of Registration.

(a) The council shall have the right to revoke a registration, refuse to accept a registration, and/or refuse to renew a registration upon proof that the treatment provider has:

(1) been convicted of any felony or a misdemeanor involving a sexual offense, or has ever received deferred adjudication for a sexual offense, unless sufficient evidence of rehabilitation has been established as determined by the council;

(2) had primary licensure placed on inactive status, not renewed, revoked, canceled, suspended, or placed on probationary status by any professional licensing body, unless sufficient evidence of rehabilitation has been established as determined by the council;

(3) been determined by any professional licensing body to have engaged in unprofessional or unethical conduct, unless sufficient evidence of rehabilitation has been established as determined by the council;

(4) been determined by the council to have engaged in deceit or fraud in connection with the delivery of services, supervision, or documentation of registry requirements or registry eligibility;

(5) violated the Act or any rule adopted by the council;

(6) been prohibited from renewal by the Education Code, §57.491 (relating to Loan Default Ground for Non-renewal of Professional or Occupational License); or

(7) been prohibited from renewal by a court order or attorney generals order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support).

(b) The council may take action against a registrant or deny an application or renewal if the registrant has felony or misdemeanor convictions.

(c) The following felonies and misdemeanors relate to a registrant because these criminal offenses indicate an inability or tendency to be unable to perform as a RSOTP

(1) an offense involving moral turpitude;

(2) failure to report child abuse or neglect;

(3) a misdemeanor involving deceptive business practices;

(4) any felony or misdemeanor conviction involving a sexual offense, or having have received deferred adjudication for a sex offense;

(5) the felony offense of theft;

(6) any offense of assault; and

(7) any other misdemeanor or felony which would indicate an inability or tendency to be unable to perform as a RSOTP.

(d) Documentation of rehabilitation may include the following:

(1) Court records related to the conviction;

(2) documents related to the sentence imposed;

(3) documents of completion of the sentence;

(4) documents of satisfactory completion of probation or parole;

(5) information about subsequent good conduct;

(6) letters of support from employers or others; and

(7) any other information that supports the applicant's qualifications.

§810.9. Complaints, Disciplinary Actions, Administrative Hearing and Judicial Review.

(a) Reporting a complaint. A person wishing to report an alleged violation of the Act or this chapter by a registrant or other person shall notify the executive director. The initial notification may be in writing, by fax, or by personal visit to the council office.

(b) Review of complaint.

(1) The executive director will review the complaint for violations of the Act or any rule adopted by the council.

(2) If it is determined that a violation of the Act or these sections may have occurred, the executive director or executive directors designee will:

(A) refer complaint to registrant's primary licensing agency within 60 days;

(B) notify the registrant or other person in writing, by phone or in person that a complaint has been filed; and

(C) notify the complainant in writing of receipt of the complaint.

(c) Responsibilities of registrant.

(1) A registrant shall cooperate with the council by furnishing required documents or information and by responding to a request for information or a subpoena issued by the council or its authorized representative.

(2) A registrant shall comply with any order issued by the council relating to the registrant. A licensee shall not interfere with a council investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(3) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or designee to the case and will be required to provide a sworn response to the allegations within two weeks of that notice.

(4) Failure to respond to the allegation within the two-week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(d) Actions by the council. The council is authorized to revoke, suspend or refuse to renew a registration, place on probation a person whose registration has been suspended, or reprimand a registrant for a violation of the Act, or a rule of the council.

(e) Probated Suspension. If the suspension is probated, the council is authorized by 13C(a)(1)-(3) of the Act to impose certain requirements and limitations on a person.

(f) Disciplinary action on primary license. If any professional license of the registrant is revoked or suspended, the council shall propose revocation of registration.

(g) Complaint information. The council shall keep information about each complaint filed with the council. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all witnesses contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the Council took no action, an explanation of the reason the complaint was closed without action.

(h) Formal hearing.

(1) The formal hearing shall be conducted according to the provisions of the Texas Government Code, Title 10, General Government, Chapter 2001, Administrative Procedure and held in Travis County, Texas unless otherwise determined by the Administrative Law Judge (ALJ) or upon agreement of the parties.

(2) Prior to institution of formal proceedings to revoke or suspend a registrant, the executive director shall give written notice to the registrant by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the executive director shall give the registrant written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the registrant must give written notice to the executive director that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed to the registrant's last reported address unless another date of receipt is reflected on a U.S. Postal Service return receipt.

(A) If the registrant fails to request a hearing, the registrant is deemed to have waived the hearing, and a default order may be entered.

(B) If the registrant requests a hearing within 10 days after receiving the notice of opportunity for hearing, the executive director shall initiate formal hearing procedures in accordance with this section.

(i) Final action.

(1) If the council suspends a registration, the suspension remains in effect for the period of suspension ordered, or until the executive director or the council determines that the reasons for suspension no longer exist. The registrant whose registration has been suspended is responsible for securing and providing to the executive director such evidence, as may be required by the council, that the reasons for the suspension no longer exist. The executive director or the council shall investigate prior to making a determination.

(2) During the time of suspension, the former registrant shall return all registration certificates to the council.

(3) If a suspension overlaps a renewal period, the former registrant shall comply with the normal renewal procedures in these sections. The council may not renew the certificate until the executive director or the council determines that the reasons for suspension have been removed.

(4) A person whose application is denied or whose registration certificate is revoked is ineligible to apply for registration under this Act for one year from the date of the denial or revocation.

(5) Upon revocation or non-renewal, the former registrant shall return all certificates issued to the registrant by the council. The certificate(s) shall be returned to the council by certified mail, hand-delivered, or by a delivery service, within 30 days of request.

(j) Appeal of a decision. A person may appeal a final decision of the council to exclude or remove the person from the registry by filing a petition for judicial review in the manner provided by the Government Code, Chapter 268, Article 1, §2001.176.

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 May 24, 2004.

TRD-200403506

Walter J. Meyer, M.D.
Chairperson
Council on Sex Offender Treatment
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 458-7236

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SUBCHAPTER B. CRIMINAL BACKGROUND CHECK SECURITY

22 TAC §§810.31 - 810.34

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.31. Access to Criminal History Records.

§810.32. Records.

§810.33. Destruction of Criminal History Records.

§810.34. Frequency of Criminal Background Check.

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

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SUBCHAPTER B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.31. Access to Criminal History Records.

The council is authorized to obtain information about the conviction or deferred adjudication that relates to an applicant of the registry and maintained by the Texas Department of Public Safety or the Federal Bureau of Investigation. The council may obtain a criminal history record from any law enforcement agency. The criminal history record information received under this section is for the exclusive use of the council and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the applicant.

§810.32. Records.

All other records of the council that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the criminal background check on each registrant are not public records and are confidential under lock and key security. Unless expressed in writing by the chairperson of the council, the executive director and the executive directors designee are the only staff authorized to have daily access to the criminal history records. These records will be maintained in separate files and not in the registrant files.

§810.33. Destruction of Criminal History Records.

The council will destroy adjudication information relating to a person after the council makes a decision on the eligibility of the applicant unless the information was the basis for a proposed revocation, suspension or refusal to renew a person's registration. The council will shred the information provided by the Texas Department of Public Safety, the Federal Bureau of Investigation or any other law enforcement agency, and the submitted applicants finger print card.

§810.34. Frequency of Criminal Background Check.

The council will conduct a criminal background check on every new applicant, randomly at the time of renewal, and as necessary on all others.

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

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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.64

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.61. Introduction to Standards of Practice.

§810.62. Council Assertions.

§810.63. Assessment/Evaluation Concerns.

§810.64. Issues to be Addressed in Treatment.

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

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The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.61. Introduction to Standards of Practice.

(a) The Council on Sex Offender Treatment (council) is dedicated to the prevention of sexual assault through effective treatment and management of sex offenders. The council identifies treatment providers who have the appropriate training and experience in the treatment of adult sex offenders and juveniles with sexual behavior problems, sponsors training seminars and conferences, and disseminates information regarding adult sex offenders and juveniles with sexual behavior problems and their treatment. The council publishes a registry of sex offender treatment providers, which contains the names of persons who have satisfactorily completed council requirements for inclusion.

(b) Sexual deviance is a learned or acquired behavioral disorder but may also be influenced by biological factors. Treatment is focused on recognizing, modifying and managing deviant behavior and the attitudes that promote it. Sexual deviance is not considered to be a disease that can be cured. The focus of contemporary treatment is on techniques designed to assist adult sex offenders and juveniles with sexual behavior problems in maintaining control throughout their lifetime. Therefore, treatment should include simple, practical techniques that can be used during and after formal therapy.

(c) Evaluation and treatment requires an approach unfamiliar to most mental health professionals. Treatment providers often exercise substantial control over the lives of their clients because of the concern for community protection. For this and other reasons, standards of practice specific to the treatment of these clients are necessary.

(d) This document was developed by the council to delineate appropriate evaluation and treatment procedures and policies. These standards were largely adapted from a publication of the Association for the Treatment of Sexual Abusers (ATSA) entitled, Ethical Standards and Principles for the Management of Sexual Abusers, Revised 2004. They are not intended to supplant the standards of the treatment provider's licensing/certifying board, but are intended to supplement them. These standards delineate professional expectations for the treatment of adult sex offenders and juveniles with sexual behavior problems.

§810.62. Council Assertions.

(a) Registrants shall:

(1) be committed to community protection and safety and registrants shall be aware of any professional and legal obligations regarding a duty to protect or warn;

(2) not make statements that a client is no longer at any risk to reoffend (ATSA);

(3) refuse referrals for re-evaluations to determine if someone is guilty or innocent of a specific sexual crime (ATSA);

(4) recognize and when providing expert testimony, acknowledge that there is no known psychological or physiological test, profile, evaluation procedure, or combination of such tools that prove or disprove whether the client has committed a specific sexual crime (ATSA);

(5) not discriminate against clients with regard to race, sex, religion, gender preference, choice of lifestyle, or disability;

(6) treat clients with dignity and respect, regardless of the nature of their crimes or conduct;

(7) be knowledgeable of legal statutes and scientific data relevant to this area of specialized practice;

(8) perform professional duties with the highest level of integrity, maintaining confidentiality within the scope of statutory responsibilities;

(9) insure that the client fully understands the scope and limits of confidentiality in the context of his or her particular situation;

(10) refrain from using professional relationships to further their personal, religious, political, or economic interest other than accepting customary professional fees;

(11) not engage in sexual relationships with clients (sex between a mental health services provider and a client is a second degree felony in Texas);

(12) fully inform clients in advance of fees for services;

(13) refrain from knowingly providing treatment services to a client who is in treatment with another professional without initial consultation with the current registrant or non-registrant;

(14) make appropriate referrals when the registrant is not qualified or is otherwise unable to offer services to a client;

(15) insure that colleagues are qualified by training and experience before making a referral to them;

(16) when withdrawing services, minimize possible adverse effects on the client and the community by continuing treatment until the client has been admitted elsewhere;

(17) facilitate the provision of follow-up services for clients who transition from one program or one jurisdiction to another which includes a written summary of the assessment of risk, offending pattern, level of participation, relevant problems and treatment needs, client strengths and deficits, support group, and recommendations;

(18) take into account the legal/civil rights of the clients, including the right to refuse treatment;

(19) make no claims regarding the efficacy of treatment that exceed what can be reasonably expected and supported by empirical literature;

(20) avoid drawing conclusions or rendering opinions that exceed the present level of knowledge in the field or the expertise of the evaluator;

(21) attempt to resolve with the clinician and/or report to the appropriate licensing or regulatory authority unethical, incompetent, and dishonorable treatment or evaluation practices; and

(22) display or provide in writing the address and telephone number of the council in all sites where sex offender treatment services are provided for the purpose of directing complaints to the council.

(b) Registrants assert that:

(1) community safety shall take precedence over any conflicting consideration and ultimately, treatment providers shall act in the best interests of society, the victim, and the client;

(2) inappropriate or unethical treatment damages the credibility of all treatment and presents an unnecessary risk to the community;

(3) criminal investigation, prosecution, and court orders for treatment may be components of effective intervention;

(4) the containment model includes but is not limited to the communication, cooperation, and coordination with community supervision officers, child protective services workers, law enforcement, polygraph examiners, survivor's therapists, support persons and is essential to community protection. This collaboration can increase the effectiveness of community risk management strategies. A close working relationship recognizes that sexual abuse is criminal behavior and that legal sanctions apply. Treatment targets and supervision conditions may be most effective when they are consistent with one another and should focus on criminogenic needs (ATSA);

(5) a voluntary client accepted for treatment should be held to the same standards of compliance as are mandated adult sex offenders and juveniles with sexual behavior problems;

(6) it is imprudent to release an untreated client without providing offense- specific assessment and treatment or specialized supervision;

(7) without external pressure many clients will not follow through in treatment. Internal motivation improves the prognosis, but is not a guarantee of success;

(8) comprehensive assessment of the client shall precede treatment and includes issues addressed in §810.63 of this title (relating to Assessment/Evaluation Concerns);

(9) adult sex offenders and juveniles with sexual behavior problems require comprehensive, long term, offense-specific treatment. Currently, cognitive-behavioral approaches that utilize sex offender peer groups have been recognized as the standard method of treatment. Treatment groups shall be limited to 12 clients . Self-help groups, drug intervention, or time-limited treatment should be used only as adjuncts to more comprehensive treatment. For some sex offenders, incarceration without treatment may increase the risk of recidivism;

(10) a written initial individualized treatment plan that identifies the issues, intervention strategies, and goals of treatment shall be prepared for each sex offender within 30 days of the referral. Treatment plans should be reassessed at least annually;

(11) the treatment plan may include behavioral contracts which outline specific expectations of the client, his/her family, and the client's support systems. These contracts shall include provisions to avert high-risk situations. These contracts shall be reassessed periodically;

(12) progress, or lack thereof, should be clearly documented in treatment records. Specific achievements, failed assignments and rule violations should be recorded. This information should be provided to the appropriate supervising officer in the justice system;

(13) progress in treatment must be based on specific, measurable objectives, observable changes, and demonstrated ability to apply changes in relevant situations. For most adult sex offenders and juveniles with sexual behavior problems, progress requires changes in the client's behavior, attitudes, social and sexual functioning, cognitive processes, and sexual arousal/preference patterns. These changes should be demonstrated by an increased understanding by the client of his/her own deviant behavior, understanding of current and instant offense cycle, increase in pro-social behaviors, compliance with supervision, increase in support systems, sensitization to the effects on a survivor, and ability to seek and apply help;

(14) when a client has made the changes required in treatment, there should be a gradual and commensurate decline of intervention, support, and supervision following an offense-specific treatment program. Ongoing support to maintain changes made in treatment is necessary and aftercare and monitoring are desirable;

(15) there will be instances when the registrant should refuse to treat a client because essential ancillary resources do not exist to provide the necessary levels of intervention or safeguards;

(16) the registrant has an ethical obligation to refer the client to a more comprehensive treatment program and/or to the judicial system, when the registrant determines that a sex offender is not making the changes necessary to reduce his/her risk to the community;

(17) registrants shall communicate to the supervising officer in the justice system, failure on the part of clients to abide by their treatment plans and/or contracts;

(18) a registrant may decide to decline further involvement with a client who refuses to address any critical aspect of treatment;

(19) registrants shall immediately notify the appropriate authority when a client drops out of court-ordered treatment;

(20) most adult sex offenders and juveniles with sexual behavior problems enter the criminal justice system with varying degrees of denial regarding their behavior. Overcoming denial is a gradual process achieved in treatment. The existence of some degree of denial shall not preclude an offender entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(21) treatment is unlikely to be effective unless the client admits his/her behavior. Community based treatment may not be appropriate for sex offenders who continue to demonstrate complete denial after a trial period of treatment;

(22) registrants shall not rely exclusively on self report by the sex offender to assess progress or compliance with treatment requirements and/or probation or parole orders. Registrants shall rely on multiple sources of information which may include physiological methods such as polygraph, phallometric, and other research based sexual arousal/preference assessments including but not limited to the Card Sort or visual reaction time methods;

(23) physiological methods or sexual arousal/preference assessment should not replace other forms of monitoring but may improve accuracy when combined with active surveillance, collateral verifications, and self-report. Penile plethysmograph assessments in Texas must be conducted by an order and under the supervision of a physician. Physiological methods or sexual arousal/preference assessments cannot be used to prove an individual did or did not, or

will or will not commit a sexual offense. The strongest predictor of sexual offense recidivism for child molesters are measures of deviant sexual arousal as measured by phallometric assessment (Hanson and Bussiere 1998);

(24) Polygraph examinations shall only be conducted by licensed examiners that meet and adhere to the "Recommended Guidelines for the Clinical Polygraph Examinations of Sex Offenders" as developed by the Joint Polygraph Committee on Offender Testing (JPCOT); Polygraph are effective in encouraging disclosure of prior events and adherence to rules. This procedure should never be the only method used to determine factual information; Sexual history polygraphs are effective in determining a client's risk to the community. Disclosure polygraphs about the instant offense cannot be conducted without the official offense report. The Registrant shall have this report in order to adequately prepare the client for the polygraph. Additionally, the polygraph examiner shall have the official report in order to conduct the polygraph examination.

(25) informed, voluntary consent shall be obtained prior to engaging clients in aversive conditioning;

(26) removal of an interfamilial sex offender against children from a residence in which children reside (instead of the children) is the preferred option;

(27) treatment referrals should be offered to the non-offending partners and children in cases where a parent or legal guardian has been removed;

(28) top priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the client and children. If the client has a history of sexual arousal to or reported fantasies of sexual contact with children, he or she should be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist;

(B) the sex offender has demonstrated control over his or her deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) court mandated conditions do not prohibit such contact;

(29) there is evidence to support family participation in the treatment of the adult sex offender and the juvenile with sexual behavior problems. Where feasible and appropriate, spouses and other family members should be included. Sexual assault survivors or vulnerable children should be excluded until such time as joint therapy is determined to be appropriate;

(30) registrants shall assist in the selection and education of the potential chaperones for contacts between the client and children. Potential chaperones should only be adults who accept and understand the client's present sexual offense, past sexual offending, and the potential for sexual re-offense. Registrants shall ensure potential chaperones are educated regarding the client's sexual history, treatment and supervision conditions, antecedents to sexual offending, safety plans, relapse prevention, and reporting procedures. Registrants shall review a detailed safety plan with the child's non-offending parent or legal guardian that describes the appropriate levels of supervision for contact, privacy, discipline practice, sexual education, appropriate dress, hygiene, bedtime routines, conditions and limits that may apply, and how contact will be terminated if it is no longer appropriate for the child (ASTA);

(31) the registrant shall make every effort to collaborate with the survivor's therapist in making decisions regarding communication, visits and reunification. Registrants shall be sensitive to the survivor's wishes and needs regarding contact with the offender. Contact shall be arranged in a manner that places child/victim safety first. When assessing child safety, both psychological and physical well-being shall be considered. The registrant shall ensure that custodial parents or legal guardians of the children have been consulted prior to authorizing contact and that contact is in accordance with Court directives; and

(32) if reunification is deemed appropriate, the process shall be closely supervised. There must be provisions for monitoring behavior and reporting rule violations. A survivor's comfort and safety shall be assessed on a continuing basis. The registrant shall recognize that supervision during visits with children is critical for those whose crimes are against children, or who have demonstrated the potential to abuse children. The supervisor of the contact shall be knowledgeable concerning sexual offending behaviors.

§810.63. Assessment/Evaluation Concerns.

(a) The evaluation focuses on both the risks and needs of the client, as well as identifying factors from social and sexual history, which may contribute to sexual deviance. Evaluations provide the basis for the development of comprehensive treatment plans and should provide recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, as well as the identified risk the adult sex offender and the juvenile with sexual behavior problems presents to the community. There is no known set of personality characteristics that can differentiate the sex offender from the non-sex offender. Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner.

(b) The following standards were largely adapted from a publication from the Association for the Treatment of Sexual Abusers entitled, Ethical Standards and Principles for the Management of Sexual Abusers, Revised 2004. Evaluations shall precede treatment. In preparing evaluations of sex offenders; Registrants are expected to:

(1) be fair and impartial, providing objective and accurate data;

(2) respond only to referral questions that fall within the evaluator's expertise and present level of knowledge;

(3) be respectful of the client's right to be informed of the reasons for the evaluation and the interpretation of data, as well as the basis for recommendations and conclusions;

(4) be aware of the client's legal status;

(5) be mindful of the limitations of client's self-report and make all possible efforts to verify the information provided by the client;

(6) use evaluative procedures and techniques sufficient to respond to the presenting issues, as well as to provide appropriate substantiation for the resulting conclusions and recommendations;

(7) acknowledge if an evaluation consisted of only a review of data, with no client contact, and clarify the impact that limited information has on the reliability and validity of the resulting report;

(8) provide informed consent, releases and/or limit of confidentiality documents in written form and employ verbal explanations for non-readers;

(9) thoroughly review written documentation and collateral interviews. This involves gathering and reviewing information from all available and relevant sources, including:

(A) criminal investigation records;

(B) child protection service investigations;

(C) previous evaluations and treatment progress reports;

(D) mental health records and assessments;

(E) medical records;

(F) correctional system reports;

(G) probations/parole reports;

(H) information regarding details of the offense as obtained by law enforcement; and

(I) offense statements from victim.

(10) whenever possible, interview the client's significant other and/or family of origin;

(11) cautiously interpret evaluation conducted without collateral information;

(12) list and acknowledge in a written report evaluation procedure summaries, conclusions, recommendations, and all collateral reports and interviews;

(13) re-interviews of survivors should not be used for the purpose of gathering information during the sex offender's evaluation; and

(14) keep the sex offender and survivor's interview and evaluation processes separate. If that is not possible, the evaluator must be extremely vigilant to avoid bias.

(c) The evaluation procedures includes:

(1) clinical review;

(2) paper/pencil testing;

(3) intellectual assessment; and

(4) physiological assessments.

(d) A reasonable effort shall be made to acquire the following information gathered in the evaluation process:

(1) intellectual and cognitive functioning;

(2) mental status and psychiatric history;

(3) medical history of head injuries, physical abnormalities, enuresis, encopresis, current use of medication, allergies, accidents, operations, and major medical illnesses;

(4) self-destructive behaviors, self mutilation and suicide attempts;

(5) psychopathology and personality characteristics;

(6) family history and marital/relationship history;

(7) history of victimization; physical, emotional and/or sexual;

(8) education and occupation history;

(9) criminal history, both sexual and non-sexual;

(10) history of violence and aggression including use of weapons;

(11) history of truancy, fire-setting, and abuse of animals;

(12) interpersonal relationships, both past and current;

(13) cognitive distortions;

(14) social competence;

(15) impulse control;

(16) substance abuse;

(17) official report regarding the instant offense;

(18) denial, minimization and inability to accept responsibility;

(19) sexual behavior, including sexual development, adolescent sexuality and experimentation, dating history, intimate sexual contacts, gender identity issues, adult sexual practices, masturbatory practices, sexual dysfunction, fantasy content, and sexual functioning; and

(20) sexually deviant behavior, including description of offense behaviors, number of victims, gender and age of victims, frequency and duration of abusive sexual contact, victim selection, access, and grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after offense, and sexual arousal patterns.

(e) Registrants will subscribe to the following tenets regarding client assessment.

(1) The comprehensive assessment of the client's sexually deviant behavior is specific to the evaluation of the client.

(2) It is important to be sensitive to the individual's cognitive functioning, including reading and writing capabilities, prior to arranging the battery of testing instruments.

(3) If a client cannot read at the level necessary to comprehend the test questions, arrangements for using a standardized approved auditory (taped or read) version of the test instrument should be made, to the extent such versions are available.

(4) The clinical interview must incorporate sufficient discussion necessary to augment, clarify and explore the information obtained from the review of collateral materials (and interviews), as well as the other components of the evaluation (testing results, etc.).

(5) It is important to note the degree of similarity or disparity between the abuser and the victim's statements.

(6) The client's explanations for false allegations should be documented.

(7) Assessment of treatment needs should identify strengths and weaknesses in the individual's psycho-sexual functioning for the purpose of directing treatment efforts to the appropriate areas.

(8) Both community safety and the degree to which a client is capable and willing to manage risk should be considered when generating recommendations.

(9) A thorough evaluation should be completed prior to a client being accepted into a community based treatment program.

(A) If a significant amount of time has lapsed between the completions of the evaluation and when the individual applies for acceptance into a treatment program, an evaluation update is required.

(B) The intent of the update should not be to duplicate the original evaluation, but to gather current data upon which the original treatment plan can either be confirmed or amended.

(10) A sex offender treatment provider should never recommend an inadequate treatment program or level of risk management because existing resources limit or preclude adequate or appropriate services.

§810.64. Juveniles with Sexual Behavior Problems.

(a) Council Assertions:

(1) Some children begin displaying sexually inappropriate behavior with others before they reach 10 years of age. Others may copy sexual behavior they have witnessed on the part of older siblings and/or adults. Therefore, early identification and treatment are essential for those who have displayed such behaviors.

(2) The onset of sexual behavioral problems in juveniles can be linked to numerous issues related to their experiences, exposure, and/or developmental deficits. Juveniles are distinct from their adult counterparts.

(3) Only a minority of juveniles manifest established paraphilic sexual arousal and interest patterns. These arousal and interest patterns are recurrent and intense, and related directly to the nature of the sexual behavior problem. In general, sexual arousal patterns of juveniles appear more changeable than those of adult sex offenders and relate less directly to their patterns of offending behavior.

(4) The treatment of juveniles with sexual behavior problems has the following components that are essential to the successful treatment of the juvenile. The program should include a comprehensive assessment, progressive levels of treatment and education, relapse prevention, transition into the community, and aftercare. In order to effectively treat juveniles with sexual behavior problems the treatment must be offense specific.

(5) Working with juveniles should be based on a multidisciplinary approach and containment model that includes but is not limited to the juvenile, family, treatment provider, supervision officer, school officials, and law enforcement. On-going communication (written and verbal) is essential in the successful treatment of the juvenile.

(6) Treatment providers should focus on the juvenile's existing strengths and positive support system to promote pro-social behaviors and facilitate change.

(7) Juveniles with sexual behavior problems come from all socio-economic, ethno-cultural, age, and religious backgrounds. They vary in their level of intellectual functioning, motivation, victim typology, and sexual behaviors.

(8) Treatment referrals should be offered to the non-offending guardians/parents and siblings where a juvenile has been removed.

(9) Juveniles who display sexually abusive behavior are effectively addressed by targeting risk factors that predispose a child to sexual behavior problems or that precipitate or perpetuate the problems.

(10) Special interventions are necessary for juveniles with intellectual and cognitive impairments.

(11) Juveniles who display sexually abusive behavior are heterogeneous groups who have developmental needs, but also have special needs and present special risks related to their abusive behaviors.

(12) Risk management strategies are effective in addressing the needs underlying the juvenile's behavior.

(13) The primary goal is helping the juvenile gain control over their sexual behavior problems and increasing their pro-social interactions, preventing further victimization, halting development of additional psychosexual problems, and helping the juvenile develop age-appropriate relationships. They are children and adolescents first.

(14) Programs that only focus on sexual behavior problems are of limited value and researchers have recommended a holistic approach as in §810.64.

(b) Juvenile Evaluation.

(1) The evaluation shall focus on strengths, the risks, and deficits of the juvenile with sexual behavior problems, as well as identifying factors from social and sexual history, which may contribute to sexual deviance. Evaluations provide the basis for the development of comprehensive treatment plans and should provide recommendations regarding the intensity of intervention specific treatment protocol needed, amenability to treatment, as well as the identified risk the juvenile with sexual behavioral problems presents to the community. There is no known set of personality characteristics that can differentiate the juvenile with sexual behavioral problems from the juvenile without sexual behavioral problems. Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner. A comprehensive evaluations and assessments of juveniles with sexual behavior problems is an ongoing process.

(2) The treatment of juveniles with sexual behavior problems is effective in reducing recidivism. In order for treatment to be effective, it must incorporate both cognitive/ behavioral and relapse prevention approaches. A multifaceted program includes the following:

(A) group and individual cognitive behavioral therapy;

(B) family therapy;

(C) victim empathy;

(D) adjunct therapy including substance abuse treatment, anger and stress management, conflict resolution, sex education, social competence/life skills, clarifying; values, trauma resolution, and interpersonal communication;

(E) psychopharmacological Approaches (if appropriate);

(F) polygraphs (Senate Bill 1232, 75th Legislative Session, 1997); and

(G) and plethysmographs (if appropriate).

(3) When using phallometric assessment or aversive treatment techniques with persons 17 years of age or younger, consent for such assessment and treatment should be obtained from the juvenile with sexual behavior problems and written consent for such assessment and treatment should be obtained from the juvenile's parents or legal guardians, and the procedures should be reviewed by a multi-disciplinary professional or institutional advisory group. This is intended to ensure that individuals not intimately involved in the treatment of the patient have input regarding the appropriateness of such methods consistent with the developmental level of the child. Stimuli must be specific for use with adolescents.

(4) The use of the plethysmograph with juveniles is an issue of some controversy. Research indicates that the age and level of denial of the juvenile may compromise the validity of the assessment. Younger juveniles appear to produce less reliable patterns of responding, and those who deny their offenses tend to produce suppressed, and therefore non-interpretable patterns of arousal (Becker et al, Kaeming et al, 1995).

(5) Individuals that are pre-pubertal or under age 13 should not undergo phallometric assessment or aversive treatment except in rare cases, which must be approved by a multi-disciplinary advisory group. Prepubescent juveniles are sexually aroused to a wide variety of stimuli.

(6) Written consent shall be obtained for assessment and information exchange from the appropriate parent or legal guardian.

Assent from the individual being evaluated should be obtained whenever possible.

(c) Initial Juvenile Assessment.

(1) The assessment shall be age appropriate.

(2) The assessment shall be sensitive to any cultural, language, ethnic, developmental, sexual orientation, gender, medical and/or educational issues that may arise during the evaluation.

(3) The assessment shall be developmentally appropriate which includes social, cognitive, and educational levels.

(4) A reasonable effort should be made to acquire the following information gathered in the assessment process:

(A) intellectual and cognitive functioning;

(B) mental status psychiatric history/hospitalization;

(C) medical history and an exam by a medical professional to determine sexual development;

(D) self destructive behaviors including self mutilation and suicide attempts;

(E) family origin and history/ relationship history;

(F) sexual and non sexual criminal history including offense report;

(G) sex offender registration statute;

(H) history of violence and aggression;

(I) history of school truancy, fire-setting, abuse of animals, and running away;

(J) cognitive distortions;

(K) impulse control;

(L) trauma assessment (emotional, physical, sexual abuse);

(M) social and educational competence;

(N) substance abuse;

(O) official reports regarding instant offense;

(P) sexual behavior including sexual development, sexuality and experimentation, gender identity issues, masturbatory practices, and fantasy content; and

(Q) sexually deviant behavior-including a description of the offense behaviors, number of victims, gender and age of victims, frequency and duration of sexual contact, victim selection, access, grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after the sexual behavior, and deviant arousal patterns.

(d) Collateral Information. The treatment provider shall thoroughly review written documentation and collateral interviews. This involves gathering and reviewing information from all available and relevant sources concerning the juvenile and the victim, including:

(1) parent or guardian;

(2) sibling;

(3) statements from the victims;

(4) school records;

(5) child protective service;

(6) previous treatment provider;

(7) mental health professional;

(8) law enforcement; and

(9) supervision officer (The following information should be provided):

(A) exchange of formal documentation;

(B) order or Judgment;

(C) victim information;

(D) juvenile risk assessment; and

(E) data collection form.

(e) Use of Psychological Tests. Psychological tests have been described as a "critical dimension" to a comprehensive evaluation of juveniles. The primary domains required in the assessment of the juvenile are as follows:

(1) intellectual and neurological functioning;

(2) personality (Jesness Inventory, MMPI for Juveniles);

(3) psychopathology (Piers Harris Children's Self Concept Scale);

(4) behavioral;

(5) sexual deviance; and

(6) co morbidity.

(f) Risk Assessments. Current existing risk assessments should be used but the ultimate determination should be a combination of the clinical interview and the assessment instruments. A strong predictor of risk is the sexual history polygraph. The sex history provides information about the juvenile's sexual behaviors and victims.

(1) It should be noted that no juvenile risk assessment are currently validated so no decision can be based solely on their outcomes.

(2) Risk assessment data is not useful for longer than 6 months due to the fluidity of juveniles.

(3) Family support and structure are important in reducing risk for re-offense.

(4) Research on recidivism indicates juvenile's recidivate at relatively low rates in relation to new sexual offenses.

(5) Risk Assessments specific to juveniles are available in the public domain are as follows:

(A) Estimate of Risk of Adolescent Sexual Offense Recidivism- ERASOR;

(B) Juvenile Sex Offender Assessment Protocol-JSOAP;

(C) Texas Juvenile Risk Assessment Instrument and Data Collection Form. (These can be obtained from the Probation Department);

(D) J-RAT; and

(E) Protective Risk Factor Scale.

(g) Substance Abuse. It is important to use a valid and reliable assessment tool to screen for substance abuse problems in determining if the substance use is a risk factor in the sexual behaviors. Assessment tool (Substance Abuse Subtle Screening Inventory-SASSI).

(h) Polygraphs. Polygraphs are used to facilitate more complete disclosures of sexual behaviors and to monitor compliance with

treatment and supervision. The polygraph is an essential tool in offender accountability and honesty.

(1) Polygraphs must be administered on a voluntary basis and with informed consent unless court ordered (SB 1232, 75th Legislative Session).

(2) Polygraphs shall follow JPCOT guidelines.

(3) Polygraphs should never be the only method used to determine factual information.

(4) Most practitioners using the polygraph indicate that the age threshold for use with juveniles is approximately 14 years old.

(5) The following polygraphs should be conducted: Disclosure, Sexual History, Maintenance, and Monitoring.

(i) Assessment Recommendations. The following issues shall be addressed:

(1) the juvenile's strengths, risks, and deficits; and

(2) co-morbidity, placement, education/vocational needs, parent and family issues, substance abuse issues, and supervision.

(j) If the juvenile has a history of sexual arousal to reported fantasies of sexual contact with children of a particular age/gender group, he or she should be restricted from having unsupervised access to children in that identified target population. Supervised visits may be considered if:

(1) Court mandated condition do not prohibit such contact;

(2) It is determined that the sufficient safeguards exits; and

(3) The juvenile has demonstrated control over their deviant arousal.

(k) Juvenile Laws. Treatment providers shall be familiar with the following laws concerning juveniles with sexual behavior problems.

(1) Title 71 Vernon's Texas Civil Statutes, Chapter 6, Art. 4512-Release of information to professional counselors.

(2) Health Insurance Portability and Accountability Act.

(3) Texas Family Code, Title 3, Juvenile Justice Code.

(4) Texas Family Code, §153.076-Duty to Provide Information.

(5) Code of Criminal Procedure, Chapter 62, Sex Offender Registration.

§810.65. Adult Female Sex Offenders.

The following are council assertions regarding female sex offenders.

(1) A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices that have clearly been designed to work together.

(2) Due to the difficulties inherent in treating sex offenders and the potential threat to community safety, sex offense specific treatment should continue for several years, followed by a lengthy period of aftercare and monitoring. Much more importance is given to the meeting of all treatment goals than the passage of a specific amount of time, since offenders make progress in treatment at different rates.

(3) Although the majority of sex offenders are male, it is clear that female sex offenders exist and that this population of offender is largely unrecognized and neglected. This lack of attention is regrettable for those who have been victimized by females.

(4) There is a paucity of professional literature and clinical practice that describes the needs of the female sex offender. Professional literature often presents females as victims even when they are identified as perpetrators.

(5) A female as a sex offender is an idea that society has difficulty acknowledging and it challenges society's beliefs about females. The notion of females as aggressive, exploitive, violent, and deviant offenders is not compatible with society's picture of women as mothers, sisters, wives, and the "gentler sex". Many professionals do not accept the idea that females would use their position and power in this manner. This creates a professional and cultural state of denial.

(6) It is estimated that females commit 12% of all offenses against victims under the age of 6 and 6% of the sexual offenses against children between 6 and 12 years old (Snyder, 2000).

(7) It is estimated that 64% percent of the sexual abuse committed by females were crimes against biological relatives and only 19% were against victims who were unrelated to the offender (Saradjian, 1996). The age of onset of the abuse was 3.2 years old (Rosencrans, 1997).

(8) It is imperative that providers balance treatment issues with offender accountability to the victims and the community at large.

(9) There are some similarities and differences between male and female sex offenders.

(10) Female Sex Offenders come from all social and economic classes (Saradjian, 1996).

(11) Women have deviant arousal that can lead to sexual abuse. Some females have gained sexual pleasure from their offending.

(12) Women should be assessed for deviant sexual interest/arousal to ensure public standardized and normed to the female population that has been validated.

(13) Information regarding sexual interest/arousal is obtained from self- report that can be polygraphed.

(14) Recent findings strongly challenge the belief that female sex offenders are rarely violent (Marvasti, 1986, Johnson and Shrier, 1987). Seventy percent of the female sex offenders in this study used extraneous violence against their victims. It is important to acknowledge that this population of female sex offenders does exist.

(15) Some female sex offenders offend violently on their own or in the company of males.

(16) Society should become more alert to the sexual abuse of acquaintances and strangers in addition to family members. Treatment programs for females reveal that programming specific to their needs requires attention. There needs to be research and development of programs concerning female sex offenders.

(17) The future challenge is to treat the female sex offender and not enable them by providing excuses or exemptions for their aberrant behaviors and sexual crimes.

(18) Determination should be a combination of the Clinical Interview and the assessment instruments. There are no valid risk assessments specifically for females at this time thus further research is needed.

(19) Programs that only focus on sexual behavior problems are of limited value and researchers have recommended a holistic approach as in §810.64 of this title.

§810.66. Developmentally Delayed Client.

(a) The management and treatment of clients with developmental disabilities is a developing specialized field. Currently many decisions regarding standards of practice must be made in the absence of clear research outcomes.

(b) These standards are based on the best practices known and designed to minimize any threat the client may pose to the community.

(c) There are many terms used to refer to the population of individuals with limited intellectual functioning, including developmentally delayed, developmentally handicapped, mentally ill, and mentally retarded.

(1) Definitions.

(A) Adaptive behavior- The effectiveness with which a person meets the standards of personal independence and social responsibility reasonably expected of the person's age and cultural group (Health and Safety Code, Chapter 614).

(B) Developmental disability- A severe and chronic disability that is attributable to a mental or physical impairment or a combination of physical and mental impairments, is manifested before age 22, is likely to continue indefinitely, and results in substantial functional limitations in three or more of the major life activities (Health and Safety Code Chapter, 614).

(C) Mental illness- An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that substantially impairs a person's thoughts, perception of reality, emotional process, or judgment or grossly impairs behavior as demonstrated by recent disturbed behavior (Health and Safety Code, Chapter 571).

(D) Mental retardation- A significantly sub average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period (Health and Safety Code, §591.003).

(E) Sub-average general intellectual functioning- Refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used (Health and Safety Code, §591.003).

(2) Council Assertions.

(A) A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices that have clearly been designed to work together.

(B) The presence of developmental disabilities does not minimize the risk for any client, nor does it mitigate the trauma experienced by sexual assault victims.

(C) Managing the risk, behavioral interventions, and the imposition of appropriate external controls should be a priority for clients with disabilities.

(D) There is nothing inherent in the presence of developmental disabilities that cause sexually deviant behavior and nothing inherent in developmental disabilities, which inoculates from sexually deviant behavior.

(E) Clients with disabilities should be offered treatment that is appropriate to their developmental capacity, their level of comprehension, and the ability to integrate treatment components.

(F) The prevalence of sexually deviant behavior among this population is not known and might be due in part to mental health service professional's reluctance to label the behavior.

(G) Studies suggest that developmentally delayed sex offenders have an overall offense pattern that is similar to non-delayed adult sex offenders or juveniles with sexual behavior problems.

(H) Developmentally delayed sex offenders are distinguished from non-delayed clients in that they display significantly more social skill deficits, are sexually naïve, lack interpersonal skill, have a higher incidence of family psychopathology, psychosocial deprivation, school maladjustment, and more psychiatric illness, and delinquent or criminal behavior (Health Canada, 2000).

(I) Progress in treatment and ability to integrate the components of treatment is generally slower for these clients. The need for simple, direct language, the presence of concrete thinking, difficulty with concepts and abstractions, and the need for frequent repetition are common requirements.

(J) Group therapy is considered the best intervention and consideration should be given to the level of functioning when considering placement in groups. The single best indicator of the ability to function in this context is the client's actual functioning in a group setting.

(K) In cases where the client's level of functioning is determined to be too low for group treatment, the use of more individually oriented behavioral interventions coupled with external containment strategies might be used exclusively.

(L) If a client is unable to conceptualize the sequential cycle portion of the traditional relapse prevention plan, a reasonable alternative would be to focus on identifying risk situation or behaviors and appropriate interventions.

(M) Special needs groups should be limited to 8 clients and should be no longer than 60 minutes in duration. It may be necessary to conduct group twice per week.

(N) Clients who remain in significant denial and/or are extremely resistant to treatment after the finite period of extension determined by the treatment and supervision team should be terminated if they pose a continued risk to the community.

(O) Removal of a client from a home in which children are at risk is the recommended action. In balancing the needs of the client against the safety of the children, the safety of the children takes precedence.

(P) When treating developmentally delayed clients who have committed a sexual offense, it is essential to recognize their vulnerabilities and their risk of victimization by non-delayed clients.

(3) Assessments of the Developmentally Delayed Offender.

(A) Age equivalent assessment scoring does not correlate to sexual behavior in adults and registrants should guard against justifying sexually deviant behavior by indicating that the age equivalence score for any client has any relation to his or her victim typology.

(B) Legally, developmentally delayed clients must be given the opportunity to exercise their right to make a voluntary and informed decision to participate in treatment. A client must be fully informed of the nature of the treatment, the benefits and the available options. In cases of intellectually handicapped sex offenders who are unable to give written consent, an interdisciplinary review and parent's or legal guardian's written consent must be obtained for permission to proceed with treatment.

(C) There is limited data available regarding the use of the plethysmograph with developmentally delayed offenders. There is evidence that these clients tend to respond with generally higher levels

of sexual arousal during testing. Caution should be used regarding interpretation and validity. Registrants should utilize a stimulus package appropriate to the client's developmental level.

(D) Use of visual reaction time measures to gain information regarding sexual interest patterns with these clients should use the instrument only with clients who have an IQ score sufficiently high to achieve valid and reliable test results. The Relapse Prediction Scores of the Abel should not be used as a part of the assessment since it uses a questionnaire not adapted for this population.

(E) Prior to conducting polygraph examinations on these clients the polygraph examiner should collaborate with the treatment provider and the supervision officer to assess the client's ability to understand the concepts of truthfulness and deception or lying and the capacity to anticipate negative consequences based on deceptive responses. Results of polygraphs are more likely to reflect an error with this population and steps should be taken to have a second polygraph when results are inconclusive or deceptive and could result in termination or revocation.

(F) Polygraph examiners should design questions; conduct the pre-test, the examination, and the post-test at a level appropriate to the client's development.

(G) The assessment should determine the client's level of functioning, appropriate treatment interventions, and facilitate the development of an individualized treatment plan. The assessment should include:

(i) current level of functioning

(I) cognitive and behavior functioning;

(II) Level of planning the crime of conviction and other sexual history (Structured Interview, Collateral Information);

(III) expressive and receptive language skills (Peabody Picture and Vocabulary Test Revised (PPVT-R);

(IV) social judgment, adaptive skills, and moral reasoning;

(V) sexual knowledge;

(VI) adaptive behavior (Vineland Adaptive Behavioral Scale, Adaptive Behavioral Scale of the American Association for Mental Retardation);

(VII) criminal behavior (Jessness Inventory, Criminal History);

(VIII) attention deficit (Conners Test, Clinical Evaluation);

(IX) ability to function in groups (observation of functioning, collateral information);

(X) support systems (Current MHMR system involvement, family involvement, social involvement);

(XI) environmental or contextual factors that contribute to or maintain the behavior; and

(XII) trauma assessment (emotional, physical, sexual abuse).

(ii) Official Offense Report/Offense Description.

(I) age and relation to the victim;

(II) details of the offense;

(III) past criminal behavior and/or sexually inappropriate behavior;

(IV) deviant sexual interest; and

(V) the extent of denial and cognitive distortions.

(iii) Pertinent History.

(I) developmental history;

(II) family, marital, relationship, and personal background;

(III) medical, psychological and/or psychiatric/hospitalization history;

(IV) educational history;

(V) occupational history;

(VI) substance use or abuse; and

(VII) history of truancy, fire-setting, abuse of animals, and running away.

(4) Treatment of the Developmentally Delayed.

(A) Treatment components for developmentally delayed clients are based on those used in treating non-developmentally delayed clients but are tailored to address the learning limitations and special issues compounding these clients.

(B) Treatment programs should address the obstacles such as lack of opportunity to learn appropriate sexual behavior at an early age, high probability of past sexual victimization, social isolation, poor community acceptance of healthy sexual relationships, and difficulty in learning complex social rules and norms relating to dating, and intimacy.

(C) Cognitive behavioral therapeutic approaches are effective when paired with the cognitive strengths and weaknesses of the client.

(D) The development of appropriate social and sexual skill is critical in reducing the client's risk to re-offend. Treatment should include concrete skill building related to social interaction and sexual behavior and sex education.

(E) Structured activities to practice social skills may be required to facilitate the client's healthy development with peers.

§810.67. Pertinent Issues to Be Addressed in Treatment (Adults and Juveniles).

(a) The field of sex offender assessment and treatment has evolved based on extensive research and clinical experience.

(b) Interventions are designed to assist the individual to effectively manage thoughts, feelings, attitudes, and behaviors associated with their risk to reoffend. Structured, cognitive behavioral skills-oriented treatment programs that target specific criminogenic needs appear to be the most effective approaches in reducing rates of reoffending (ATSA). The following treatment components generally are accepted as those most important to the effective treatment of sexual deviancy.

(1) Arousal Control. Control of deviant arousal, fantasies, and urges is a priority with most adult sex offenders and juveniles with sexual behavior problems. Fantasy and sexual arousal to fantasy are precursors to deviant sexual behavior. It should be assumed that most adult sex offenders and juveniles with sexual behavior problems have gained sexual pleasure from their specific form of deviance. Arousal control methods do not eliminate but only help control arousal. It is therefore necessary that clients learn to apply these techniques in everyday situations. Arousal control may require periodic "booster" sessions for the remainder of the client's life. Effective arousal control must also include methods to control spontaneous deviant fantasies and to

minimize contact with stimulating objects or persons. Arousal control should proceed from the most effective methods for reducing arousal to less effective methods. To document changes in arousal control, physiological measurement is essential. Multiple measures over time are required to determine change reliability.

(2) Cognitive Therapy. Cognitive distortions are thoughts and attitudes that allow offenders to justify, rationalize, and minimize the impact of their deviant behavior. Cognitive distortions allow the adult sex offender and juveniles with sexual behavior problems to overcome prohibitions and progress from fantasy to behavior. These distorted thoughts provide the adult sex offender and juveniles with sexual behavior problems with an excuse to engage in deviant sexual behavior, and serve to reduce guilt and responsibility. Cognitive therapy strives to identify, assess, and modify cognition's that promote sexual deviance. Cognitive therapy is considered a vital component of treatment.

(3) Offense Cycle/Relapse Prevention. Current knowledge of deviant sexual behavior suggests that there is a cycle of behaviors, emotions, and cognitions that is identifiable and which precede deviant sexual behavior in a predictable manner. The ability to accurately identify these maladaptive behaviors is a primary goal for every adult sex offender and juvenile with sexual behavior problems in treatment. Autobiographies, sexual history polygraphs, offense reports, interviews and cognitive-behavioral chains are used to identify antecedents to offending. The ability to intervene can be enhanced by training primary partners and other support persons to recognize maladaptive behaviors and to encourage application of proper coping behaviors. In addition, treatment should include a formal multi-level relapse prevention plan.

(4) Victim Empathy. Although there is no clear evidence to suggest that all sex offenders can gain true empathy for victims of abuse, a universal goal of treatment is to learn to understand and value others. Highlighting the consequences of victimization helps sensitize the offender to the harm he or she has done. Empathy is comprised of cognitive and emotional aspects and both components may need to be addressed (ASTA). The use of analogous experiences has been shown to be effective especially with juveniles. Secondary victims are relatives or other persons closely involved with the primary victim and client, who are severely impacted emotionally or physically by the trauma suffered by the victim.

(5) Biomedical Approaches. Intervention with psychopharmacological agents is useful in select cases. Antiandrogens such as depo-provera or Lupron act by reducing testosterone levels and may be helpful in controlling arousal and libido when these factors are undermining progress in therapy or increasing the risk of re-offending before significant progress can be made in the cognitive aspects of therapy. Antidepressants and medications targeting obsessive-compulsive symptoms are also useful in some individuals where those symptoms play a role in the overall psychodynamic picture. Likely candidates for biomedical intervention are those clients who are predatory, violent, have had prior treatment failures, and report an inability to control deviant sexual arousal. Use of these agents should never be the only method of treatment. Physical or chemical castration should be utilized only as an adjunct to treatment and not in lieu of.

(6) Increasing Social Competence. Many adult sex offenders and juveniles with sexual behavior problems are poor problem-solvers, lack assertiveness, lack the ability to develop and sustain reciprocal friendships, and do not adequately manage anger or stress. They may lack the ability to develop and sustain reciprocal friendships. One goal of treatment is to improve the clients' ability to deal effectively with social situations and develop meaningful relationships with others.

(7) Improving Primary Relationships. Failure to develop and maintain a reciprocal, living relationship with an appropriate partner or healthy functional family may lead one to seek out alternative sexual outlets. With adults identifying specific sexual dysfunctions, sex therapy, and training in dating skills may be necessary to develop a functional lifestyle. Failure to involve the current partners or family members in therapy may lead to the same stresses that precipitated the sexual deviancy. With juveniles identifying sex education deficits and training in appropriate dating and relationship skills are essential to the development of a functional lifestyle.

(8) Couples/Family Therapy. To facilitate transition of the client's partner and or family into therapy a variety of treatment modalities are recommended. Individual, couple, family, and sibling therapy, non-offending spouses groups, and/or parents or legal guardians of victims' groups prepare the partner and family for the issues and methods involved in sex offender treatment. If an adult sex offender or juvenile is to eventually live in a home where survivors or children reside, a predetermined integration sequence should be followed which addresses role and boundary issues. This should include close supervision and a variety of safeguards for the protection of children.

(9) Support Systems. Involvement of close friends and family in therapy provides the offender with a milieu in which support is available. Part of the transition to follow-up is a reduction in-group and individual therapy. To compensate for this loss of support and surveillance, the support system should assist the adult sex offender and juvenile in avoiding and coping with antecedents to sexual deviance. The support system should include individuals from the adult sex offender and juvenile's daily life (i.e., family, friends, co-workers, church members, and extended family).

(10) Adjunct Treatments: Substance abuse, anger management, stress management, social skills, or self-help groups shall only be used as adjuncts to a comprehensive treatment program in reducing the client's risk to re-offend.

(11) Comorbid Diagnosis. In some adult sex offenders and juveniles with sexual behavior problems there are sufficient signs and symptoms to merit an additional diagnosis by DSM IV-TR criteria. These diagnoses can be anywhere in the entire spectrum of psychiatric disorder. The most common are alcohol abuse, substance abuse and affective disorders. Treating an alcohol or substance problem should not be assumed to make sex offender treatment unnecessary. Occasionally, the delusions and hallucinations of schizophrenia will be associated with the individual committing sexual offenses. The comorbid diagnoses should be treated with the appropriate therapies concomitantly with the treatment for sex offending behavior except in the case of schizophrenia where the anti-psychotic therapy would obviously take precedence.

(12) After-Care Treatment. A therapeutic regime that includes after-care treatment significantly increases the likelihood that gains made during treatment will be maintained. In order for new habits and skills to be reinforced and to monitor compliance with treatment contracts, after-care treatment should involve periodic "booster" sessions to reinforce and assess maintenance of positive gains made during treatment. This can be facilitated by involving the treatment group, supervision personnel, support system, the use of polygraphs, and phallometric assessment. Information from these sources may serve to deter future offenses or alert therapists to problems.

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 May 24, 2004.

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Walter J. Meyer, M.D.
Chairperson
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Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 458-7236

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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.91. Code of Professional Ethics.

§810.92. Code of Ethics.

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

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♦ ♦ ♦

22 TAC §810.91, §810.92

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.91. Code of Professional Ethics.

Registrants are trained in dealing with the assessment and treatment of adult sex offenders and juveniles with sexual behavior problems. These registrants constitute a professional discipline, which has a membership committed to establishing and maintaining the highest level of professional standards related to the assessment and treatment of these clients. As such, they are conscious of their special skills and aware of their professional boundaries. They perform their professional duties with the highest level of integrity and appropriate confidentiality, within the scope of their statutory responsibilities. They will not hesitate to seek assistance from other professional disciplines when circumstances dictate a need to do so. They are committed to protect the public against and will not hesitate to expose unethical, incompetent, or dishonorable practices. In order to maintain the highest standard of service and consumer protection, they commit themselves to the following principles designed to earn the greatest level of public confidence.

§810.92. Code of Ethics.

(a) Professional Conduct.

(1) Each registrant will provide professional service to anyone, regardless of race, religion, sex, political affiliation, social or economic status, or choice of life style. A registrant will not allow personal feelings related to a clients alleged or actual crimes or behavior to interfere with professional judgment and objectivity. When a registrant cannot offer service to a client for any reason, he or she will make a proper referral. Registrants are encouraged to devote a portion of their time to work for which there is little or no financial return.

(2) Each registrant will refrain from using his or her professional relationship, related to the assessment or treatment of a client, to further personal, religious, political or economic interests, other than customary professional fees.

(3) The proper conduct of each registrant is a personal matter to the same degree as it is with any other individual, except when such conduct compromises the fulfillment of professional responsibilities or reduces the public trust in this specialty area. Consequently, registrants are sensitive to predominant community standards and the potential impact that either conformity to, or deviation from these standards can have on the perception of their own performance, as well as that of their colleagues.

(4) Each registrant has an obligation to engage in continuing education and professional growth including active participation in meetings and affairs or relevant professional affiliations.

(5) Each registrant will refrain from diagnosing, treating or advising on problems outside the recognized boundaries of his/her competence.

(b) Client Relationships.

(1) Each registrant, offers dignified and reasonable support to a client, and does not exaggerate the efficacy of his or her service.

(2) When engaged in private practice, each registrant recognizes the importance pertaining to financial matters with clientele. Arrangements for payments are to be settled at the beginning of an assessment or a therapeutic relationship.

(3) Each registrant shall avoid dual relationships with clientele. These may impair professional judgment or pose a risk of exploiting the client. Examples of dual relationships include, but are not limited to, the following: treatment of family members, close friends, employees, supervisors, supervisees, and relationships outside of treatment business or social.

(4) Sexual harassment or intimacy with clients is unethical. Sexual behavior between a registrant and a client constitutes a felony offense in Texas.

(5) A registrant shall not withdraw services to clients in a precipitous manner. Each member shall give careful consideration to all factors in the situation and take care to minimize possible adverse effects on the client.

(6) Each registrant who anticipates termination or disruption of service to clients shall notify the clients promptly and provide for transfer, referral, or continuation of service in keeping with the clients needs and preferences.

(7) Each registrant who serves the clients of a colleague during a temporary absence or emergency will serve those clients with the same consideration of that afforded any client.

(8) In their professional role, registrants will avoid any action, which will violate or diminish the legal and civil rights of clients or others who may be affected by their actions.

(c) Confidentiality.

(1) Registrants will keep records on each client, storing them in such a way as to ensure their safety and confidentiality in accordance with the highest professional and legal standards including but not limited to HIPAA and the Texas Health and Safety Code, Chapter 611.

(2) Each registrant is responsible for informing clients of the exceptions to confidentiality. Clients should be informed of any circumstances which may trigger an exception to the agreed upon confidentiality.

(3) Registrants in criminal justice settings, or elsewhere, should inform all parties with whom they are working of the level of confidentiality, which applies. They should clarify any circumstances, which would constitute exceptions to confidentiality, in advance of the service being rendered. Each registrant should make clear to the client any conflict of interests or dual-client relationships, which affect his/her current relationship with a client.

(4) Written permission and informed consent shall be granted by the client before any data may be divulged to other parties.

(5) When responding to an inquiry for information and when a written release by the client is obtained, written and oral reports should present data germane to the purpose of the inquiry. Every effort should be made to avoid undue invasion of privacy for the client or other related person.

(6) As noted above, information is not communicated to others without the written consent of the client unless the following circumstances occur.

(A) There exists a clear and immediate danger to the person from the client.

(B) There is an obligation to comply with specific statutes requiring reports of suspected abuse to authorities. Each registrant is responsible for becoming fully aware of all statutes, which pertain to the conduct of his or her professional practice.

(d) Assessments.

(1) Registrants make every effort possible to promote the client's non- offending behavior while at the same time, acting in the best interest of the client, so long as others are not placed at identifiable risk. They guard against the misuse of assessment data. They respect their client's rights to know the results, the interpretations made, and the basis for the conclusions and recommendations drawn from such assessments. They endeavor to ensure that the assessment and reports they provide are used appropriately by others as well. Reports are written in such a way to communicate clearly to the recipient of the report.

(2) Unless the client agrees to an exception in advance, each registrant respects the right of the client to have a complete explanation, in language, which the client is able to understand, of the nature and purpose of the methodologies, and any foreseeable (side) effects of the assessment.

(3) Each registrant will obtain voluntary informed consent, in written form, from a client prior to conducting a physiological assessment or engaging in treatment. In cases where a question exists regarding the appropriateness of administering a test to a particular client, the registrant shall seek expert guidance from a competent medical and/or psychological authority prior to testing.

(4) In court-ordered evaluations, the client should be informed of his rights as a client, including his rights of confidentiality.

(5) The responsible use of assessment measures is of paramount concern and a serious responsibility of each registrant. Assessments regarding a person's degree of sexual dangerousness, suitability for treatment, or other forensic referral questions shall not be determined solely on the basis of a Phallometric assessment. Rather, such data must be properly integrated within a comprehensive assessment, the components of which are determined by a person who has specific training and expertise in making such assessments.

(6) An assessment should not be used to confirm or deny whether an event or crime has taken place.

(7) In reporting assessment results, registrants indicate any reservations that might exist regarding validity or reliability because of the circumstances of the assessment or the absence of comparative norms for the person being tested. Each registrant endeavors to ensure that assessment results and interpretations are not misunderstood or misused by others. Proper qualifications will be made with regard to prediction and generalized ability of data issues, in order to not mislead the consumer of the report.

(8) Since it is not within the professional competence of registrants to offer conclusions on matters of law, unless they are trained to do so, they should resist pressure to offer such conclusions (e.g., while it would be appropriate to address an issue regarding the probability of a client committing certain criminal acts within a certain period of time, it would be inappropriate to state that an individual is too dangerous to be released).

(9) Each registrant should be very cautious in offering predictions of criminal behavior for use in imprisoning or releasing individuals. If a registrant decided that it is appropriate, on the basis of a thorough evaluation in a given case, to offer a prediction of criminal behavior, he or she should specify clearly:

(A) the acts being predicted;

(B) the estimated probability that these acts will occur during a given period of time; and

(C) the facts and data on which these predictive judgments are based.

(10) Each registrant should be thoroughly familiar with the assessment or treatment procedures and data used by another registrant before providing any public comment or testimony pertaining to the validity, reliability, or accuracy of such information.

(11) Each registrant will safeguard sexual arousal assessment testing and treatment materials. Each registrant will recognize the sensitivity of this material and use it only for the purpose for which it is intended in a controlled Phallometric laboratory assessment. Registrants will not make such materials available to persons who lack proper training and credentials, or who would misinterpret or improperly use such stimulus materials.

(e) Professional Relationships.

(1) Each registrant will refrain from knowingly offering treatment services to a client who is in treatment with another professional without initially consulting with the professionals involved.

(2) Each registrant will act with proper regard for the needs, special competencies, and perspectives of not only colleagues who treat sex offenders but other professionals as well.

(3) Each registrant is encouraged to affiliate with professional groups, clinics, or agencies operating in the assessment and treatment of sex offenders. Similarly, interdisciplinary contact and cooperation is encouraged.

(f) Research and Publications.

(1) Each registrant is obligated to protect the welfare of his or her research subjects. Provisions of the human subjects experimental policy shall prevail as specified by the United States Department of Health, Education and Welfare guidelines.

(2) Each registrant will carefully evaluate the ethical implications of possible research and has full responsibility to ensure that ethical practices are enforced in conducting such research.

(3) The practice of informed consent person prevails. The research participant shall have full freedom to decline to participate in or withdraw from the research at any time without any prejudicial consequences.

(4) The research subject shall be protected from physical and mental discomfort, harm, and danger that may result from research procedures to the greatest degree possible.

(5) Publication credit is assigned to those who have contributed to a publication in proportion to their contribution, and in accordance with customary publication practices.

(g) Public Information and Advertising. All professional presentations to the public will be governed by the following standards on public information and advertising.

(1) General Principles: The practice of assessment and treatment of the sex offender exists for the public welfare. Therefore, it is appropriate for registrants to inform the public of the availability of services. However, much needs to be done to educate the public as to the services available from qualified persons who engage in the assessment and treatment of sex offenders. Therefore, registrants have a responsibility to the public to engage in appropriate informational activities and avoid misrepresentation or misleading statements in keeping with the following general principles and specific regulations: selection of a registrant by a prospective client should be made on an informed basis. Advice and recommendations of third parties, such as community corrections officers, attorneys, physicians, other professionals, relatives or friends, as well as responses to restrained publicity, may be helpful. Advertisements and public communications, whether in directories, announcement cards, newspapers or on radio or television, should be formulated to convey accurate information which is necessary to make an appropriate selection. Self-praising and testimonials should be avoided. Information that may be helpful in some situations would include the following:

(A) office information such as name, including a group name and names of professional associates, address, telephone number, credit card acceptability, languages spoken and written, and office hours;

(B) only earned degrees from an accredited college or university, state licensure and/or other certification, professional certification or affiliation;

(C) description of practice, including the statement that a practice is limited to the assessment or treatment of adult sex offenders and juveniles with sexual behavior problems (if appropriate); and

(D) professional fee information.

(2) The proper motivation for community publicity by members who are engaged in the assessment and treatment of adult sex offenders and juveniles with sexual behavior problems lies in the need to inform the public of the availability of competent professionals. The public benefit derived from advertising depends upon the usefulness and accuracy of the information provided to the community to which it is directed.

(3) The regulation of public statements by registrants is rooted in the public interest. Public statements through which a registrant seeks business by use of extravagant or brash statements or appeals to fears could mislead or harm the layperson. Furthermore, public communications that would produce unrealistic expectations in particular cases and would bring about a lack of confidence in the profession, would be harmful to the community. The therapist-client relationship is personal and unique and should not be established as the result of pressures, deception or exploitation of the vulnerability of clients.

(4) The name under which a registrant conducts his or her practice may be a factor in the selection process. Use of a name or credentials, which could mislead referral sources or lay persons is improper. Likewise, a registrant should not hold oneself out as being a partner or associate of any agency or firm if he is, in fact, not acting in that capacity (e.g., a person engaged in private practice who is also employed at a state hospital should make it clear to a prospective client in private practice that he is not acting on behalf of a state hospital).

(5) In order to avoid the possibility of misleading persons with whom he or she deals, a registrant should be scrupulous in the representation of his or her professional background, training and status. Each registrant must indicate, if it is accurate, any limitations in his or her practice (e.g., an ASOTP should specify that he/she must operate under the supervision of a RSOTP).

(6) Registrants shall not represent their affiliation with any organization or agency in a manner, which falsely implies sponsorship or certification by that organization.

(7) Registrants shall not knowingly make a representation about his or her ability, background, or experience, or about that of a partner or associate, or about a fee or any other aspect of a proposed professional engagement that is false, fraudulent, misleading, or deceptive. A false, fraudulent, misleading, or deceptive statement or claim is defined as a statement or claim which:

(A) contains a material misrepresentation of fact;

(B) omits any material or statement of fact which is necessary to make the statement, in light of all circumstances, not misleading; or

(C) is intended or likely to create an unjustified expectation concerning the registrant, or 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.

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SUBCHAPTER E. GENERAL PROVISIONS

22 TAC §810.121, §810.122

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.121. Introduction.

§810.122. 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.

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22 TAC §810.121, §810.122

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.121. Introduction.

(a) Purpose. The provisions of Subchapters E-J of this chapter govern the procedures relating to the civil commitment of sexually violent predators in the State of Texas and the development of a case management system, which provides appropriate and necessary treatment and supervision.

(b) Construction. These sections cover definitions, criteria for case managers, treatment providers, and biennial examination experts; guidelines for the supervised housing of sexually violent predators; outpatient treatment plans and standards of care; civil commitment requirements, supervision and tracking services; the exchange and release of information relating to sexually violent predators; commitment review procedures; petitions for release; and immunity from liability for good faith conduct.

(c) History. The legislature has determined that a small but extremely dangerous group of sexually violent predators were being released from prison that had a behavioral abnormality that was not amenable to traditional mental illness treatment modalities and were likely to engage in repeated predatory acts of sexual violence. The legislature determined that the existing involuntary commitment provisions of Subtitle C, Title 7,were inadequate to address the risk to society of repeated predatory behavior of the sexually violent predator. The legislature further determined that treatment modalities for sexually violent predators were different from traditional psychotherapy modalities. The legislature concluded that a civil commitment standard for the long-term comprehensive and offense specific supervision and treatment of sexually violent predators was necessary for the protection of the citizens of the State of Texas (Art. 4, Title 11, Health and Safety Code).

§810.122. Definitions.

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

(1) Act--Article 4, Health and Safety Code, Title 11, Chapter 841. Civil Commitment of Sexually Violent Predators.

(2) Behavioral abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) Biennial examination expert--A person or persons employed by or under contract with the council to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.

(4) Child safety zone--means an area as defined in Code of Criminal Procedure, Art. 42.12, §13B and Health and Safety Code, §481.134. Civil Commitment clients are mandated by court order not to go in, on, or within 1000 feet of a child safety zone.

(5) Civil commitment--The civil commitment of a person adjudged to be a sexually violent predator and committed to the outpatient sexual violent predator treatment program (OSVPTP).

(6) Civil commitment case manager--A person employed by or under contract with the council to perform duties related to the supervision, coordination and monitoring of the person committed to the outpatient treatment and supervision program.

(7) Civil commitment treatment provider--A person under contract with the council to conduct assessments, provide intensive treatment, conduct treatment planning, and to assist the Civil Commitment Case Manager in supervising the sexually violent predator.

(8) Council--The Council on Sex Offender Treatment.

(9) Global Positioning Satellite (GPS) Tracking--Technology that incorporates global positioning tracking and electronic radio frequency. GPS allows the person's location to be monitored 24 hours per day, 7 days per week.

(10) Interagency Case Management Team--All professionals involved in the treatment, assessment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager is the chairperson of the team.

(11) Multidisciplinary Team--Composed of members of the Council on Sex Offender Treatment, Texas Department of Criminal Justice, Texas Department of Criminal Justice-Victim Service Division , Texas Department Public Safety, and Texas Department of Mental Health and Mental Retardation or its successor agency. The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge, gives notice to the Texas Department of Criminal Justice or the Texas Department of Mental Health and

Mental Retardation, and recommends the assessment of the person for a behavioral abnormality (Act, §841.022).

(12) Penile Plethysmograph--A diagnostic method to assess sexual arousal by measuring the blood flow (tumescence) to the penis during the presentation of sexual stimuli in a laboratory setting. The plethysmograph provides the identification of clients' arousal in response to sexual stimuli (audio/visual) and the evaluation of therapeutic efficacy.

(13) Clinical polygraph examination--The employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act. Polygraphs measure the emotional arousal that is caused by fear and anxiety. The autonomic nervous system responds to arousal with physiological reactions such as increased heart rate, depth of respiration, and sweat gland activity. There are four types of polygraphs:

(A) Disclosure Polygraph-addresses the offense of conviction in conjunction with the official version;

(B) Sexual History Polygraph-addresses the complete sexual history of the client up to the instant offense;

(C) Maintenance Polygraph-addresses compliance with conditions of supervision and treatment; and

(D) Monitoring Polygraph-addresses if the client has committed a "new" sexual offense.

(14) Polygraph examiner--A licensed polygraph examiner who shall adhere to the Joint Polygraph Committee on Offender Testing (JPCOT) for polygraphing adult sex offenders and juveniles with sexual behavior problems.

(15) Predatory act--An act that is committed for the purpose of victimization and that is directed toward:

(A) a stranger;

(B) a person of casual acquaintance with whom no substantial relationship exists; or

(C) a person with whom a relationship has been established or promoted for the purpose of victimization.

(16) Repeat sexual offender--A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(A) the person:

(i) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(ii) enters a plea of guilty or nolo contendere to a sexually violent offense in return for a grant of deferred adjudication;

(iii) is adjudged not guilty by reason of insanity of a sexually violent offense; or

(iv) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Youth Commission under §54.04(d)(3) or (m), Family Code; and

(B) after the date on which under Health and Safety Code, §841.003(b), Subdivision (1) the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(i) is convicted, but only if the sentence for the offense is imposed; or

(ii) is adjudged not guilty by reason of insanity.

(17) Residential facility-A community residential facility, or halfway house, located in the State of Texas, and under contract with the council or the Texas Department of Criminal Justice.

(18) Sexually violent offense:

(A) an offense under the Penal Code, §§21.11(a)(1), 22.011, or 22.021;

(B) an offense under the Penal Code, §30.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under the Penal Code, §30.02, if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraphs (A) or (B) of this paragraph;

(D) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraphs (A), (B) or (C) of this paragraph;

(E) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C) or (D) of this paragraph; or

(F) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C), or (D) of this paragraph.

(19) Sexually violent predator (SVP)--A person as defined in the Health and Safety Code, Title 11, §841.003. A person is a sexually violent predator for the purpose of this chapter if the person: is a repeat sexually violent offender; and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence; is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses.

(20) Supervision, Treatment, and GPS Requirements--Are the requirements wherein a person agrees to participate and comply with the conditions of the Outpatient Sexually Violent Predator Treatment Program (OSVPTP).

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

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SUBCHAPTER F. CIVIL COMMITMENT

22 TAC §§810.151 - 810.153

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.151. Administration of the Act.

§810.152. Civil Commitment of Sexually Violent Predators.

§810.153. Outpatient Treatment and Supervision 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.

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22 TAC §§810.151 - 810.153

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.151. Administration of the Act.

The Council on Sex Offender Treatment (council) is responsible for providing the appropriate and necessary treatment and supervision of a sexually violent predator (SVP). Pursuant to the Act, the council shall develop and implement policies and procedures involving standards of treatment and supervision that enhance public safety and hold the person to the highest level of accountability. The council shall contract for the services of case managers, treatment providers, commitment review experts, global positioning tracking providers, biennial examination experts, transportation providers, and residential housing providers. The council by rule shall administer this chapter. Rules adopted by the council under this section must be consistent with the purposes of this chapter. The council by rule shall develop standards of care and case management for persons committed under this chapter. The council shall appoint two members of the council and two alternates, to serve as a member of the Multidisciplinary Team (team) as defined in the Act, §841.022. The council member(s) or designee(s) who serves on the team shall keep the council informed of the actions taken by the team by providing the council's Executive Director with periodic reports as required.

§810.152. Civil Commitment of Sexually Violent Predators.

In the event that a judge or jury determines that a person is a sexually violent predator (SVP), the person shall be committed by the judge to the Outpatient Sexually Violent Predator Treatment Program (OSVPTP) in accordance with a treatment and supervision plan approved by the council. Upon making a determination that a person is a SVP, the committing judge shall provide the council and the person with a copy of the civil commitment requirements for the person committed. The OSVPTP must begin on the persons release from a secure correctional facility or discharge from a state hospital and must continue until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. A case manager who has been approved by the council shall coordinate the OSVPTP. The council shall provide the case manager with all available documentation relating to the client including but not limited to a copy of the civil commitment requirements imposed upon the person by the committing judge.

§810.153. Outpatient Treatment and Supervision Program.

The council shall contract for the provision of an OSVPTP, which utilizes cognitive behavioral sex offender treatment and intensive supervision to attain the goal of no more victims. The OSVPTP containment model is composed of the following elements treatment orientation, assessments, and evaluations, global positioning tracking services, polygraph examinations, medication, transportation, penile plethysmograph, supervision, treatment, residential housing (if appropriate), and auditing services.

(1) Housing. The council shall provide for any necessary supervised or residential housing, including but not limited to, existing community residential facilities, or halfway houses currently under contract with the council or the Texas Department of Criminal Justice (TDCJ) and private entities, or other similar residential facilities as warranted. The supervised housing shall be approved by the council and shall be in locations around the State where the Department of Public Safety (DPS) maintains sufficient personnel who are properly trained in utilizing all forms of tracking services.

(2) Orientation. A person civilly committed by a judge , shall receive an orientation session from the assigned treatment provider involving the OSVPTP. The council shall establish policies and procedures for informing the person of his rights, obligations, and responsibilities under the OSVPTP. A person civilly committed to the OSVPTP must sign all forms, releases and consent documents approved by the council, including but not limited to, the Treatment, Supervision, and GPS Requirements which relate to said OSVPTP, and the person must agree to strictly adhere to the terms and conditions of said requirements and other documents as required by the Court. A person, who signs the requirements and adheres to its terms and conditions, is allowed to begin the OSVPTP. If the person fails to sign the documents, he is not permitted to begin the OSVPTP and will be subject to all legal sanctions available under the Act.

(3) Evaluation. The initial stage of the OSVPTP shall begin with a formal assessment of the SVP. The initial assessment shall involve two components. First, the treatment provider shall review and validate the formal risk assessment. Second, the treatment provider shall conduct an assessment for the purpose of identifying individual needs, which must be addressed during the OSVPTP. The individual needs as identified by the treatment provider shall be included in the person's individual treatment plan.

(4) Global Positioning Tracking Services. The council shall enter into an Interagency Agreement with the DPS, which will provide the technology and expertise to track sexually violent predators during their commitment to the OSVPTP. The primary focus of intensive tracking services is to ensure public safety, the highest level of client accountability, compliance with adhering to a daily activity schedule and to the requirements of the OSVPTP. Such services shall include but not be limited to monitoring global position

tracking, electronic monitoring, and surveillance. All SVPs shall begin an intensive monitoring system once a judge civilly commits the person for outpatient treatment and supervision or is released from a security facility. The person shall be on the intensive global positioning tracking until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(5) Polygraph Services. The person is mandated by the order of commitment to submit to polygraph testing. The treatment plan shall consist of clinical polygraph exams specific to sex offenders, including instant offense, sexual history, maintenance and monitoring exams. The council shall only approve treatment plans, which utilize licensed polygraph examiner who shall agree to adhere to the Joint Polygraph Committee guidelines for polygraphing sex offenders.

(6) Medication. Medication may include anti-psychotic, anti-depressant, anti-anxiety, anti-obsessional, anti-androgenic and/or equivalent chemotherapy.

(7) Penile Plethysmograph. The person is mandated by the order of commitment to submit to plethysmograph testing. The plethysmograph shall be used to identify clients who manifest excessive deviant arousal in response to stimuli depicting sexual abuse, discernment of lack of arousal to stimuli of consenting sex, minimization of distortions evident in self-report level of arousal, evaluation of therapeutic efficacy, and enhancement of certain forms of behavioral treatment.

(8) Supervision. The council shall establish employment policies and procedures for the hiring of a contracted case manager who will be responsible for the coordination of the treatment and supervision of the person civilly committed, and monitoring compliance with the treatment and supervision requirements for that person. The case manager shall be required to:

(A) conduct face to face contact at the office, residence, and field visits to monitor the SVP;

(B) serve as a liaison with the sex offender therapist, global positioning tracking services; polygraph examiner, District Attorneys, residential staff, parole officer, employer, and all other professionals involved in the person's life;

(C) shall report any violation to the council within 24 hours;

(D) shall ensure the residential plan is congruent with the child safety zone laws;

(E) shall ensure the person registers with the Texas Department of Public Safety every thirty (30) days;

(F) shall make referrals for alcohol and drug testing;

(G) adjust the person's supervision according to the risk assessment;

(H) shall make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters shall inform the person annually of their right to file for unauthorized release;

(I) shall submit the biennial report to the Judge;

(J) shall coordinate transportation services for the person; and

(K) shall abide by the Case Manager Code of Ethics.

(9) Treatment. The council shall approve and contract for the provision of treatment, which is based on a cognitive behavioral model with the focus of the treatment being holistic. The OSVPTP shall include but not be limited to sex offender specific group and individual therapy; social skills training, medicine, and if deemed warranted by the treatment provider, substance abuse counseling or traditional mental health treatment. The treatment plan shall be composed of standard tasks, which all persons must complete prior to moving to the next stage. In addition, individual goals shall be established based upon evaluation data. A treatment plan shall include the monitoring of the person with a polygraph and penile plethysmograph. The council shall establish guidelines and policies and procedures for the hiring of contracted treatment providers who will be responsible for developing and implementing an individual treatment plan approved by the council. All treatment plans and guidelines for standards of care are subject to the approval of the council prior to implementation.

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

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SUBCHAPTER G. CIVIL COMMITMENT CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §§810.181 - 810.183

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.181. Purpose.
§810.182. Civil Commitment Case Manager.
§810.183. Civil Commitment Treatment Provider.

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

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22 TAC §§810.181 - 810.183

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.181. Purpose.
The Council on Sex Offender Treatment is responsible but not limited to providing appropriate and necessary treatment, supervision, residential services, and transportation through a case management system, which requires the contracting for these services.

§810.182. Civil Commitment Case Manager.
The council shall approve and contract for the services of a person to perform duties related to outpatient treatment and supervision of a person civilly committed to the Outpatient Sexually Violent Predator Treatment Program (OSVPTP). The council shall establish employment policies and procedures, which set forth duties and responsibilities, minimum qualifications, knowledge, skills, and abilities required of a person serving in such capacity. The case manager shall report directly to the council through its Executive Director or designee; provide supervision to the SVP; ensure community safety by monitoring the SVP; communicate with law enforcement, treatment providers, prosecutors, and the judge having jurisdiction over the person's commitment; coordinate outpatient treatment for the SVP; periodically reviews assessments to determine the success of outpatient treatment and supervision; train residential housing staff; provide periodic reports to the council through its Executive Director or designee and to the judge having jurisdiction over the persons commitment; and make recommendations to the judge having jurisdiction over the persons commitment as to whether or not to allow the committed person to change residence , or any other appropriate matters relating to the persons civil commitment.

§810.183. Civil Commitment Treatment Provider.
The council shall approve and contract for the services of a person or persons to perform duties related to the outpatient treatment of a person civilly committed to the OSVPTP, and shall establish assessment and treatment guidelines for the Civil Commitment Treatment Providers to adhere to. The council shall establish employment policies and procedures, which set forth duties and responsibilities, minimum qualifications, knowledge, skills, and abilities required of a person or persons serving in such capacity. A treatment provider shall report directly to the council through its Executive Director or designee regarding the treatment and supervision of a person committed to the OSVPTP; shall conduct assessments; provide treatment and conduct treatment planning; provide the case manager with data that will assist in the supervision of the SVP: follow assessment and treatment guidelines and policies as established by the council; conduct evaluations and on-going risk assessments; recommend increases or decreases in supervision and freedom for the SVP based upon evaluations and observations; conduct group and individual counseling; conduct treatment planning and submit incident reports to the case manager; liaison with the case manager and other professionals providing services to the SVP; document all services provided to the SVP; and provide status reports to the case manager regarding the person's compliance with the treatment and supervision requirements of the OSVPTP.

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

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SUBCHAPTER H. CIVIL COMMITMENT REVIEW

22 TAC §810.211

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeal affects Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.211. Biennial Examination.

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

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22 TAC §810.211

The new section is proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new section affects Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.211. Biennial Examination.

(a) A person who is civilly committed under the Act, §841.081, shall receive a biennial examination conducted by an expert. The council shall approve and contract for the services of an expert who will conduct a biennial examination of the person civilly committed as a sexually violent predator. The expert shall not be the same expert who conducted the initial examination of the person for civil commitment purposes. The expert shall produce a written report within 90 days from the date of referral or earlier if required by the court, which shall include the following:

(1) the client's name, identification number, and date of examination;

(2) client's version and official version of the instant offense;

(3) client's level of denial of the instant offense and denial of deviant arousal or intent;

(4) history of assessment utilized, method and description of testing, and analysis of test data;

(5) a background summary of the client's history regarding, sexual history, social history; birth/development, family marital, education, employment, substance abuse, anger, suicide, psychiatric, and current psychiatric symptoms;

(6) current mental status based on clinical observation and diagnosis of mental illness as per the current Diagnostic and Statistical Manual;

(7) a treatment or supervision history and a description of the client's history in an outpatient program;

(8) a determination if the client's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory acts of sexual violence;

(9) the examiner's recommendation regarding the clients need for civil commitment; and

(10) expert's signature and title.

(b) The report shall also include a consideration of whether to modify a requirement imposed on the person under the Act, and whether to release the person from all of the requirements imposed on the person under the Act. The case manager shall provide a report of the client's compliance or non-compliance with treatment and supervision to the judge having jurisdiction over the person's commitment, and to the council through its Executive Director or designee. The council shall establish employment guidelines and policies setting forth duties and responsibilities, minimum qualifications, knowledge, skills, and the abilities of a person serving as a biennial examination expert. The expert shall not be the same expert who conducted the initial examination of the person for civil commitment purposes.

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

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SUBCHAPTER I. PETITION FOR RELEASE

22 TAC §810.241, §810.242

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.241. Authorized Petition for Release.

§810.242. Unauthorized Petition for Release.

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

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22 TAC §810.241, §810.242

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.241. Authorized Petition for Release.

In the event that the case manager and council determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the case manager and the council shall authorize the person to petition the court for release. Prior to authorizing the person to petition the court for release, the case manager shall notify the council through its Executive Director or designee.

§810.242. Unauthorized Petition for Release.

Upon a person's commitment to the OSVPTP and on an annual basis thereafter, the case manager shall provide the committed person with written notice of the committed persons right to file a petition for release which has not been authorized by the case manager. The case manager shall provide a copy of the written notice to the council through its Executive Director or designee.

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 May 24, 2004.

TRD-200403522
Walter J. Meyer, M.D.
Chairperson
Council on Sex Offender Treatment
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 458-7236

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SUBCHAPTER J. MISCELLANEOUS PROVISIONS

22 TAC §810.271, §810.272

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The repeals affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.271. Release and Exchange of Information.

§810.272. Immunity.

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

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22 TAC §§810.271 - 810.275

The new sections are proposed under Texas Occupations Code, §110.158, which provides the council with the authority to adopt rules consistent with the chapter; and under Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter.

The new sections affect Texas Occupations Code, Chapter 110, and Texas Health and Safety Code, Chapter 841.

§810.271. Release and Exchange of Information.

In order to protect the public and to facilitate a determination of whether a person is a sexually violent predator, the council shall release information relating to the person to those entities responsible for making determinations under the Act. The council shall provide the case manager with relevant information relating to the person in order to ensure public safety, and to enable the provision of supervision and treatment to a person who is a SVP. Information relating to the supervision, treatment, criminal history, or physical or mental health of the person may be released as deemed appropriate by the council. The person's consent is not required for the release or exchange of information under the Act.

(1) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(2) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to the case manager.

(3) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(4) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

(5) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

§810.272. Effect of Certain Subsequent Convictions, Judgments, or Verdicts on the Order of Commitment.

(a) Except as provided by subsection (b) of this section, the following convictions, judgments, or verdicts do not affect an order of civil commitment under this chapter:

(1) a conviction for a felony if a sentence is not imposed;

(2) a conviction for a misdemeanor, regardless of whether a sentence is imposed; and

(3) a judgment or verdict of not guilty by reason of insanity for any offense absent a corresponding commitment to the Texas Department of Mental Health and Mental Retardation.

(b) The statutory duties imposed by this chapter are suspended for the duration of any confinement of a person who receives a conviction described by subsection (a)(2) of this section.

§810.273. Certain Expert Testimony not Required for Civil Commitment of the Sexually Violent Predator.

A person who suffers from a behavioral abnormality as determined under this chapter is not because of that abnormality a person of unsound mind for the purposes of §15-a, Article I, Texas Constitution.

§810.274. Criminal Penalty.

A person commits an offense if the person violates a requirement imposed under this Act. An offense under this section is a felony of the third degree.

§810.275. Immunity.

Pursuant to the Act, §841.147, the following persons are immune from liability for good faith conduct under this chapter: an employee or officer of the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, Texas Department of Health, or the council, a member of the multidisciplinary team established under §841.022 an employee of the division of the prison prosecution unit charged with initiating and pursuing civil commitment proceedings under this chapter; and a person providing, or contracting, appointed, or volunteering to perform a tracking service or another service under this chapter.

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

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Council on Sex Offender Treatment
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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS
SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.1 - 871.17

The Advisory Board of Athletic Trainers (board) proposes new §§871.1 - 871.17, concerning the licensure and regulation of athletic trainers.

The sections are presently adopted under 25 Texas Administrative Code, Part 1, Chapter 313 titled "Athletic Trainers." The sections are being proposed as new sections under 22 Texas Administrative Code, Part 40, Chapter 871. The repeal and republication is necessary to move the sections to a more appropriate location in the Texas Administrative Code.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 313.1 - 313.17 have been reviewed and the board has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed. Sections 313.1 - 313.17 will be repealed in 25 Texas Administrative Code and proposed as new sections in 22 Texas Administrative Code.

Revisions were necessary for several reasons. The new sections have been revised to reflect changes in the statute; to clarify and simplify the rules; to correct citations; to remove a standard first aid techniques course from acceptable continuing education; and to require a cardiopulmonary resuscitation course and an automated external defibrillation course during each continuing education reporting period, but to not allow them to count towards the required continuing education hours needed to renew the license. The board finds that the reasons for adopting the rules continue to exist and proposes to readopt these rules with changes.

Additionally, the revisions are necessary to implement House Bill 2985, 78th Legislature, 2003, which added Occupations Code, Chapter 101, Subchapter G, which establishes the Office of Patient Protection within the Health Professions Council and requires additional fees to fund it; Senate Bill 1152, 78th Legislature, 2003, which amended Government Code, Chapter 2054, to require participation in Texas Online; House Bill 2292, 78th Legislative Session, 2003, which revised Health and Safety Code, §12.0111 and §12.0112, and requires two-year licenses effective January 1, 2005; Senate Bill 161, 78th Legislature, 2003, which amends Occupations Code, Chapter 451, relating to emergency suspensions; and to include language relating to the failure to comply with the terms of a court order relating to the possession of or access to a child in accordance with the requirement of Texas Family Code, Chapter 232 (relating to Suspension of License).

The board submitted a Notice of Intent to Review for the sections in accordance with Government Code, §2001.039, agency review of rules. The notice was published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7424). No comments were received as a result of the publication of this notice.

Heather Muehr, Program Director, Advisory Board of Athletic Trainers, has determined that for each of the first five years the new sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the new sections as proposed. The estimated increase in general revenue cannot be established because the number of persons required to comply with the proposed sections cannot be determined. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority. The department is also required to collect fees to fund the Office of Patient Protection.

Ms. Muehr has also determined that for each of the first five years the new sections are in effect, the public benefit as a result of enforcing or administering the sections will be to insure the appropriate regulation of athletic trainers. There will be a fiscal impact to micro-businesses or small businesses that pay for their employees' initial application or renewal license that are required to comply with the new sections. The business will incur the additional fees for processing applications and renewal applications through Texas Online and for funding the Office of Patient Protection. The estimated fiscal impact cannot be determined because we do not know how many of the businesses will pay the licensure or renewal fees for their employees. There will be an economic impact to individuals who are required to comply with the new sections as proposed. Applicants and licensees will be required to pay additional fees for processing applications and renewal applications through Texas Online and for funding the Office of Patient Protection. Some licensees will also incur additional costs to attend the cardiopulmonary resuscitation and automated external defibrillation course as required by proposed new §871.12. However, a majority of licensees are already required by their employers to attend the cardiopulmonary resuscitation and automated external defibrillation courses and will not incur additional costs.

Comments on the proposal may be submitted to Heather Muehr, Program Director, Advisory Board of Athletic Trainers, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6615, or Heather.Muehr@tdh.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*. The rules are scheduled to take effect on September 1, 2004.

The new sections are proposed under the Occupations Code, §451.103, which authorizes the Advisory Board of Athletic Trainers to adopt rules necessary for the performance of its duties.

The new sections affect Occupations Code, Chapter 451. The review of the rules implements Government Code, §2001.039.

§871.1. Definitions.

The following words and terms, when used in these rules shall have the following meanings unless the context clearly indicates otherwise. Words and terms defined in the Athletic Trainers Act shall have the same meaning in these rules:

(1) Act--Occupations Code, Chapter 451 and Texas Civil Statutes, Article 4512d, relating to the Advisory Board of Athletic Trainers.

(2) Applicant--A person who applies to the board for a license or temporary license.

(3) ALJ--An administrative law judge appointed by the State Office of Administrative Hearings to preside over contested case hearings.

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

(5) Associate executive secretary--A licensed athletic trainer employed by the board as the associate director of board licensing activities and who serves at the direction of the board.

(6) Athletic trainer--A person licensed under the Act.

(7) Board--The Advisory Board of Athletic Trainers.

(8) Clock-hour--50 minutes of attendance and participation in an acceptable continuing education experience.

(9) Department--The Department of State Health Services.

(10) Executive secretary--A licensed athletic trainer employed by the board as the director of board licensing activities and who serves at the direction of the board.

(11) Executive secretary emeritus--A licensed athletic trainer who has been previously employed by the board as the director of board licensing activities and who currently serves at the direction of the board and provides guidance to the Administrative Services Committee.

(12) Licensee--A person who holds a current license or a temporary license as an athletic trainer issued by the board under the Act.

(13) Program director--The department employee designated as the coordinator of the licensure activities authorized by the Act.

(14) SOAH--The State Office of Administrative Hearings.

(15) Temporary license--A license issued under §871.10 of this title (relating to Temporary License).

§871.2. Scope of Practice.

(a) A licensed athletic trainer prevents, recognizes, assesses, manages, treats, disposes of, and reconditions athletic injuries and illnesses under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license. An athlete is a person who participates in an organized sport or sport-related exercise or activity, including interscholastic, intercollegiate, intramural, semiprofessional, and professional sports activities.

(b) The activities listed in subsection (c)(1) - (7) of this section may be performed in any setting authorized by a licensed physician and may include, but not be limited to, an educational institution, professional or amateur athletic organization, an athletic facility, or a health care facility.

(c) Services provided by a licensed athletic trainer may include, but are not limited to:

(1) planning and implementing a comprehensive athletic injury and illness prevention program;

(2) conducting an initial assessment of an athlete's injury or illness and formulating an impression of the injury or illness in order to provide emergency or continued care and referral to a physician for definitive diagnosis and treatment, if appropriate;

(3) administering first aid and emergency care for acute athletic injuries and illnesses;

(4) coordinating, planning, and implementing a comprehensive rehabilitation program for athletic injuries;

(5) coordinating, planning, and supervising all administrative components of an athletic training or sports medicine program;

(6) providing health care information and counseling athletes; and

(7) conducting research and providing instruction on subject matter related to athletic training or sports medicine.

(d) A licensee shall not provide health care services which are not within the definition of "athletic training" in the Act except in accordance with state and federal laws and rules applicable to the provided services including, but not limited to, Occupations Code, Chapter 157, relating to a physician's delegated authority; other licensure laws; and laws relating to the possession and distribution of controlled substances.

§871.3. The Board's Operation.

(a) The chair is appointed by and serves at the will of the governor.

(b) The chair shall preside at all board meetings at which he or she is in attendance and perform all duties prescribed by the Act and this chapter. The chair may serve as an ex-officio member of any committee.

(c) The vice-chair shall perform the duties of chair in case of the absence of the chair. If the office of chair becomes vacant, the vice-chair will serve until a successor is appointed.

(d) At the meeting held nearest to August 31 of each year, the board shall elect by a majority vote of those members present and voting, a vice-chair and secretary. Nominations shall be from the floor.

(e) A vacancy which occurs in the offices of vice-chair or secretary may be filled by a majority vote of those members present and voting at the next board meeting.

(f) The board or the chair with the approval of the board may establish committees necessary to assist the board in carrying out its duties and responsibilities.

(1) The chair may appoint members of the board to serve on committees.

(2) The chair may designate a member of the committee to serve as committee chair for a one-year period.

(3) The chair may appoint non-board members to serve as committee members on a consultant or voluntary basis, subject to board approval.

(4) The committee chairs shall make regular reports to the board by interim written reports and/or at regular meetings, as necessary.

(5) Committees shall meet when called by the chair of the committee or when so directed by the board.

(6) The following standing committees may be appointed by the chair:

(A) the Administrative Services Committee;

(B) the Continuing Education Committee;

(C) the Education Committee;

(D) the Governmental Affairs Committee; and

(E) the Communications Committee.

(g) The board shall hold at least two regular meetings during each year ending on August 31 at such dates, places, and times as determined by the chair.

(1) The board may hold additional meetings necessary for the transaction of board business on the call of the chair or at the written request of any three members of the board.

(2) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Government Code, Chapter 551.

(3) A quorum of the board necessary to conduct official business is three members.

(h) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(i) Board action shall require a majority vote of those members present and voting.

(j) The latest edition of Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(k) Policy against discrimination. The board shall make decisions in the discharge of its statutory authority without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.

(l) The policy of the board is that members shall attend regular and committee meetings.

(1) It is a ground for removal from the board if a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(2) The board may report to the governor and the Texas Sunset Advisory Commission the attendance records of members.

(m) A board member is entitled to receive the state per diem allowance as set by the legislature in the General Appropriations Act for transportation and related expenses incurred for each day the member engages in the business of the board.

(1) Payment to board members of per diem and transportation expenses shall be on official state travel vouchers which have been approved by the department.

(2) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(n) The program director shall prepare and submit to each member of the board, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of board business which have been approved for discussion by the chair.

(o) The official agenda of a meeting shall be filed with the Office of the Secretary of State of the State of Texas in accordance with the Open Meetings Act, Government Code, Chapter 551.

(p) The drafts of the minutes of each meeting shall be forwarded to each board member for review and comments prior to approval by the board.

(1) After approval by the board, the minutes of any board meeting are official only when affixed with the original signatures of the chair and secretary.

(2) The official minutes of board meetings shall be kept in the office of the program director and shall be available to any person desiring to examine them during regular office hours.

(q) All public records of the board shall be open for inspection during regular office hours unless such records contain information excepted from disclosure under the Public Information Act, Government Code, Chapter 552; the Family Educational Rights and Privacy Act of 1974, 20 United States Code, §1232g; or other applicable law.

(1) A person desiring to examine public records shall make a request to examine the records.

(2) Public records may not be taken from board offices; however, persons may obtain photocopies upon request and by paying the cost per page in accordance with rules of the Texas Building and Procurement Commission.

§871.4. Petition for Rulemaking.

(a) The following procedures shall apply to the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for it. If the executive secretary determines that further information is necessary to assist the board in reaching a decision, the executive secretary may require that the petitioner resubmit the petition and that it contain:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the anticipated public benefit as a result of adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule.

(3) The board may deny a petition which does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A) - (D) of this subsection if the executive secretary determines that the latter is necessary.

(4) The petition shall be mailed or delivered to the Executive Secretary, Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183.

(5) The executive secretary shall submit a completed petition to the board for its consideration.

(6) The executive secretary shall submit the petition to the board for its consideration and disposition at the first regular board meeting scheduled after receipt of the petition. If the next meeting is within 15 days of the date the petition is received, the executive secretary shall submit the petition to the board at the next regular meeting of the board.

(c) Denial or acceptance of the petition.

(1) The board may deny parts of the petition and/or initiate rulemaking procedures on parts of the petition.

(2) If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's denial, including the reason(s) for the denial.

(3) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(4) The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

§871.5. Processing Applications.

(a) The following periods of time shall apply from the date an application is received until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. For the purpose of this section, an application is not considered complete until all required documentation and fees have been received. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a completed application. The time periods are as follows:

(1) letter of acceptance of application for licensure or temporary licensure--30 working days;

(2) letter of application or renewal deficiency--30 working days; and

(3) issuance of license renewal--20 working days.

(b) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. For the purpose of this section, an application is not considered complete until the applicant has successfully completed any required examination and all required documentation and fees have been received. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with law and of the opportunity for a formal hearing. The time periods are as follows:

(1) letter of approval for examination--30 working days;

(2) initial letter of approval for licensure--30 working days;

(3) letter of denial of licensure--180 working days; and

(4) issuance of license renewal--20 working days.

(c) In the event an application is not processed in the time periods stated in subsections (a) and (b) of this section, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the program director. If the program director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(d) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(e) Appeal. If the program director denies a request for reimbursement under subsection (c) of this section, the applicant may appeal to the chair of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chair at the address of the board that he or she requests full reimbursement of all fees paid because the application was not processed within the applicable time period. The program director shall prepare and submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the chair. The program director shall provide written notice of the chair's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(f) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in subsections (a) and (b) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the board is final and appealable.

§871.6. Fees.

(a) The schedule of fees of the board is as follows:

(1) application fee--$60;

(2) temporary license fee--$200;

(3) written examination fee--$75;

(4) oral/practical examination fee--$125;

(5) initial license fee for a license issued before January 1, 2005--$50;

(6) initial license fee for a license issued after January 1, 2005--$100;

(7) child support reinstatement fee--$75;

(8) returned check fee--$25;

(9) renewal license that is issued for a one-year period--$125;

(10) renewal license that is issued for a two-year period--$250; and

(11) late renewal fee:

(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or

(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.

(b) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(c) For all applications and renewal applications, the board is required to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(d) All fees are nonrefundable.

(e) A licensee or applicant whose personal check for a fee is not honored by the financial institution may reinstate the renewal application, initial application, or examination eligibility by remitting to the department a money order or cashier's check for the amount of the

fee plus the returned check fee within 30 days of the date of the person's receipt of the department's notice that the personal check was not honored.

(1) An initial or renewal application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(2) If proper payment is not received, the license or temporary license shall not be issued or renewed. If a license or renewal card has already been issued, it shall be ineffective.

(3) If proper payment is not received for an examination fee, the applicant's examination results shall not be released.

§871.7. Qualifications.

(a) Applicants qualifying under the Act, §451.153(a)(1) shall hold a baccalaureate or post-baccalaureate degree and one of the following:

(1) current licensure, registration, or certification as an athletic trainer issued by another state, jurisdiction, or territory of the United States; or

(2) current national certification as an athletic trainer issued by the National Athletic Trainers Association Board of Certification (NATABOC).

(b) In place of the requirements in subsection (a) of this section, applicants qualifying under the Act, §451.153(a)(1) shall have:

(1) a baccalaureate or post-baccalaureate degree which includes at least 24 hours of combined academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology or biomechanics;

(D) physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries;

(F) advanced athletic training, advanced sports medicine, or assessment of injury; and

(G) therapeutic exercise or rehabilitation or therapeutic modalities; and

(2) an apprenticeship in athletic training meeting the following requirements:

(A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;

(B) the apprenticeship must be a minimum of 1,800 hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;

(C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 hours of the 1,800 hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. No more than 300 hours may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by the college or university's athletic trainer in prevention of injuries, emergency care, rehabilitation, and modality usage.

(c) Applicants qualifying under the Act, §451.153(a)(2) or §451.153(a)(3) shall have a baccalaureate or post-baccalaureate degree or a state issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(d) Certification required. An applicant must have:

(1) a current adult cardiopulmonary resuscitation certificate; or

(2) current certification for emergency medical services (EMS) with the Department of State Health Services.

(e) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(f) The board shall not accept courses which an applicant's transcript indicates were not completed with a passing grade for credit.

(g) Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

(h) Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association reported by the American Association of Collegiate Registrars and Admissions Officers.

§871.8. Student Athletic Trainer Activities.

A student athletic trainer may perform the activities of an athletic trainer only under the following circumstances.

(1) A student shall be considered to be performing the activities of an athletic trainer under the Act, §451.153, and not in violation of the Act, §451.151, if the student is performing the activities:

(A) as part of the athletic training apprenticeship hours described in §871.7 of this title (relating to Qualifications); or

(B) as follows:

(i) the student's supervising college or university licensed athletic trainer has approved, referred, sent, or directed the student to a setting other than with the student's school's intercollegiate athletes;

(ii) the setting is with another college or university, a high school, a professional athletic team, or a health care clinic; and

(iii) the student is directly supervised in the setting by a licensed athletic trainer, licensed physician or licensed physical therapist.

(2) Hours which fall under paragraph (1)(B) of this section shall not be counted as apprenticeship hours unless the hours meet the requirements of §871.7 of this title.

(3) For the purposes of this section, supervision means daily, direct, and immediate communication.

§871.9. Examination for Licensure.

(a) The board shall offer examinations at least two times a year at times and places established and announced by the board.

(b) The examination shall consist of written and practical questions and evaluations prescribed by the board.

(c) An applicant may file an application for examination if the applicant:

(1) is within 30 semester hours of graduation;

(2) has completed or is currently pre-registered or enrolled in the courses listed in §871.7 of this title (relating to Qualifications); and

(3) has completed at least 1300 hours of the required 1800 hours and the apprenticeship program is in progress if the applicant qualifies under the Act, §451.153(a)(1); or

(4) has completed at least 600 hours of the required 720 hours and the apprenticeship program is in progress if the applicant qualifies under the Act, §451.153(a)(2) or §451.153(a)(3).

(d) The program director shall review all applications prior to the examination. An applicant meeting the requirements of subsection (c) of this section or of §871.7 of this title and pays the required examination fee shall be approved to take the examination.

(e) The board shall notify an applicant whose application has been approved for examination at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(f) An examination registration form must be completed and returned to the board by the applicant with the required examination fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination. Applications which are received incomplete or late may cause a delay.

(g) Examinations shall be graded by the board's designee.

(h) The board shall notify each applicant by mail of the results of the examination within 30 days of the date of the examination.

(i) The following procedures relate to applicants who fail the examination prescribed by the board.

(1) An applicant who fails the examination may take a subsequent examination after paying the examination fee.

(2) The board will furnish a copy of the board's policy concerning examination review to an applicant who fails an examination. If requested in writing, the board shall furnish an applicant who fails an examination a written analysis of performance.

(3) An applicant who fails an examination three times must take both the written examination and the practical examination on the fourth examination attempt and on every fourth examination attempt thereafter.

(j) Applicants who have passed the examination and do not have a degree will have 90 days from their graduation date to submit all documents and fees necessary to show compliance with this chapter and complete the licensing procedure. If the application process is not completed within 90 days of the graduation date, the applicant shall be required to file a new application and retake the examination successfully in order to qualify for licensure.

(k) An applicant who fails to take the examination within a period of two years after the initial examination approval notice is mailed by the board may have such approval withdrawn.

§871.10. Temporary License.

(a) A temporary license may be issued to an individual who meets the educational and apprenticeship requirements of this chapter.

(b) After receiving a completed application and all required fees, the board shall issue a temporary license to an applicant that meets the requirements of this section. The temporary license entitles an applicant to perform the activities of an athletic trainer until the results of the first examination which the applicant is eligible to take are released.

(c) An applicant who failed an examination administered by the board shall not be eligible for a temporary license. If a temporary license has previously been issued, it shall be voided and the applicant shall not be eligible for another temporary license.

(d) A person who has been licensed as an athletic trainer and allowed the license to expire, may be eligible for a temporary license upon submission and approval of a new application for licensure. The expiration of a temporary license issued under this subsection will be in accordance with subsection (b) of this section.

§871.11. License Renewal.

(a) Licenses issued between January 1, 2005, and December 31, 2005, are valid for a one-year period or a two-year period, as determined by the department, commencing on the date of issuance of the initial license. All licenses issued on or after January 1, 2006, are valid for a two-year period.

(b) A licensee must renew the license on or before the expiration date or pay a late fee.

(c) The renewal date of a license shall be the last day of the month in which the license was originally issued.

(d) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license shall not excuse failure to file for timely renewal.

(e) A licensee must fulfill all applicable continuing education requirements prescribed by the board in order to renew the license.

(f) The board shall not renew a license if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(g) The procedures to renew a license are as follows.

(1) At least 45 days prior to the expiration date of a person's license, the department shall send a license renewal form to the licensee at the address in the department's records. The licensee must complete the license renewal form and return it to the department with all required fees.

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor or felony convictions.

(3) A licensee has renewed the license when the licensee has mailed the renewal form and all required documentation and fees to the department prior to the expiration date of the license. The postmark date shall be considered the date of mailing. If a license holder makes a timely and sufficient application for renewal of a license, the current license in his/her possession does not expire until the application has been finally granted or denied by the department.

(4) The board shall issue a license renewal identification card to a licensee who has met all requirements for renewal.

(5) The department shall inform a person who has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(6) A person whose license has expired for not more than 90 days may renew the license by submitting to the department the license renewal form and the late renewal fee. The renewal is effective if it is mailed to the department not more than 90 days after the expiration date of the license. The postmark date shall be considered the date of mailing.

(7) A person whose license has been expired for more than 90 days but less than one year from the expiration date may renew the license by submitting to the department the license renewal form and the late renewal fee.

(8) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the then current requirements and procedures for obtaining a license.

(h) Expiration of license.

(1) A person whose license has expired may not hold himself or herself out as an athletic trainer; imply that he or she has the title of "licensed athletic trainer," "athletic trainer" or "sports trainer," or use "LAT," "AT," or "LATC" or any facsimile of those titles in any manner.

(2) A person whose license has expired may not perform the activities of an athletic trainer.

(3) A person who fails to renew a license is required to surrender the license certificate and identification card to the board after one year from expiration of the license or upon demand. The certificate remains the property of the board.

(i) If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty serving outside the State of Texas shall be filed with the board along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the board along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A copy of the marriage license shall be filed with the board along with the renewal form if the spouse of the licensee executes any of the documents required in the subsection.

(6) A licensee renewing under this subsection shall pay all required fees, but not the late renewal fee.

(7) A licensee renewing under this subsection shall not be required to submit any continuing education hours.

(8) A licensee renewing under this subsection must submit the required forms and fees within 60 days of the licensee's return from active duty. The license must be renewed before the licensee can perform the activities of an athletic trainer.

§871.12. Continuing Education Requirements.

(a) The purpose of this section is to establish the continuing education requirements a licensee shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensed athletic trainers. Continuing education experiences are programs beyond the basic education required to obtain licensure which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the practices of licensed athletic trainers, thus improving athletic training care to the public.

(b) Hours required for continuing education.

(1) A licensee that is on a one-year renewal cycle must complete 30 clock-hours of continuing education during each three-year period as described in this subsection. In addition to the 30 clock-hours of continuing education, a licensee must also successfully complete a cardiopulmonary resuscitation (CPR) techniques course and an automated external defibrillation course during each three-year period. The three-year period begins on the first day following the issuance month and ends on the last day of the licensee's renewal month. The initial period shall begin with the date the board issues the license certificate and ends on the last day of the third renewal cycle.

(2) A licensee that is on a two-year renewal cycle must complete 20 clock-hours of continuing education during each two-year period. In addition to the 20 clock-hours of continuing education, a licensee must also successfully complete a cardiopulmonary resuscitation (CPR) techniques course and an automated external defibrillation course during each two-year period. The two-year period begins on the first day following the license issuance month and ends upon the expiration date of the license.

(c) Continuing education credit undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses at a regionally accredited college or university related to sports medicine;

(2) clinical courses related to sports medicine;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in sports medicine or athletic training;

(4) instructing or presenting education programs or activities without compensation at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences in athletic training or sports medicine not to exceed five clock-hours each continuing education period;

(5) publishing a book or an article in a peer review journal relating to athletic training or sports medicine not to exceed five clock-hours each continuing education period;

(6) serving as a skills examiner at the state licensure examination not to exceed one clock-hour of continuing education credit for each examination date for a maximum of six clock-hours of credit each continuing education period; or

(7) successful completion of a self-study program in athletic training or sports medicine, not to exceed eight clock-hours each continuing education period.

(d) Continuing education experience shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock-hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (c)(2) or (3) of this section shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) A clock-hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) Successful completion of courses described in subsection (c)(7) of this section is evidenced by a certificate of completion presented by the publisher, or sponsoring organization of the self-study program.

(5) Approval by the continuing education committee must be obtained for each continuing education program as described in subsection (c) of this section, unless continuing education credit is granted by a national, regional or state health care professional association.

(e) Requests for approval of continuing education experience should address the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(2) objectives of specific information or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs; including the name of the sponsoring individual(s) or organization(s), and program leaders or faculty if different from sponsors and contact person.

(f) The board shall employ an audit system for continuing education reporting. The licensee shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the board at the time of renewal unless the licensee has been selected for audit.

(g) The audit process shall be as follows.

(1) The department shall select for audit a random sample of licensees for each renewal month. Audit forms shall be sent to the selected licensees.

(2) All licensees selected for audit will furnish documentation such as official transcripts, certificates, diplomas, receipts, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the board, to verify having earned the continuing education hours listed on the continuing education report form. The documentation must be provided to the department upon request.

(3) Failure to timely furnish this information or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.

(h) A licensee who has failed to complete the requirements for continuing education may be granted a 180-day extension to the continuing education period.

(1) The request for an extension of the continuing education period must be made in writing.

(2) The subsequent continuing education period shall end three years from the date the previous continuing education period expired or upon the expiration of the license, not the date of the end of the extension period.

(3) Credit earned during the extension period may only be applied to the previous continuing education period.

(4) A license may be renewed upon completion of the required continuing education within the given extension period, submission of the license renewal form, and payment of the applicable late renewal fee.

(i) A person who fails to complete continuing education requirements for renewal and fails to request an extension to the continuing education period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(j) The continuing education committee may not grant continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (b) or (h) of this section; or

(4) performance of duties that are routine job duties or requirements.

§871.13. Standards for Conduct.

(a) An athletic trainer shall work under the direction of a licensed physician or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license when carrying out the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries.

(b) A licensee shall not misrepresent any professional qualifications or credentials.

(c) A licensee shall not make any false or misleading claims about the effectiveness of any athletic training care.

(d) A licensee shall not promote or endorse products in a manner that is false or misleading.

(e) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of athletic training care.

(f) A licensee shall comply with the provisions of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, and the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483, and any rules of the Department of State Health Services or the Texas State Board of Pharmacy implementing those statutes.

(g) A licensee shall have the responsibility of reporting violations of board rules to the department.

(h) A licensee shall not present false information to the board or the department on any application or other document or in any investigation or disciplinary proceeding of the board or the department.

(i) A licensee shall not aid or abet the practice of an unlicensed person when that person is required to have a license under the Act.

(j) A licensee shall comply with any order relating to the licensee which is issued by the board.

(k) A licensee shall not provide health care services which are not within the definition of "athletic training" in the Act except in accordance with state and federal laws and rules applicable to the provided services including, but not limited to, Occupations Code, Chapter 157 (relating to a physician's authority to delegate certain medical acts); other licensure laws; and laws relating to the possession and distribution of controlled substances.

(l) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of athletes for professional services.

(m) A licensee shall provide athletic training services without discrimination based on race, creed, sex, religion, national origin, or age.

(n) A licensee shall not violate any provision of any federal or state statute relating to confidential medical communications and/or records.

(o) A licensee shall not offer professional services to a person concurrently receiving the same or similar professional services from another individual except with the knowledge of that individual.

(p) A licensee shall not engage in sexual contact or sexually exploitive behavior with a person receiving athletic training services from the licensee. Sexual contact shall mean the activities or behaviors described in the Texas Penal Code, §21.01. Sexually exploitive behavior shall mean any verbal or physical conduct that can reasonably be construed as intended to arouse or gratify the sexual desire of any person.

(q) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's service with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(r) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for athletic training services previously made on a bill or a statement for the client. This requirement applies even if the charges are to be paid by a third party.

(s) Unreasonable or medically unnecessary billing is prohibited.

(t) A licensee shall be subject to disciplinary action by the board if the licensee:

(1) is issued a public letter of reprimand;

(2) is assessed a civil penalty by a court; or

(3) has been convicted and ordered to pay court costs under Artcle 56.55 of the Crime Victims Compensation Act, Code of Criminal Procedures, Chapter 56, Subchapter B.

(u) The license certificate shall be displayed in the primary office or place of employment of the licensee. In the absence of a primary office or place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current license identification card.

(v) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of a license identification card in lieu of the original document.

(w) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card issued by the board.

(x) The licensee shall notify the board of changes in name or preferred mailing address within 30 days of such change.

(y) A licensee may not violate any provision of the Act or this chapter.

(z) A person may not hold himself or herself out as an athletic trainer or perform any of the duties of an athletic trainer as defined in the Act unless the person holds an appropriate license issued under the Act. A person may not hold himself or herself out as an athletic trainer by implying that he or she has the title of "licensed athletic trainer," "sports trainer," or "athletic trainer" or using the letters "LAT," "LATC," or "AT" or any facsimile of those titles in any manner unless the person holds a license issued under the Act.

§871.14. Violations, Complaints and Disciplinary Actions.

(a) Any person may complain to the board alleging that a person has violated the Act or this chapter.

(b) A person wishing to file a complaint against a licensee or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the program director's office. The mailing address is Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183 and the phone number is (512) 834-6615.

(c) The department shall investigate anonymous complaints if the complainant provides sufficient information.

(d) Complaints shall be investigated in accordance with the following procedures.

(1) The program director shall make the initial investigation and report the findings to the executive secretary.

(2) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, or relevant evidence.

(3) If the program director determines that the complaint does not come within the board's jurisdiction, the program director shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(4) The program director shall, at least quarterly until final disposition of the complaint, notify the complainant and the person against whom the complaint has been filed of the status of the complaint unless such notice would jeopardize an investigation.

(5) The executive secretary may recommend that the license be revoked, suspended, suspended with probation, suspended on an emergency basis, denied, or that the licensee be reprimanded, that administrative penalties be assessed, or other enforcement action authorized by law.

(6) If the executive secretary and the program director determine that there are insufficient grounds to support the complaint, the program director shall dismiss the complaint and give written notice of the reason for dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(e) The board may deny an application or initiate disciplinary actions as described in subsection (d)(5) of this section for a violation of the Act or this chapter.

(f) The executive secretary shall give written notice to the licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, and the licensee shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(g) If disciplinary action is proposed, the executive secretary shall give written notice by certified mail, return receipt requested, that the licensee must request, in writing, a formal hearing within 20 days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(h) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be secured. The executive secretary may determine whether the public interest would be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing.

(1) An informal settlement conference shall be voluntary.

(2) A settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(3) The licensee, the licensee's attorney, the executive secretary, the program director, and the board's attorney may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(4) The complainant shall not be considered a party in the settlement conference but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(5) At the conclusion of the settlement conference, the executive secretary or his designee may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The executive secretary or his designee may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

§871.15. Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.

(a) The board may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an athletic trainer.

(b) In considering whether a criminal conviction directly relates to the occupation of an athletic trainer, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to be an athletic trainer. The following felonies and misdemeanors relate to the license of an athletic trainer because these criminal offenses indicate an unwillingness or an inability to be able to perform as an athletic trainer:

(A) the misdemeanor of knowingly or intentionally acting as an athletic trainer without a license issued under the Act;

(B) a misdemeanor and/or felony offense involving moral turpitude;

(C) a misdemeanor and/or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any offenses in this subsection.

(vi) the misdemeanors and felonies listed in clauses (i) - (v) of this subparagraph are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and this chapter;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an athletic trainer. In determining the present fitness of a person, the

board shall consider the evidence described in the Occupations Code, Chapter 53, relating to Consequences of Criminal Conviction.

(c) The board's procedures for revoking, suspending, probating, reprimanding, or denying a license to persons with criminal backgrounds are as follows.

(1) The program director, upon consent of the executive secretary, shall give written notice to the person that the board proposes to take any of the disciplinary actions outlined in §871.14(d)(5) of this title (relating to Violations, Complaints, and Disciplinary Actions).

(2) If the board takes any of the disciplinary actions outlined in §871.14(d)(5) of this title, the program director, upon consent of the executive secretary, shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for review of the evidence presented to the board and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) of the earliest date that the person may appeal.

§871.16. Formal Hearings.

(a) The program director, on request from a licensee or applicant, who is entitled to a formal hearing, shall initiate a formal hearing.

(b) A hearing shall be conducted in accordance with the Administrative Procedure Act (APA) and this section.

(c) An administrative law judge (ALJ) appointed by the State Office of Administrative Hearings (SOAH) shall preside over and conduct the hearing. After the hearing, the ALJ shall prepare a proposal for decision and provide copies of same to all parties to the hearing.

(d) The final order or decision will be rendered by the board.

§871.17. Suspension of License Relating to Child Support and Child Custody.

(a) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the program director, upon consent of the executive secretary, shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the title "athletic trainer" or practice athletic training after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the program director, upon consent of the executive secretary, shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out at §871.6 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

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

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403489
Natalie Steadman
Chair
Advisory Board of Athletic Trainers
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 458-7236

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 313. ATHLETIC TRAINERS

SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

25 TAC §§313.1 - 313.17

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

The Advisory Board of Athletic Trainers (board) proposes the repeal of §§313.1 - 313.17, concerning the licensure and regulation of athletic trainers.

The sections are presently adopted under 25 Texas Administrative Code, Part 1, Chapter 313 titled "Athletic Trainers." The sections are being proposed for adoption as new sections under 22 Texas Administrative Code, Part 40, Chapter 871. The repeal and republication is necessary to move the sections to a more appropriate location in the Texas Administrative Code.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 313.1 - 313.17 have been

reviewed and the board has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed; however, these rules will be repealed in 25 Texas Administrative Code and proposed as new sections in 22 Texas Administrative Code.

Revisions were necessary for several reasons. The new sections have been revised to reflect changes in the statute; to clarify and simplify the rules; to correct citations; to remove a standard first aid techniques course from acceptable continuing education; and to require a cardiopulmonary resuscitation course and an automated external defibrillation course during each continuing education reporting period, but to not allow them to count toward the required continuing education hours needed to renew the license. The board finds that the reasons for adopting the rules continue to exist and proposes to readopt these rules with changes.

Additionally, the revisions are necessary to implement House Bill 2985, 78th Legislature, 2003, which added Occupations Code, Chapter 101, Subchapter G, which establishes the Office of Patient Protection within the Health Professions Council and requires additional fees to fund it; Senate Bill 1152, 78th Legislature, 2003, which amended Government Code, Chapter 2054, to require participation in Texas Online; House Bill 2292, 78th Legislative Session, 2003, which revised Health and Safety Code, §12.0111 and §12.0112, and requires two-year licenses effective January 1, 2005; Senate Bill 161, 78th Legislature, 2003, which amends Occupations Code, Chapter 451, relating to emergency suspensions; and to include language relating to the failure to comply with the terms of a court order relating to the possession of, or access to, a child in accordance with the requirement of Texas Family Code, Chapter 232 (relating to Suspension of License).

The board submitted a Notice of Intent to Review for the sections in accordance with Government Code, §2001.039, agency review of rules. The notice was published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7424). No comments were received as a result of the publication of this notice.

Heather Muehr, Program Director, Advisory Board of Athletic Trainers, has determined that for each of the first five years the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals as proposed.

Ms. Muehr has also determined that for each of the first five years the repeal is in effect, the public benefit as a result of enforcing or administering the repeal will be to insure the appropriate regulation of athletic trainers. There will be no fiscal impact to micro-businesses, small businesses, or persons who are required to comply with the repeals. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Heather Muehr, Program Director, Advisory Board of Athletic Trainers, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6615, or Heather.Muehr@tdh.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*. The rules are scheduled to take effect on September 1, 2004.

The repeals are proposed under the Occupations Code, §451.103, which authorizes the Advisory Board of Athletic Trainers to adopt rules necessary for the performance of its duties.

The repeals affect Occupations Code, Chapter 451. The review of the rules implements Government Code, §2001.039.

§313.1. Definitions.
§313.2. Scope of Practice.
§313.3. The Board's Operation.
§313.4. Petition for Rulemaking.
§313.5. Processing Applications.
§313.6. Fees.
§313.7. Qualifications.
§313.8. Student Athletic Trainer Activities.
§313.9. Examination for Licensure.
§313.10. Temporary License.
§313.11. License Renewal.
§313.12. Continuing Education Requirements.
§313.13. Guidelines for Conduct.
§313.14. Violations, Complaints, and Disciplinary Actions.
§313.15. Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.
§313.16. Formal Hearings.
§313.17. Suspension of License for Failure to Pay Child Support.

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 May 24, 2004.

TRD-200403488
Natalie Steadman
Chair, Advisory Board of Athletic Trainers
Texas Department of Health
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314, 65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department proposes amendments to §§65.314, 65.315, 65.318, and 65.319 - 65.321, concerning the Migratory Game Bird Proclamation. The amendment to §65.314, concerning Zones and Boundaries for Early Season Species, would alter the southern boundary of the Central Zone near San Antonio. The current boundary follows U.S. Highway 90 eastward to its junction with Interstate Highway 10 in San Antonio. The proposed new boundary would follow U.S. Highway 90 to its junction with Loop 1604, and then follow Loop 1604 eastward to its junction with Interstate Highway 10. Because the area bounded by U.S. Highway 90 on the west, Loop 1604 on the south, and Interstate Highway 10 on the east then would be part of the Central Zone rather than the South Zone, the boundary shift would allow earlier harvest (September 1, versus September 20) of white-winged doves making feeding flights south out of San Antonio, which would serve to increase hunter opportunity in that area. Nesting

studies conducted in the 1980s by the department indicate that the vast majority of white-winged doves have finished nesting and fledged their young by September 1, whereas for mourning doves, approximately 4% of nests were initiated after September 1, 6% of the seasonal eggs and nestlings were present after September 1, and 89% of nestlings have been fledged by that time. The proposal is exploratory and is contingent on approval by the U.S. Fish and Wildlife Service (Service). The department has approached the Service to determine whether the proposed change can be made without a formal recommendation approved by the entire Central Flyway Council and the Service Regulations Committee. If the proposed change requires such action, the department will be unable to adopt the change for the 2004-2005 season.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season Species, adjusts the season dates for early-season species of migratory game birds to account for calendar-shift (an annual adjustment to ensure that seasons open on the correct day of the week).

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season Species, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift. The proposed amendment also sets forth conditional bag limits for ducks, coots, and mergansers. The current bag limits for these species reflect the continuing concerns of the U.S. Fish and Wildlife Service over breeding populations of canvasback and pintail ducks. For the last two years, the Service has not authorized full-season hunting opportunity for those two species, electing to require states to impose a truncated season-within-a-season instead. There is a possibility that the Service this year might offer the opportunity to have full-season hunting for all species, but with an aggregate bag limit less than that currently in effect.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift.

The amendment to §65.321, concerning Special Management Provisions, also adjusts dates for the take of light geese during the special conservation season to account for calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2004-2005 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizenry.

There will be no effect on small businesses or microbusinesses. There are no additional economic costs to persons required to comply with the rules as proposed.

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

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

The department has determined that Government Code, § 2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

Comments on the proposed rules may be submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4578 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. Zones and Boundaries for Early Season Species.

(a) Rails: statewide.

(b) Mourning and white-winged doves.

(1) North Zone: That portion of the state north of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to Interstate Highway 20; thence northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; thence northeast along Interstate Highway 30 to the Texas-Arkansas state line.

(2) Central Zone: That portion of the state between the North Zone and the South Zone.

(3) South Zone: That portion of the state south of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence following Loop 1604 south and east to Interstate Highway 10 [~~at San Antonio~~]; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.

(4) Special white-winged dove area: That portion of the state south and west of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to United States Highway 83 at Uvalde; thence south along U.S. Highway 83 to State Highway 44; thence east along State Highway 44 to State Highway 16 at Freer; thence south along State Highway 16 to State Highway 285 at Hebbronville; thence east along State Highway 285 to FM 1017; thence southeast along FM 1017 to State Highway 186 at Linn; thence east along State Highway 186 to the Mansfield Channel at Port Mansfield; thence east along the Mansfield Channel to the Gulf of Mexico.

(c) Gallinules (Moorhen or common gallinule and purple gallinule): statewide.

(d) Teal ducks (blue-winged, green-winged, and cinnamon): statewide.

(e) Woodcock: statewide.

(f) Common snipe: statewide.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 11 - 26, 2004 and October 30 - December 22, 2004 [~~September 20 - 28, 2003 and October 25 - December 24, 2003~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2004 [~~September 1 - October 30, 2003~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2004 and December 26, 2004 - January 4, 2005 [~~September 1 - October 30, 2003 and December 26, 2003 - January 4, 2004~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 24- November 9, 2004 and December 18, 2004 - January 9, 2005 [~~September 20 - November 5, 2003, and December 20, 2003 - January 11, 2004~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 4, 5, 11, and 12, 2004 [~~September 6, 7, 13, and 14, 2003~~].

(i) Daily bag limit: 10 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than five mourning doves and two white-tipped doves per day;

(ii) Possession limit: 20 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 10 mourning doves and four white-tipped doves in possession.

(B) Dates: September 24 - November 9, 2004 and December 18, 2004 - January 5, 2005 [~~September 20 - November 5, 2003 and December 20, 2003 - January 7, 2004~~].

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 11 - 26, 2004 and October 30 - December 22, 2004 [~~September 20 - 28, 2003 and October 25 - December 24, 2003~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 11 - 26, 2004 [~~September 13 - 28, 2003~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2004 - January 31, 2005 [~~December 18, 2003 - January 31, 2004~~]. The daily bag limit is three. The possession limit is six.

(h) Common snipe (Wilson's snipe or jacksnipe): October 30, 2004- February 13, 2005 [~~October 18, 2003 - February 1, 2004~~]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. If the U.S. Fish and Wildlife Service establishes a [~~The~~] daily bag limit for ducks of [~~is~~] six, the daily bag [~~which~~] may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one canvasback, one pintail, two redheads, and two wood ducks. Canvasback and pintail may be taken only during the restricted seasons provided for those species. If the U.S. Fish and Wildlife Service establishes an aggregate bag limit of five, the daily bag may include no more than three scaup, two reheads, two wood ducks, and no more than one (in the aggregate) of the following: mallard hen, pintail, mottled duck, or canvasback. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser. [~~Canvasback and pintail may be taken only during the restricted seasons provided for those species.~~]

(A) High Plains Mallard Management Unit: October 30-November 1, 2004, and November 6, 2004 - January 30, 2005 [~~October 25-27, 2003, and November 1, 2003 - January 25, 2004~~]. The open season for pintail and canvasback begins December 23, 2004 and runs through January 30, 2005 [~~December 18, 2003 and runs through January 25, 2004~~].

(B) North Zone: November 13-14, 2004 and November 20, 2004 - January 30, 2005 [~~November 8-9, 2003 and November 15, 2003 - January 25, 2004~~]. The open season for pintail and canvasback begins December 23, 2004 and runs through January 30, 2005 [~~December 18, 2003 and runs through January 25, 2004~~].

(C) South Zone: October 30-31, 2004, and November 6, 2004-- January 16, 2005 [~~October 25-26, 2003, and November 8 - January 18, 2004~~]. The open season for pintail and canvasback begins December 9, 2004 and runs through January 16, 2005 [~~December 11, 2003 and runs through January 18, 2004~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: October 30, 2004 - February 8, 2005 [~~October 25, 2003 - February 3, 2004~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 6, 2004 - February 8, 2005 [~~November 1, 2003 - February 3, 2004~~]. The daily bag limit for dark geese is four, which may not include more than three Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese. The daily bag limit for light geese is 20, and there is no possession limit.

(I) In that portion of the Eastern Zone lying north of IH 10: October 23, 2004 - January 30, 2005 [~~October 25, 2003 - January 25, 2004~~].

(II) In that portion of the Eastern Zone that is both south of IH 10 and east of IH 35: October 23, 2004 - January 16, 2005 [~~October 25, 2003 - January 18, 2004~~].

(ii) Dark geese. The daily bag limit for dark geese is five, no more than three of which may be Canada geese and no more than two of which may be two white-fronted geese.

(I) In that portion of the Eastern Zone lying north of IH 10: November 6, 2004 - January 30, 2005 [~~November 1, 2003 - January 25, 2004~~]; and

(II) In that portion of the Eastern Zone that is both south of IH 10 and east of IH 35: October 23, 2004 - January 16, 2005 [~~October 25, 2003 - January 18, 2004~~].

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 6, 2004 - February 6, 2005 [~~November 1, 2003 - February 1, 2004~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 27, 2004 - February 6, 2005 [~~November 22, 2003 - February 1, 2004~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 18, 2004 - January 16, 2005 [~~December 20, 2003 - January 18, 2004~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section, except that pintail ducks and canvasback ducks may be taken. The bag limit for pintail ducks is one per day and the bag limit for canvasback ducks is one per day. The possession limit is two. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 16-17, 2004 [~~October 18-19, 2003~~];

(B) North Zone: October 30-31, 2004 [~~October 25-26, 2003~~]; and

(C) South Zone: October 16-17, 2004 [~~October 18-19, 2003~~].

§65.319. Extended Falconry Season--Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 19 - December 25, 2004 [~~November 19 - December 25, 2003~~].

(2) rails and gallinules: December 9, 2004 - January 14, 2005 [~~December 26, 2003 - January 31, 2004~~].

(3) woodcock: November 24 - December 17, 2004 and February 1 - March 9, 2005 [~~November 24 - December 17, 2003 and February 1 - March 9, 2004~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season--Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 31 - February 14, 2005 [~~January 26 - February 9, 2004~~];

(C) [~~(B)~~] South Duck Zone: January 17- January 31, 2005 [~~January 19 - February 2, 2004~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1)-(3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. In addition to the means and methods authorized in §65.310(a) of this title (relating to Means , Methods, and Special Requirements), the following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document from the person who killed the birds. The wildlife resource document is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The wildlife resource document shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 31, 2005 through March 27, 2005 [~~January 26, 2004 through March 28, 2004~~], the take of light geese is lawful in that portion of the Eastern Zone lying north of IH 10.

(B) From January 17, 2005 through March 27, 2005 [~~January 19, 2004 through March 28, 2004~~], the take of light geese is lawful in that portion of the Eastern Zone that is both south of IH 10 and east of IH 35.

(C) From February 9, 2005 through March 27, 2005 [~~February 4, 2004 through March 28, 2004~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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 May 20, 2004.

TRD-200403404
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §371.24

The Texas Water Development Board (the board) proposes an amendment to 31 TAC §371.24 concerning the Drinking Water State Revolving Fund.

The board proposes to amend §371.24 concerning Disadvantaged Community Program through Loan Subsidies. The proposed amendment to §371.24 will allow for an alternative method in determining the adjusted median household income for a community that Census data may not otherwise provide. This alternative method is the use of a survey of the income of the customers in the service area of a particular applicant. Several communities have expressed concern about the accuracy of Census data. Many small rural communities are located within or surrounded by affluent areas that may skew the income levels for the area needing assistance. In some cases, Census data is not even available, such as for water supply corporations. In these instances, the use of a survey is an effective tool to isolate and identify the applicant's income and, moreover, to accurately reflect the applicant's current economic situation when comparing current rates to income level.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the section is in effect there will not be fiscal implications on state government as a result of enforcement and administration of this section. She has also 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 water projects with some additional cost associated with conducting surveys. 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 section, as proposed, is in effect the public benefit anticipated as a result of enforcing the proposed section will be to provide a greater opportunity for communities to access funding through the Disadvantaged Community Programs by providing an alternative method to demonstrate a key component of eligibility for financial assistance. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Staff Attorney, Office of the General Counsel, 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.

The amendment is proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapter 15, Subchapter J.

§371.24. Disadvantaged Community Program through Loan Subsidies.

(a) Eligibility. Subject to limitations of federal law, the board may provide financial assistance in the form of low interest loans and/or loan subsidies through the Disadvantaged Community Account of the DWSRF to:

(1) a political subdivision:

(A) that is a disadvantaged community; or

(B) for a project serving an area that:

(i) is located outside the boundaries of the political subdivision; and

(ii) meets the definition of a disadvantaged community; or

(2) an owner of a community water system that is ordered by the commission to provide service to a disadvantaged community, provided that the financial assistance is for the sole purpose of providing service to a disadvantaged community.

(b) Definition of Disadvantaged Community.

(1) A community is a disadvantaged community if it meets the definition of a disadvantaged community presently or if as a result of a proposed project, the community becomes a disadvantaged community.

(2) Disadvantaged community means the service area of a public water system that 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

(A) 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

(B) 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%.

(3) The household cost factor is calculated as the average yearly water bill divided by adjusted median household income.

(4) The combined household cost factor is calculated as the average yearly water bill plus the average yearly sewer bill divided by the adjusted median household income.

(5) The average yearly water bill is calculated as the average number of persons per occupied household multiplied by 2,325 gallons per person per month multiplied by the proposed monthly water rate multiplied by 12. The proposed monthly water rate shall include the cost of the proposed project. Any funds for the proposed project received from sources other than the DWSRF shall be deducted from the cost of the project.

(6) The average yearly sewer bill is calculated as the average number of persons per occupied household multiplied by 1,279 gallons per person per month multiplied by the monthly sewer rate multiplied by 12.

(7) The adjusted median household income is calculated as the 1990 annual median household income multiplied by the current Texas Consumer Price Index divided by the 1990 Texas Consumer Price Index. The adjusted median income may also be calculated using data from a survey approved by the executive administrator of a statistically acceptable sampling of customers in the service area completed within the last 12 months. The necessary information will be provided by the board to the applicant during the solicitation process.

(8) If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household should be included in calculating the household cost factor or the combined household cost factor.

(c) Interest Rates and Subsidies. Notwithstanding the provisions of §371.52 of this title (relating to Lending Rates), the interest rates and the levels of subsidies under the disadvantaged community program will be determined by the provisions of this subsection. The loan amount that is subject to forgiveness will not be subject to an interest rate.

(1) If the adjusted median household income for the service area is between 75% and 70% of the median state household income, the board's financial assistance shall be in the form of a loan with a 1.0% interest rate.

(2) If the adjusted median household income for the service area is less than or equal to 70% but greater than 60% of the median state household income, the board's financial assistance shall be in the form of a loan with a 0.0% interest rate.

(3) If the adjusted median household income for the service area is less than or equal to 60% but greater than 50% of the median state household income, the board's financial assistance shall be in the form of a loan with a 0.0% interest rate and 15% of the principal will be forgiven.

(4) If the adjusted median household income for the service area is less than or equal to 50% of the median state household income, the board's financial assistance shall be in the form of a loan with a 0.0% interest rate and 35% of the principal will be forgiven.

(d) Additional Project Costs. If the actual cost of a project funded under this section exceeds the estimated cost of the project as listed on the intended use plan, the additional cost will be funded through the Water Supply Account of the Texas Water Development Fund and interest rates for the additional cost will be set according to the provisions of §363.33 of this title (relating to Interest Rates for Loans and Purchase of Board's interest in State Participation Projects).

(e) Term of Loan. Notwithstanding the provisions of §371.12(1)(B) of this title (relating to Uses of the Fund), the board may extend the term of a loan made to a political subdivision or a disadvantaged community as provided in subsections (a) and (b) of this section if the extended term terminates not later than the date that is 30 years after the date of project completion and does not exceed the expected design life of the project.

(f) Total Amount of Subsidies. For each fiscal year, the total amount of loan subsidies made by the board under this section may not exceed 30% of the amount of the capitalization grant received by the board for that year.

(g) Consolidations.

(1) Financial assistance for consolidations.

(A) If the applicant acquires another public water system or provides retail service to another public water system, 20% of the cost of the project is subject to forgiveness of principal.

(B) If the applicant provides wholesale service to another public water system, 15% of the cost of the project is subject to forgiveness of principal.

(C) The amount of principal that will be forgiven for the consolidation will be deducted from the cost of the project before calculating the amount of financial assistance for the remaining cost of the project pursuant to subsection (c) of this section.

(2) Eligible costs.

(A) Any one or more of the following costs of consolidation are eligible for funding:

(i) system acquisitions;

(ii) the cost of plant upgrades or expansions specific to providing service to the disadvantaged community;

(iii) the cost of rehabilitating or replacing the distribution system of an existing water system to bring the system into compliance with drinking water regulations;

(iv) the provision of wholesale service; and

(v) master meters and upgrades needed to receive wholesale service from the consolidating system.

(B) Notwithstanding the provisions of §371.13(a)(4) of this title (relating to Projects Eligible for Assistance), purchase of existing capacity in the consolidating system are not eligible for funding through the Disadvantaged Community Account of the DWSRF.

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 May 19, 2004.

TRD-200403402
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: July 21, 2004
For further information, please call: (512) 463-7981

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.19

The Texas Water Development Board (the board) proposes an amendment to 31 TAC §375.19 concerning the Clean Water State Revolving Fund.

The board proposes to amend §375.19 concerning Financial assistance for projects benefiting disadvantaged communities. The proposed amendment to §375.19 will allow for an alternative method in determining the adjusted median household income for a community that Census data may not otherwise provide. This alternative method is the use of a survey of the income of the customers in the service area of a particular applicant. Several communities have expressed concern about the accuracy of Census data. Many small rural communities are located within or surrounded by affluent areas that may skew the income levels for the area needing assistance. In some cases, Census data is not even available, such as for water supply corporations. In these instances, the use of a survey is an effective tool to isolate and identify the applicant's income and, moreover, to accurately reflect the applicant's current economic situation when comparing current rates to income level.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the section is in effect there will not be fiscal implications on state government as a result of enforcement and administration of this section. She has also 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 with some additional cost associated with conducting surveys. 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 section, as proposed, is in effect the public benefit anticipated as a result of enforcing the proposed section will be to provide a greater opportunity for disadvantaged communities to access funding through the Clean Water State Revolving Fund by providing an alternative method to demonstrate a key component of eligibility for financial assistance. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Staff Attorney, Office of the General Counsel, 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.

The amendment is proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapter 15, Subchapter J.

§375.19. Financial assistance for projects benefiting disadvantaged communities.

(a) Eligibility. The board may provide financial assistance in the form of low interest loans through CWSRF program account to a political subdivision:

(1) that is a disadvantaged community; or

(2) that will serve an area that:

(A) is located outside the current service area of the political subdivision; and

(B) meets the definition of a disadvantaged community;

(b) Definition of disadvantaged community.

(1) A community is a disadvantaged community if it meets the definition of a disadvantaged community presently or if as a result of a proposed project, the community becomes a disadvantaged community.

(2) Disadvantaged community means an area in which the project will provide service that 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

(A) 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

(B) 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%.

(3) The household cost factor is calculated as the average yearly water bill divided by adjusted median household income.

(4) The combined household cost factor is calculated as the average yearly water bill plus the average yearly sewer bill divided by the adjusted median household income.

(5) The average yearly water bill is calculated as the average number of persons per occupied household multiplied by 2,325 gallons per person per month multiplied by the proposed monthly water rate multiplied by 12. The proposed monthly water rate shall include the cost of the proposed project. Any funds for the proposed project received from sources other than the CWSRF shall be deducted from the cost of the project.

(6) The average yearly sewer bill is calculated as the average number of persons per occupied household multiplied by 1,279 gallons per person per month multiplied by the monthly sewer rate multiplied by 12.

(7) The adjusted median household income is calculated as 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. The adjusted median income may also be calculated using data from a survey approved by the executive administrator of a statistically acceptable sampling of customers in the service area completed within the last 12 months. The necessary information will make available through the executive administrator to the applicant.

(8) If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household may be included in calculating the household cost factor or the combined household cost factor.

(c) Interest rates and subsidies. Notwithstanding the provisions of §375.52 of this title (relating to Lending Rates), the interest rates for a project eligible for the funds available to disadvantaged communities program will be determined by the provisions of this subsection.

(1) If the adjusted median household income for the service area is between 75% and 70% of the median state household income, the board's financial assistance shall be in the form of a loan with a 1.0% interest rate.

(2) If the adjusted median household income for the service area is less than or equal to 70%, the board's financial assistance shall be in the form of a loan with a 0.0% interest rate.

(d) Additional project costs. If the actual cost of a project funded under this section exceeds the estimated cost of the project as listed on the intended use plan, the additional cost will be funded through the Financial Assistance Account of the Texas Water Development Fund and interest rates for the additional cost will be set according to the provisions of §363.33 of this title (relating to Interest Rates for Loans and Purchase of Board's interest in State Participation Projects).

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 May 19, 2004.

TRD-200403401

Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: July 21, 2004
For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.360

The Comptroller of Public Accounts proposes an amendment to §3.360, concerning customs brokers. This section is being amended to implement House Bill 109, 78th Regular Session of the Texas Legislature. Effective January 1, 2004, the legislation amends Tax Code §151.157, §151.158, §151.307, §151.406, §151.712 and adds §151.1575 regarding new documentation requirements for customs broker export certifications, license fees and procedures for brokers, stamp fees, bonds or securities, penalties, and other customs broker documentation, export verification, reporting, and record-keeping requirements. Other amendments to the language of the proposed section are for the purposes of clarity.

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

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

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

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

The amendment implements the Tax Code, Chapter 151.

§3.360. Customs Brokers (Tax Code §§151.157, 151.1575, 151.158, 151.307, and 151.172)

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

(1) Employee--A person who is authorized by his employer to perform customs transactions or related services on behalf of the employer, is compensated by the employer with a regular salary or wages, is under the direct control and supervision of the employer, and from

whose salary or wages the employer is required to and actually does deduct and withhold a tax under federal law. This definition applies to employees of customs brokers and employees of verification contractors.

(2) Licensed customs broker--A person who is licensed by the United States Customs Service to act as a customs[~~custom house~~] broker and who holds a Texas Customs Broker's License issued by the comptroller as provided for in this section.

(3) Total value of property--The sales price, as shown on receipts and invoices of all property for which a licensed customs broker issued export certification forms during a calendar quarter.

(4) Total amount of tax on property--The total amount of all Texas state and local sales and use taxes paid on property for which a licensed customs broker issued export certification forms during a calendar quarter.

(5) Total amount of tax refunded- The total amount of all Texas state and local sales and use taxes that retailers refunded to a customs broker during a calendar quarter.

(6) [~~(3)~~] Verification contractor--An independent contractor who, for consideration and under a written contract with a licensed customs broker,monitors the export of property on behalf of a licensed customs broker as provided in subsection (b)(1) of this section [~~facilitates the monitoring of exports to be certified by the broker~~]. Unless the context clearly indicates otherwise, all references in this section to a verification contractor include an employee of a verification contractor.

(b) Certification of exports. Only a licensed customs broker or an employee of a licensed customs broker may fully or partially prepare, issue, and/or sign a valid export certification form as provided for in this section and in §3.323 of this title (relating to Imports and Exports). A retailer who receives documentation that is valid under this section certifying that delivery was made to a point outside of the territorial limits of the United States should refer to §3.323(e) for information regarding refunds. A licensed customs broker, or an authorized employee of the customs broker, may issue an export certification form only if the custom broker or authorized employee:

(1) personally witnesses, or a verification contractor personally witnesses, the transportation of property across the border of the United States;

(2) personally witnesses the property being placed on a common carrier for delivery outside the territorial limits of the United States; or

(3) verifies by performing all of the following actions that the purchaser is transporting the property to a destination outside of the territorial limits of the United States:

(A) examines a passport, laser visa identification card, or picture foreign voter registration identification that proves that the purchaser of the property resides in a foreign country;

(B) requires that the purchaser produce the property and the original receipt for the property so the customs broker or authorized employee can verify that the property is the same property as described in the purchaser's sales receipt;

(C) requires that the purchaser state the foreign country of destination, which must be the foreign country in which the purchaser resides, the date and time the property is expected to arrive in the foreign country destination, the date and time the property was purchased, the name and address of the retailer from whom the purchaser bought the property, the sales price and quantity of the property, and a description of the property;

(D) requires that the purchaser sign a form:

(i) that states that purchaser has provided the information and documentation required in paragraph (3) of this subsection;

(ii) that states "Providing false information to a customs broker is a Class B misdemeanor" clearly on the form; and

(iii) that contains a notice to the purchaser that property not exported to a foreign country is subject to Texas sales and use tax and the purchaser is liable for payment of an amount equal to tax on the value of the property, as well as, other possible civil liabilities and criminal penalties, if the purchaser improperly obtains a refund of taxes relating to the property; and

(E) requires that the purchaser produce the following travel documentation for inspection by the customs broker or authorized employee:

(i) if the purchase was made in a county that does not border the United Mexican States, the purchaser's Form I-94, Arrival/Departure record, or its successor, as issued by the Bureau of Citizenship and Immigration Security of the United States Department of Homeland Security; or

(ii) if the purchase was made in a county that does not border the United Mexican States, the purchaser's travel documentation, e.g. airline or bus ticket; and

(4) circles and writes or states "exported" next to each item to be exported on purchaser's original receipt.

(c) Texas Customs Broker's License; prerequisites. A person may apply to the comptroller for a Texas Customs Broker's License, which is a license to issue export certification forms for the purpose of claiming exemption from Texas sales and use taxes. To obtain a license, a person must:

(1) be currently licensed by the United States Customs Service to act as a custom house broker;

(2) submit an application in the form prescribed by the comptroller;[~~and~~]

(3) pay an annual license fee of $300 for each place of business from which the customs broker intends to issue export certification forms;

(4) post a bond or security as required in subsection (h) of this section; and

(5) [~~(3)~~] be current in payment of all taxes and fees administered by the comptroller.

(d) Form of application. The comptroller will prescribe an application form for a Texas Customs Broker's License, which must include or be accompanied by the following:

(1) a copy of the applicant's license to act as a customs [~~custom house~~]broker issued by the United States Customs Service;

(2) the applicant's name, mailing address, primary business address, business telephone number, home address, and home telephone number, and the names, home addresses, and home telephone numbers of all the general partners (if the applicant is a partnership), the charter number, charter date, federal employers identification number, and the names, home addresses, and home telephone numbers of the officers and directors (if the applicant is a corporation), or the names, home addresses, and home telephone numbers of the members (if the

applicant is an entity[~~association~~] other than a partnership or corporation);

(3) the names, mailing addresses, primary business addresses, business telephone numbers, home addresses, and home telephone numbers of all verification contractors and all authorized employees of verification contractors, and the names, home addresses, and home telephone numbers of all the general partners (if the verification contractor is a partnership), the charter number, charter date, federal employers identification number, and the names, home addresses, and home telephone numbers of the officers and directors (if the verification contractor is a corporation), or the names, home addresses, and home telephone numbers of the members (if the verification contractor is an entity[~~association~~] other than a partnership or corporation), and the date of contract of all verification contractors;

(4) the names, home addresses, and home telephone numbers of all employees who are authorized to certify exports in the name of the applicant and the date of hire of all such employees;

(5) a copy of each authorized employee's power of attorney to certify exports in the name of the applicant;

(6) the trade name of the applicant's business and the address of each location where export certifications are to be fully or partially prepared;

(7) the original signature or signatures of the applicant (if he is a sole proprietor), an officer or director (if the applicant is a corporation), all general partners (if the applicant is a partnership), or an authorized member (if the applicant is an association other than a corporation or partnership), and the original signatures of all employees of the broker;

(8) the social security number of each employee, verification contractor, authorized employee of a verification contractor, and the social security number of the applicant (if he is a sole proprietor), each general partner (if the applicant is a partnership), each officer and director (if the applicant is a corporation), or each member (if the applicant is an association other than a partnership or corporation); and

(9) any other information the comptroller requires.

(e) Annual customs broker license and fee.[~~Duration of license. A~~] An annual customs brokers license issued under this section continues in effect through December 31st each year unless[~~until~~] canceled by the broker or suspended or revoked by the comptroller before the expiration date. All expired, canceled, suspended, or revoked licenses must be immediately returned to the comptroller or they will be subject to confiscation. The annual license fee is non-refundable but the fee may be prorated on a $75 per-quarter basis as follows:

(1) $300 fee for a license with an effective date beginning January 1st through March 31st.

(2) $225 fee for a license with an effective date beginning April 1st through June 30th.

(3) $150 fee for a license with an effective date beginning July 1st through September 30th.

(4) $75 fee for a license with an effective date beginning October 1st through December 31st of a calendar year.

(f) Display of license. An original Texas Customs Broker's License must be prominently displayed at each place of business of the broker where export certification forms are fully or partially prepared.

(g) Locations outside the United States. No Texas Customs Broker's Licenses will be issued for locations beyond the territorial limits of the State of Texas[~~United States~~].

(h) Bond or security. A licensed customs broker is required to post a bond or security in the amount of $5,000, plus an additional $1,000 for each place of business from which the customs broker intends to issue export certification forms.

(1) The security may be in the form of cash, a certificate of deposit, a letter of credit, or another instrument of value acceptable as security to the comptroller.

(2) The comptroller may forfeit a customs broker's bond or security and apply the amount to any liabilities due for unpaid taxes, penalties, interest, license fees, stamp fees, and other penalties imposed for any violations of the Tax Code or this section.

(3) A licensed customs broker, who has a bond or security forfeited by the comptroller, must immediately post another bond or security as required by the comptroller.

(4) A customs broker must send the comptroller a written request to obtain release of the bond or security once the broker has ceased to do business in Texas. The comptroller may release a bond or security once a customs broker has ceased doing business in Texas and the comptroller verifies that the customs broker has no outstanding liabilities or penalties due.

(i) [~~(h)~~] Verification contractors. A licensed customs broker may enter into a written contract with a verification contractor to facilitate the monitoring of exports certified by the broker. A verification contractor may authorize by power of attorney his full-time[~~full-~~] or part-time employee to perform verification services on his behalf. A verification contractor may not fully or partially prepare, issue, and/or sign export certification forms and may not affix export certification stamps to export certification forms. A verification contractor's contract must be submitted to and approved by the comptroller, before the verification contractor may[~~prior to which the verification contractor may not~~] perform [~~valid~~]export verification services[~~described in this subsection~~].

(j) [~~(i)~~] Export certification stamps. The comptroller will produce or have produced export certification stamps to be affixed to export certification forms.

(1) The comptroller may change the design as often as necessary for the enforcement of this section. The design will be changed at least once each calendar quarter.

(2) Only a licensed customs broker or his authorized employee may receive stamps. A person obtaining stamps in person must present photo [~~photographic~~]identification.

(3) There is a $1.60[~~no~~] fee for each stamp[~~the stamps~~].

(4) The stamps are non-transferable. A stamp is void if transferred to a person other than the broker to whom the comptroller originally issued the stamp or to that broker's employee[~~in the ordinary course of business~~]. This paragraph[~~subdivision~~] does not apply to a stamp that is actually affixed to an export certification form that is transferred in compliance with this section.

(5) All unused, expired stamps must be returned to the comptroller within 15 working days of the end of each calendar quarter. All such stamps must be delivered to the comptroller on the same date, at the same time, and to[~~at~~] the same location[~~of the comptroller~~]. Unused stamps must be immediately returned to the comptroller upon cancellation, suspension, or revocation of the broker's license or upon notification that the broker is out of business and may be confiscated if not returned. Unused, expired stamps may not be retained, destroyed, or disposed of except by the comptroller. The comptroller will allow a licensed customs broker credit for returned unused stamps. Such credit must be used to purchase new stamps. A licensed customs

broker who ceases to do business in Texas must return all unused stamps within 15 working days of the customs broker's last day of business. The comptroller shall refund an out-of-business customs broker an amount of $1.60 for each returned unused stamp.

(6) As soon as practicable after discovery, a broker must report in writing to the comptroller the theft, destruction, or other loss of stamps issued to the broker, including the numbers assigned to the lost stamps (if the comptroller has numbered the stamps sequentially). No credit or refund will be allowed for stamps lost, destroyed, or stolen, unless the customs broker provides sufficient documentation that the stamps were stolen or destroyed.

(7) A broker must notify the comptroller as soon as practicable in writing if the broker has no remaining inventory of stamps following use, theft, and/or other loss of the stamps.

(k) Preparation of documentation. The comptroller will maintain a password-protected website that a licensed customs broker, or an authorized employee of a licensed custom broker, must use to prepare export certification forms.

(1) A licensed customs broker, or an authorized employee of a licensed custom broker, is required to use the website to prepare export certification forms and must provide all information as required by the comptroller. Failure to use the website to prepare export certification forms while the website is available is a violation under subsection (q) of this section.

(2) A licensed custom broker, or an authorized employee of a licensed custom broker, must prepare hard copy export certification forms if the website is unavailable due to technical or communications problems. A licensed custom broker, or an authorized employee of a licensed custom broker, must enter such export certification information using the website within 48- hours after the website becomes available. Failure to enter such documentation within 48-hours is a violation under subsection (q) of this section.

(l) Reports required. A licensed custom broker is required to file a report quarterly on a form prescribed by the comptroller.

(1) The quarterly report must be signed by the licensed customs broker or by the licensed customs broker's duly authorized agent and must include the following information:

(A) the total value of property for which the licensed custom broker issued export certifications that quarter;

(B) the total amount of tax on property for which the licensed custom broker issued export certifications that quarter; and

(C) the total amount of tax refunded in accordance with export certifications issued by the licensed custom broker that quarter.

(2) The customs broker report is due on the 20th day of the month following the end of each calendar quarter reporting period. For example, the first quarter report period is January, February, and March, and the due date is April 20th. If the 20th is a Saturday, Sunday, or legal holiday, the report is due the next business day. To be considered timely, a report must be either postmarked or received by the comptroller on or before the due date of the report.

(3) Failure to receive the correct report form from the comptroller does not relieve a customs broker of the responsibility to file a report.

(4) A penalty of $500 is imposed for each report filed after the due date. The comptroller may also impose an additional $50 late filing penalty for each late report filed if the custom broker has filed two previous late reports.

(m) [~~(j)~~] Records required. A licensed customs broker must maintain books and records that include, at a minimum, the following:

(1) an exact photographic image, including the exact photographic image of the export certification stamp, of each export certification form signed by the broker within the last two years[~~(but not before January 1, 1993)~~]. Carbon copies and pages from multi-page forms are acceptable in lieu of photocopies, provided the number of the export certification stamp affixed to the original is recorded on the additional copies;

(2) a ledger that:

(A) lists sequentially all export certification forms issued or voided within the last two years (but not before January 1, 1993);

(B) identifies the person or persons who fully or partially prepared, issued, and/or signed each form; and

(C) identifies the person's or persons' relationship to the licensed customs broker;

(3) an inventory of export certification stamps and records tracking transfers of stamps between the broker and his employees, identifying the recipients and showing the dates of transfer, quantities transferred, the sequential numbers of the transferred stamps (if the comptroller has numbered the stamps sequentially), and detailed records regarding stamps that have been lost, stolen, or are otherwise unaccounted for;

(4) a current list of all employees authorized to fully or partially prepare, issue, and/or sign export certification forms and information relating to the hiring and termination of employees;

(5) all contracts executed between the broker and verification contractors and information relating to the termination or cancellation of such contracts;

(6) exact copies of all invoices, receipts, passports, laser visa identification cards, foreign voter registration picture identification, I-94 forms, air, land, or water travel documentation, or other documents relating to property whose export the broker has certified. This requirement specifically applies to documentation that must be verified by a customs broker under subsections (b)(3) of this section. The requirement also applies to other documentation[~~only~~] if the broker attached such copies to the original form as provided in subsection (p)(6)[~~(m)(5)~~] of this section;

(7) a copy of a certified check, company check, or money order made payable to the purchaser, or a credit memo or cash receipt signed by the purchaser, and the purchaser's written assignment of the right to a Texas sales or use tax refund for each instance in which the broker obtained a refund assignment from the purchaser;

(8) detailed records showing the amount the broker charges clients for his export certification services and the broker's gross receipts from certifying exports; [~~and~~]

(9) information of the exact same type as required to be submitted with the application for a license as described in subsection (d) of this section, updated and kept current since the date of application; and[~~.~~]

(10) detailed records of when an authorized employee is terminated, quits, is no longer authorized to complete export certification forms, or whose power of attorney is withdrawn. A licensed customs broker is required to notify the comptroller in writing within 15 days of the date when an authorized employee is subject to such action.

(n) [~~(k)~~] Examination of records. A licensed customs broker must maintain all required records available for examination by the comptroller. The comptroller will issue written notice of routine examination of records at least 15 days prior to the date of examination. No advance notice will be issued if the comptroller determines that notice could jeopardize the proper enforcement of the tax laws and the comptroller's rules. The examination will take place at the broker's principal place of business unless the comptroller agrees to examine the records at another location.

(o) [~~(l)~~] Retention of records. A licensed customs broker must retain records for a period of at least two years from the date of the document, the date of completion (if the required record is a contract), or the date of final entry (if the required record is a list or ledger). Copies of export certification forms must be retained for at least two years after the date the broker or the broker's employee signs the form, regardless of the date of export. For other documents with multiple dates, the two-year period for retention begins on the latest date reflected on the document.

(p) [~~(m)~~] Export certification form and contents. The export certification forms issued by a licensed customs broker must be substantially in the form recommended by the comptroller. A separate form must be completed for each seller. Multiple invoices from a single seller may be listed on a single export certification form only if all the listed items were exported at the same place, on the same date, and at the same time. The required information must be completed in English on the face of the form, in addition to any other language in which the form is completed. The comptroller may immediately confiscate from any person an export certification form that is incomplete on its face, indecipherable, fraudulent, or otherwise in violation of this section. An export certification form must, at a minimum, reflect the following information:

(1) the name and address of the purchaser of the property, as shown on the invoice, receipt, or similar document, or the purchaser's home address if the customs broker certified the export under subsection (b)(3) of this section;

(2) the name of the seller and the seller's location from which the property was sold;

(3) the name, address of the place of business which the custom broker certified the export, and Texas Customs Broker's License number of the broker in whose name the export is being certified;

(4) the date (and time, if available) of sale, as shown on the invoice, receipt, or similar document[~~the date of sale, date and time the property was exported, and exact location (e.g., the bridge or airport) where the property was exported~~];

(5) the date, time and exact location where the property was exported (e.g., the name of border crossing bridge or airport), unless export was verified as set out in subsection (b)(3);

(6) [~~(5)~~] a description and quantity of the property, a list of Store Keeping Unit (SKU) or other product identification codes, or copies of invoices securely attached to the form and signed and dated individually by the broker or the broker's authorized employee;

(7) [~~(6)~~] the invoice numbers (if any) and total sales prices and taxes of all[~~the~~] property certified for export;

(8) [~~(7)~~] the original signature of the licensed customs broker or the broker's employee, together with a certification that the property has been exported or will be exported under the verification requirements of subsection (b)(3) of this section;

(9) [~~(8)~~] the name of the person who signed the form, typed or legibly printed near the signature;

(10) [~~(9)~~] a valid export certification stamp whose expiration date falls within the same calendar quarter as the date of export (regardless of the date of sale); and

(11) [~~(10)~~] a sequential export certification form number assigned by the licensed customs broker;[~~.~~]

(12) the purchaser's original signature and date; and

(13) the certification identification number assigned by comptroller.

(q) [~~(n)~~] License denial, suspension, and revocation. The comptroller may deny, suspend, or revoke a Texas Customs Broker's License for cause.

(1) Grounds for denying a person's application for a Texas Customs Broker's License include, but are not limited to:

(A) ineligibility for a license under subsection (c) of this section, including filing incomplete, false, or misleading information with the license application;

(B) disqualification for a license due to prior denial, United States Customs Service suspension, or revocation, as provided in this subsection; [~~or~~]

(C) forfeiture of corporate privileges, certificate of authority, or charter, if the applicant is a corporation;[~~.~~]

(D) failure to pay annual license fee; or

(E) failure to post bond or security as required by comptroller.

(2) A person whose application for a Texas Customs Broker's License has been denied may resubmit the application not sooner than 90 days after the date on which the comptroller's decision to deny the application becomes final. However, the comptroller may authorize reapplication at an earlier date if he determines it is warranted under the circumstances.

(3) Acts or omissions of a licensed customs broker, his employee, his verification contractor, an officer or director, a general partner, or association member (as applicable) that constitute cause for suspension or revocation of a license under this section include, but are not limited to:

(A) cancellation, suspension, or revocation by the United States Customs Service of the broker's license to act as a custom house broker or cancellation of that license by the broker;

(B) violation of any provision of the Tax Code or the comptroller's rules;

(C) delivering to any person a signed and/or stamped export certification form if all or a portion of the property described thereon was not actually exported at the time and place and on the date reflected on the certification form , or not properly verified as property that will be exported as required in subsection (b)(3) of this section;

(D) delivering to any person a signed and/or stamped export certification form based solely on:

(i) foreign import documents, bills of lading, freight forwarder's receipts, or other documents that constitute valid proof of export in and of themselves under §3.323 of this title (relating to Imports and Exports); or

(ii) proof of foreign citizenship;

(E) transferring an export certification stamp to a person other than the licensed customs broker or the broker's employee, except

if, at the time of transfer, the stamp is affixed to an export certification form issued in compliance with this section;

(F) delivering to any person an export certification form with knowledge that the recipient intends to use the form to evade tax that is legally due or to assist another person in the evasion of tax that is legally due;

(G) soliciting, advertising, or promoting the unlawful evasion of tax through use of export certification forms;

(H) knowingly making a false verbal or written statement to the comptroller;

(I) fully or partially preparing export certification forms at a location for which no Texas Customs Broker's License has been issued;

(J) transferring signed and/or stamped export certification forms that are otherwise blank or incomplete at the time of transfer to a person other than the licensed customs broker or the broker's employee in the ordinary course of business;

(K) failing to exercise responsible supervision and control over the conduct of export certification business, including inadequate supervision of employees and verification contractors;

(L) failing to keep current in a correct, orderly, and itemized manner the records required under this section, failing to timely provide the comptroller with information required to be provided, or failing to account for all export certification stamps received from the comptroller;

(M) refusing the comptroller access to, concealing, removing, or destroying without the comptroller's prior[~~,~~] written consent, the whole or any part of a record required to be kept under this section, or refusing to cooperate with the comptroller's investigation;

(N) attempting to unduly influence the comptroller by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift, favor, or other thing of value;

(O) withholding information from or knowingly imparting false information to a client;

(P) failing to timely return to the comptroller unused, expired export certification stamps as required by this section, absent a showing and timely report to the comptroller of loss by theft or accident;

(Q) selling or buying export certification forms and/or export certification stamps except as consistent with this section;

(R) seeking and/or obtaining under false pretenses a tax refund from a seller, including giving a false refund assignment to the seller or otherwise representing that the broker has the authority to obtain a refund of tax paid by another person if the broker does not have such authority[~~, in fact~~];[~~or~~]

(S) failing promptly to notify the seller, in writing, that an export certification form relating to that seller is for any reason incomplete, misleading, void, or otherwise invalid;[~~.~~]

(T) failing to file quarterly customs broker report;

(U) failing to use the website for preparing documentation while the website is available, or if the website becomes unavailable, failing to promptly enter documentation using the website within 48 hours after website becomes available or disabling of interfering with the proper functioning of the website in any manner; or

(V) failing to pay tax, penalties, or interest that become due or are imposed by the comptroller under the provisions of the Tax Code or this section.

(4) After notice and hearing, the comptroller may suspend a license for no fewer than 60 days and no more than 120 days if the broker's license has not been previously suspended or revoked, for no fewer than 120 days and no more that 180 days if the broker's license has been previously suspended or revoked, or concurrently and for the same length of time as a suspension by the United States Customs Service of the broker's license to act as a custom house broker. The suspension becomes effective on the date the comptroller's decision to suspend the license becomes final. Suspension of a license applies to all locations of the broker.

(5) After notice and hearing, the comptroller may revoke a broker's license indefinitely if the broker's license has been suspended at least twice previously or has been previously revoked, or if the broker's license to act as a custom house broker has been revoked by the United States Customs Service. The revocation becomes effective on the date the comptroller's decision to revoke the license becomes final. Revocation of a license applies to all locations of the broker.

(6) A Texas Customs Broker's License that has been revoked must be returned to the comptroller within 15 days of the effective date of revocation. A Texas Customs Broker's License that has been suspended is reinstated automatically upon the expiration of the period of suspension, unless the licensee notifies the comptroller in writing that the license should not be reinstated. Not sooner than one year after the effective date of revocation, a person whose Texas Customs Broker's License has been revoked may apply to the comptroller for reinstatement. The comptroller may reinstate the license if the person otherwise qualifies for a license as provided in this section and the comptroller is satisfied that the person has a good faith intent to comply with the tax laws and the comptroller's rules.

(7) For procedures relating to license denial, suspension, and revocation, see §3.361 of this title (relating to Practice and Procedure for Texas Customs Broker's License Denial, Suspension, and Revocation).

(8) The comptroller may require a customs broker to pay the comptroller the amount of any tax refunded if the customs broker does not comply with the Tax Code or this section. In addition to the amount of the refunded tax, the comptroller may require the customs broker pay a penalty in an amount equal to the refunded tax, but not less than $500 dollars nor more than $5,000. The comptroller may deduct any penalties to be paid by a customs broker from the customs broker's posted bond.

(9) A proceeding by the comptroller to require a customs broker to pay an amount under paragraph (8) is a contested case in the same manner as a proceeding to suspend or revoke a customs broker's license under Tax Code §151.157(f).

(r) Form of export certification. An export certification form must be substantially in the form of a Licensed Customs Broker Export Certification. The comptroller adopts that form by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 W. 6th Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800- 252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)

[~~(o)~~ ~~Suggested form of certification. A suggested form for the Licensed Customs Broker's Export Certification is set out as follows.~~]

[~~Figure: 34 TAC §3.360(o)~~]

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 May 18, 2004.

TRD-200403346
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.5

The Texas Youth Commission (TYC) proposes an amendment to §87.5, concerning Family Involvement. The amendment to the section will make a clarification regarding what constitutes private, in-person communication between a youth in the custody of TYC and his/her parent during visitation. The amendment will establish an expectation of 24-hour advance notice from a parent who requests such communication. The amendment also provides for greater detail regarding information provided to parents of TYC youth. Pursuant to federal law 20 USCA 1221e-3, any notices required under the Individuals with Disabilities Education Act must be provided, without regard to youth consent, to the parents of TYC youth who are 18 years of age or older and placed in a residential facility of less than high restriction.

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

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with federal law, maintenance of facility safety and security, as well as clear direction relating to information that must be provided to parents of TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §67.0761, which provides the Texas Youth Commission with the authority to develop programs that encourage family involvement in the rehabilitation of a child.

The proposed rule implements the Human Resources Code, §61.034.

§87.5. Family Involvement.

(a) The purpose of this rule is to establish the amount and type of involvement Texas Youth Commission (TYC) [~~TYC~~] encourages and seeks with the family of youth in jurisdiction.

(b) Parent Notifications. [~~Families of youths younger than 18 shall be provided the information listed in this policy without regard to the youth's consent. Youths 18 and older must give written consent for information to be disclosed to a parent or guardian, with the exception that educational information on the youth may be shared with a parent that is the parent of a "dependent student" as defined in section 152 of the Internal Revenue Code of 1986.~~]

(1) Parents of youth younger than 18 shall be provided the following information without regard to the youth's consent:

(A) written notification of youth placement;

(B) the name of the youth's primary service worker (PSW);

(C) instructions for contacting the youth's PSW;

(D) rights and rules regarding visitation, mail, and telephone;

(E) rules regarding personal property;

(F) rules regarding parents sending money to youth; and

(G) copies of the Individual Case Plan (ICP).

(2) Youth 18 and older must give written consent for information to be disclosed to a parent, with the following exceptions:

(A) educational information may be shared with a parent whose child is a "dependent student" as defined in section 152 of the Internal Revenue Code of 1986, pursuant to federal law 20 USCA 1232g; and

(B) any notices required under Individuals with Disabilities Education Act (IDEA), Part B, including Admission, Review, and Dismissal (ARD) committee meetings and scheduled evaluations, if the youth is in a residential placement other than high restriction pursuant to federal law 20 USCA 1221e-3 will be provided to the parent.

[~~(c) Families shall be given prompt written notification of youth placement.~~]

(3) [~~(d)~~] Written information sent to parents who may be non-English speaking shall be either translated to Spanish or accompanied by a letter stating that TYC will translate the information into the spoken language at the request of the parent.

[~~(e) Families shall be provided at least:~~]

[~~(1) the name of the youth's primary service worker (PSW) and instructions for contacting him/her;~~]

[~~(2) rights and rules regarding visitation, mail, and telephone;~~]

[~~(3) rules regarding personal property;~~]

[~~(4) rules regarding parent sending money to youth; and~~]

[~~(5) information about locating the facility.~~]

[~~(f) Families are provided copies of Individual Case Plans (ICP).~~]

(c) Communication.

(1) In the course of the communication described below, the youth's PSW shall not disclose any information for which a youth 18 or older has withheld consent.

(2) [~~(g)~~] Youth's PSW shall:

(A) [~~(1)~~] seek input from family for youth's ICP;

(B) [~~(2)~~] encourage families to communicate concerns to facility administrators and/or PSW;

(C) [~~(3)~~] encourage families to visit their child in any program and prepare for the youth's return home;

(D) [~~(4)~~] whenever possible, counsel a youth's parents [~~or guardians~~] in preparation for the youth's return home;

(E) [~~(5)~~] encourage youth to communicate with families by letter and/or telephone; and

(F) [~~(6)~~] refer families to other agencies that provide services needed by the families.

(d) Visitation.

(1) Youth are allowed to have visitation subject to the safe and secure operations of the program. See §93.1 of this title (relating to Basic Youth Rights).

(2) Youth have a right to refuse visitation.

(3) Parents' Visitation.

[~~(h)Youth may be allowed the privilege of a family visitation in the community.~~]

(A) [~~(i)~~] Parents shall have the right to private, in-person communication with their child [~~communicate in person privately with the youth~~] for reasonable periods of time. The time, place, and conditions of the private, in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.

(B) Private, in-person communication means a communication between a parent and his/her child in a location where conversation cannot be overheard by staff.

(C) Parents wishing to have private, in-person communication with their child are expected to make the request at least 24 hours before the visitation. Requests not made within 24 hours should be accommodated if facility capacity allows.

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 May 24, 2004.

TRD-200403492
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes amendments to Chapter 800 General Administration, Subchapter A, General Provisions, §800.2, Subchapter B, Allocations and Funding, §§800.51-800.54, §§800.57-800.58, §800.63, §§800.71- 800.75; the repeal of §§800.61- 800.62; and new §§800.65-800.67.

Purpose

The purposes of the changes proposed are to fulfill statutory requirements embodied in Texas Labor Code §301.001, as amended, establishing the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs; to standardize, simplify, and make more consistent the procedure of determining allocations on the basis of the universe of need; to streamline and achieve administrative efficiency and effectiveness in granting allocated funds, in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services; and delete various obsolete provisions, add to various provisions to make references more accurate and complete, and make various technical corrections.

Background

Texas Labor Code §301.001, as amended, establishes the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. Texas Labor Code §302.002 directs the executive director to consolidate the administrative and programmatic functions of the programs under the authority of the Commission to achieve efficient and effective delivery of services, and also to contract with local workforce development boards for program planning and service delivery. In order to most effectively achieve an integrated workforce development system-wherein disparate and distinct programs are blended into a functionally unified whole-the Commission intends to make allocations that support integrated and consolidated workforce programs, to administer grants of allocated funds simplifying (to the maximum extent feasible) the current incongruent and confounding array of disparate federal and state programmatic requirements, funding periods, and other impediments, and to advocate and enhance achievement of integrated and consolidated workforce development by workforce development boards. By standardizing, simplifying, and making more consistent the procedure of determining allocations on the basis of need, the Commission is helping to promote the integration and consolidation of workforce development programs. By streamlining and achieving administrative efficiency and effectiveness in granting allocated funds-including administering consolidated workforce development grants according to a unified program year, and utilizing enhanced grant closeout procedures-the Commission will facilitate a more effective use of the cash draw system, accelerate contracting in general, and accomplish greater efficiency in contracting, thereby setting the stage for decreased Agency and Board administrative costs.

The Commission invites the Boards-as well as others-to comment on the proposed rules.

Section 800.2 adds definitions for Employment Services, Project Reintegration of Offenders (RIO), Trade Act Services, and Veterans' Employment and Training; adds Employment Services,

Project RIO, Trade Act Services, Veterans' Employment and Training, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements, and strikes now-obsolete Welfare-to-Work for Program Year definitions; changes Program Year definitions to October 1-September 30 in order to facilitate the consolidation of allocations and to help achieve administrative efficiencies. The definition of Allocation and Food Stamp Employment and Training is simplified and clarified. "Core Outcome" Measures is replaced with "Formal" Measures (although the definition remains unchanged), and within the definition of "Performance Standard," reference to "Core Outcome" Measures is replaced with "Formal" Measures, in order to update the rules with current terminology. The definition of Local Workforce Development Area is unchanged but moved, in order to be listed in alphabetical order.

Section 800.51 broadens the scope and purpose of Subchapter B. Allocations, in concert with Texas Labor Code §301.001 and §302.002, emphasizing that the Texas Workforce Commission was established to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. This section also clarifies that the scope and purpose of Subchapter B are enhanced by Agency procedures of contracting with Boards for allocations to promote the greatest practicable degree of administrative economy, streamlining, and effectiveness.

Section 800.52 adds definitions of accrued expenditures, contract closeout settlement package, contract period, deobligation, equal base amount, hold harmless/stop gain, and WIA formula allocated funds. This section also modifies current definitions of monthly expenditure report and obligation, and strikes the now-obsolete definition of two-parent family participation rate. Definitions are being added or modified in order to provide increased clarity in the rules. The rationale for the modification of the definition of obligation (together with a new provision proposed for inclusion in Section 800.72 dealing with contract closeout settlement package) is to provide the maximum time in which funds may be expended and obligations liquidated, consistent with contract closeout requirements. An equal base amount in allocations is included to acknowledge that despite the wide variance in the characteristics of Texas workforce areas, each Board is similarly required to utilize infrastructure and other resources in order to provide one-stop services.

Sections 800.53 and 800.54 standardize, simplify, and make more consistent the procedure of determining allocations on the basis of need for Choices and Food Stamp Employment and Training. These sections also include technical edits not intended to effect substantive changes.

Section 800.57 adds provisions articulating that the hold harmless/stop gain procedure will be applied in the allocations for Employment Service (the hold harmless/stop gain procedure has been utilized for such allocations each year, but formerly not articulated in the rules). A provision is added that no more than ten percent of the funds expended as part of the workforce area's allocation shall be used for administrative costs, to provide consistency among the various allocations.

Section 800.58 strikes the listing of Welfare-to-Work funds reserved by the Governor, to be included in child care allocated funds, because the program has expired. A provision is added, articulating that the hold harmless/stop gain procedure will be applied in the allocations for Child Care (the hold harmless/stop gain procedure has been utilized for such allocations each year, but formerly not articulated in the rules). This section also includes minor editing not intended to effect substantive changes.

Sections 800.61 and 800.62 strike provisions covering now obsolete programs, Welfare-to-Work and School-to-Careers.

Section 800.63 clarifies one of the factors for dislocated worker allocations to make it consistent with WIA statute, and also provides details regarding the allocation of WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements. A provision is added that no more than ten percent of the funds expended as part of the workforce area's allocation shall be used for administrative costs; this is a consistent provision for allocations and represents no change for the WIA program. A provision covering the availability of funds is stricken because it is unnecessary, as it is already adequately addressed in federal statute, and a provision is added, stating that the hold harmless/stop gain procedure will be applied in the WIA formula allocations for Adult and Youth employment and training activities (the hold harmless/stop gain procedure has been utilized for such allocations each year, but formerly not articulated in the rules).

Sections 800.65, 800.66, and 800.67 add new provisions setting forth the details regarding allocations for Project RIO, Trade Act Services, and Veterans' Employment and Training, following the same standardizing and simplifying characteristics of the Choices and Food Stamp Employment and Training allocation amendments noted above. Project RIO, Trade Act Services, and Veterans' Employment and Training are allocated in order to fulfill the statutory requirement for the Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs.

Section 800.71 adds Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One Stop Enhancements as subject to general deobligation and reallocation provisions.

Section 800.72 clarifies that Board reporting requirements include accrued expenditures and obligations, and also provides that Board contract closeout settlement packages shall be submitted on or before 60 days following the end of the contract period, and the Commission may suspend payments, advances, or reimbursements to Boards in the cash draw system if financial reports are not submitted in a timely fashion. While these requirements have been in effect, they have not been formerly articulated in the rules. This section provides additionally that the executive director may approve a Board's request to extend the deadline for submitting a financial report or a contract closeout settlement package, if the request is received on a timely basis with sufficient justification.

Section 800.73 adds Employment Services and new allocations (Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements) and revises allocation expenditure targets, in order to simplify and streamline this procedure. Expenditure targets as of the end of the third month and ninth month of the program year are established for each allocation; however, for Trade Act Services, expenditure targets are established as of the end of the third month, sixth month, and ninth month.

Section 800.74 provides that Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, and

WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements are subject to deobligation of all or part of the difference between a Board's actual accrued expenditure level and the target expenditure level.

Section 800.75 provides that the Commission may reallocate selected funds from Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements.

Coordination Activities: In the development of these rules for publication and public comment the Commission sought the involvement of each of Texas' twenty-eight Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code §302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development, adopted September 24, 2002. Prior to and during this rulemaking process, the Commission considered the Boards' contributions.

During preliminary discussions regarding policy concepts covering these proposed amendments with the Texas Association of Workforce Boards in Austin on April 16, 2004 and in a telephone conference call on April 23, 2004, some concerns were expressed about the notion of proposed "equal base amounts" to be included in allocations, while others expressed support. And, while options discussed included the possibility of equal base amounts equivalent to 1/4th of 1 percent or 18% of 1 percent of selected allocations (i.e., Choices, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements) for each of the 28 workforce areas, the equal base amount proposed in these rule amendments is 1/10th of 1 percent for each of the 28 workforce areas, to be included in those allocations. This modest equal base amount is proposed in recognition of the infrastructure costs and other needs of every workforce board to provide one-stop services, whether the workforce area is urban and intensely populated or rural and sparsely populated.

Similarly, concerns were raised by one Board that allocations, while predominantly need-based, do not make provisions for differences in the cost of living. While it is true that allocations do not include allowances for costs of living, there is neither statutory guidance to do so, nor any clear methodological approach for doing so effectively or fairly.

Clearly, Texas workforce areas have what one might conclude are vast differences. Geographically, the largest Texas workforce area is 30 times the size of the smallest. The most populated Texas workforce area has 33 times the population of the least populated workforce area. No formula adjustment is capable of fairly or accurately equalizing or mitigating cost-of-living or cost-to-serve differences that may exist. Indeed, a nominal 1/10th of one percent equal base amount formally recognizes the challenges of vastly differing workforce boards in operating an integrated and effective workforce development system, but the rest must be left to local decision-making and control, and the effective partnerships created by the Commission and workforce boards across the state.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

There are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not regulated or required to do anything by the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no affect on employment conditions in this state as a result of the proposed rules.

Luis Macias, Director of Workforce and Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to streamline the definitions, allocation, deobligation and reallocation provisions to assist the Boards in the management and oversight of workforce services and activities.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: John.Moore@twc.state.tx.us. Comments must be received by the Agency within 30 days from the date of the publication in the *Texas Register*.

For information about the Commission please visit our web page at www.texasworkforce.org.

A public hearing on these proposed rules has been tentatively scheduled for June 8, 2004 at 2:00 p.m. in the Commission Meeting Room, Room 244, Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78701.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

These amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission.

The rules affect Title 4, Texas Labor Code and Chapters 31, 33, and 44 of the Texas Human Resources Code.

§800.2. Definitions

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Allocation--The amount approved by the Commission for expenditures during a specified program year[~~period~~], according to specific state and federal requirements.

(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(4) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, [~~Welfare-to-Work,~~] WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(5) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.*) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(7) Formal[~~Core Outcome~~] Measures--Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(8) Employment Services--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220.)

(9) [~~(8)~~] Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(10) [~~(9)~~] Food Stamp Employment and Training (FSE&T) [~~Activities~~]--A program to assist food stamp recipients to become self-supporting through participation in activities which include employment, job readiness, education, and training,[~~The activities authorized and engaged in~~] as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.

(11) Local Workforce Development Area (workforce area)--Workforce areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 USCA, §2831 and §2939).

(12) [~~(10)~~] One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.

(13) [~~(11)~~] Performance Measure--An expected performance outcome or result.

(14) [~~(12)~~] Performance Standard--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Formal[~~Core Outcome~~] Measures.

(15) [~~(13)~~] Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1- September 30[~~September 1 - August 31~~];

(B) Choices: October 1- September 30[~~September 1 - August 31~~];

(C) Employment Services: October 1- September 30[~~Welfare-to-Work: September 1 - August 31~~];

(D) Food Stamp Employment and Training: October 1- September 30;[~~September 1 - August 31; and~~]

(E) Project RIO: October 1- September 30;

(F) Trade Act Services; October 1- September 30;

(G) Veterans' Employment and Training: October 1- September 30;

(H) Workforce Investment Act (WIA)[~~WIA~~] Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30[~~.~~];

(I) WIA Alternative Funding for Statewide Activities: October 1- September 30; and

(J) WIA Alternative Funding for One-Stop Enhancements: October 1- September 30.

(16) Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Youth Commission incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Youth Commission.

(17) [~~(14)~~] TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as

amended (7 U.S.C.A. §201.1 *et seq.*) and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 C.F.R. Parts 260-265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code Chapter 34.

(18) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 CFR Part 617) providing services to dislocated workers eligible for Trade benefits through Texas workforce centers.

(19) [~~(15)~~] TWIC--Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105. Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.

(20) [~~(16)~~] Texas Workforce Center Partner--an entity which carries out a workforce investment, educational or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a [~~local~~] workforce [~~development~~] area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

(21) Veterans' Employment and Training--Services established under the Jobs for Veterans Act of 2002 (Public Law 107-288, 38 U.S.C.A. §4100, 4201, and 4301) the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) program to provide employment services to disabled veterans, veterans of the Vietnam era, and other eligible veterans and family members.

(22) [~~(17)~~] WIA--Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.* References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.

(23) [~~(18)~~] WIA formula allocated funds--funds allocated by formula to [~~local~~] workforce [~~development~~] areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

~~[(19) Local Workforce Development Area--Workforce development area designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. §§2831 and 2939). Also referred to as workforce area.]~~

This agency hereby certifies that the 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 May 20, 2004.

TRD-200403408
John Moore
General Counsel
Texas Workforce Commission
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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.51 - 800.54, 800.57, 800.58, 800.63, 800.71 - 800.75

These amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission.

The rules affect Title 4, Texas Labor Code and Chapters 31, 33, and 44 of the Texas Human Resources Code.

§800.51. Scope and Purpose.

(a) The purpose of this rule is to interpret Texas Labor Code, §302.062, [~~as enacted in House Bill 1863, 74th Legislature (1995),~~] relating to the allocation of available funds for workforce training and services from the Texas Workforce Commission to workforce areas , as well as Texas Labor Code, §301.001 and §302.002, which establish the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs, and direct the Executive Director to consolidate the administrative and programmatic functions under the authority of the Commission, to achieve efficient and effective delivery of services. It is the intent of the Commission to allocate funds to workforce areas for the purpose of meeting or exceeding statewide performance measures as set forth in the state General Appropriations Act and consistent with the authority reflected in Texas Labor Code Section 302.004, satisfying federal program requirements, and operating an integrated workforce development system. This subchapter sets forth the funding[~~the level required by law~~] to be allocated to workforce areas and the methods and procedures to be followed, in order to accomplish the consolidation and integration of workforce development programs. The Commission is committed, whenever possible, to allocating an amount of funds available for workforce training and services greater than the minimum level set by law.

(b) Funds allocated or reallocated under this subchapter will only be made available [~~to the local boards~~] under the terms of a properly executed contract between the Commission and a certified workforce[~~local~~] board with an approved plan [~~and the Commission~~].

(c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete program[~~state fiscal~~] year. For contract periods of less than a complete program[~~state fiscal~~] year, the allocated amounts will be negotiated between the Commission and the Board, based upon the remaining months of the program[~~state fiscal~~] year.

(d) Subsections (a)-(c) of this section shall apply to all sections contained in this subchapter unless a section specifically states otherwise.

(e) Funds available to the Commission that are not otherwise allocated or reallocated under this subchapter, may be used by the Commission for purposes authorized by state and federal laws and regulations.

(f) Notwithstanding any other provision of the rules contained in this part, the level of funding allocated to a workforce area may be determined, modified or reallocated by the Commission for one or more of the following reasons:

(1) to ensure full utilization of the funding;

(2) to ensure compliance with State and federal requirements applicable to the State;

(3) to meet the State's federal participation rates;

(4) to respond to caseload changes; or

(5) to respond to unforeseen demographic or economic changes.

§800.52. Definitions.

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

(1) Accrued Expenditures--Charges incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.

(2) [~~(1)~~] All-family participation rate--The percentage of all families receiving TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407, as amended.

[~~(2) Expenditures--Costs incurred for goods and services that cause decreases in net financial resources.~~]

(3) Contract Closeout Settlement Package--Financial, performance and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:

(A) the contract has expired;

(B) all available funds for the contract period have been paid out;

(C) all accrued expenditures chargeable to the specific contract have been incurred; or

(D) the period of available funds has expired or been terminated.

(4) Contract Period--The length of time in which a contract for allocated funds between the Commission and a Board is in effect and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency. A contract period longer than a program year shall be specified under the terms of a properly executed contract.

(5) Deobligation--An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board for allocated funds, on the basis of provisions as set forth in §800.73 and §800.74 of the Commission rules.

(6) Equal Base Amount--An amount equivalent to .10% (one-tenth of one percent) of a total allocation which shall be provided equally to each workforce area.

(7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90% of the corresponding proportion for the past two years, or that the current year proportion is not above 125% of the prior two-year relative proportion.

(8) [~~(3)~~] Monthly expenditure report--A written or electronically submitted report [~~submitted~~] by a Board that contains information regarding services for each category of funding allocated by the Commission, and in which the Board lists expenditures and obligations by category of funding.

(9) [~~(4)~~] Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated within 60[~~program year, and which will be performed within the program year or within 90~~] calendar days after the end of a contract period, unless such definition is superceded by federal requirements [~~program year~~]. [~~Any obligation periods extending beyond 90 days after the program year shall be prorated using the straight-line method or other acceptable proration method that accurately matches benefits received with dollars included as obligations. Obligations include Individual Training Accounts as described in the Workforce Investment Act.~~]

[~~(5) Two-parent family participation rate--The percentage of two-parent families receiving cash assistance that a state must engage in an approved work activity for a specified number of hours per week as determined by the state and permitted by the by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407, as amended.~~]

(10) WIA formula allocated funds - Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

§800.53. Choices.

(a) Funds available to the Commission to provide Choices services will be allocated to [~~the~~] workforce areas using a need-based formula, in order to meet state and federal requirements, as set forth in subsection (b) of this section.

(b) At least 80% of the Choices funds [~~, excluding Investment in Long-Term Success for TANF recipients components,~~] will be allocated to the workforce areas on the basis of:

(1) the relative proportion of the total number of all[~~two-parent~~] families with Choices work requirements residing within the workforce area during the most recent calendar year to the statewide total number of all[~~two-parent~~] families with Choices work requirements;[~~, and~~]

(2) an equal base amount; and[~~the relative proportion of the total number of single-parent families with Choices work requirements residing within the workforce area to the statewide total of single-parent families with Choices work requirements.~~]

(3) the application of a hold harmless/stop gain procedure.[~~Funding will be divided between paragraphs (1) and (2) of this subsection based on the need to meet federal participation rates for both the two-parent families and all families, as required by federal law.~~]

(c) No more than 10% of Choices funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by [~~the appropriate~~] federal regulations and Commission policy.

§800.54. Food Stamp Employment and Training

(a) Funds available to the Commission to provide Food Stamp Employment and Training (FSE&T)[~~(FS E & T)~~] services under 7 U.S.C.A §2015(d) will be allocated to [~~the~~] workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80% of the FS E & T funds will be allocated to the workforce areas on the basis of :

(1) the relative proportion of the total unduplicated number of mandatory work registrants receiving food stamps residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of mandatory work registrants receiving food stamps;

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by [~~the appropriate~~] federal regulations and Commission policy.

§800.57. Employment Services.

(a) Employment Services funds available to the Commission to provide Employment Services under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B) will be utilized by the Commission as set forth in subsection (b) of this section.

(b) At least 80% of the Employment Services funds under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B, including §49(c)) will be utilized by the Commission within the workforce areas according to the established federal formula, as follows:

(1) Two-thirds will be based on the relative proportion of the total civilian labor force residing within the workforce area to the statewide total civilian labor force ; [~~, and~~]

(2) one-third[~~One-third~~] will be based on the relative proportion of the total number of unemployed individuals residing within the workforce area to the statewide total number of unemployed individuals; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by appropriate federal regulations and Commission policy.

§800.58. Child Care.

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, [~~Welfare-to-Work funds reserved by the Governor,~~] TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

(1) 50% will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and

(2) 50% will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100% of the poverty level to the statewide total number of people whose income does not exceed 100% of the poverty level.

(c) Child Care and Development Fund (CCDF) Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) Child Care and Development Fund (CCDF) Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level.

(e) If[~~For~~] Food Stamp Employment and Training child care [~~,~~] funding is determined to be available, then funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children aged 6-12 years in households of mandatory food stamp work registrants residing within the workforce area to the statewide total number of children aged 6-12 years in households of mandatory food stamp work registrants.

(f) The following provisions apply to the funds allocated in subsections (b) - (e) of this section:

(1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.

(2) Children eligible for Transitional and Choices child care[~~Transitional clients who are eligible for child care for their children and Choices child care clients who are eligible for child care for their children~~] shall be served on a priority basis to enable parents to participate in work, education, or training activities.

(3) No more than 5% of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 Code of Federal Regulations §98.52, as may be amended unless the total expenditures for a workforce area are less than $5,000,000. If a workforce area has total expenditures of less than $5,000,000, then no more than $250,000 may be used for administrative expenditures.

(4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.

(5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

(6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

§800.63. Workforce Investment Act (WIA).

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

(1) Area of substantial unemployment--As defined in WIA §127(b)(2)(B) (29 U.S.C.A. §2852(b)(2)(B)) and WIA §132(b)(1)(B)(v)(III) (29 U.S.C.A. §2862(b)(1)(B)(v)(III)).

(2) Disadvantaged adult--As defined in WIA §132(b)(1)(B)(v)(IV) (29 U.S.C.A. §2862(b)(1)(B)(v)(IV)).

(3) Disadvantaged youth--As defined in WIA §127(b)(2)(C) (29 U.S.C.A. §2852(b)(2)(C)).

(b) Scope and Authority. Funds available to the Commission[~~Agency~~] under Title I of WIA for youth activities, adult employment and training activities, and dislocated worker employment and training activities shall be allocated to workforce areas or reserved for statewide activities in accordance with:

(1) the provisions of prior consistent state law as authorized by WIA §194(a)(1)(A) (29 U.S.C.A. §2944(a)(1)(A)), including but not limited to Texas Labor Code §302.062, as amended, and Subchapter B of this title (relating to Allocations and Funding);

(2) the WIA and related federal regulations as amended; and

(3) the WIA State Plan.

(c) Reserves and Allocations for Youth and Adult Employment and Training Activities. The Commission shall reserve no more than 15% and shall allocate to workforce areas at least 85% of the youth

activities and adult employment and training activities allotments from the United States Department of Labor.

(d) Reserves and Allocations for Dislocated Worker Employment and Training Activities. The Commission shall allocate the dislocated worker employment and training allotment in the following manner:

(1) reserve no more than 15% for statewide workforce investment activities;

(2) reserve no more than 25% for state level rapid response and additional local assistance activities and determine the proportion allocated to each activity; and

(3) allocate at least 60% to workforce areas.

(e) State Adopted Elements, Formulas, and Weights. The Commission shall implement the following elements, formulas, and weights adopted for Texas in the WIA State Plan in allocating WIA funds to workforce areas.

(1) WIA adult employment and training activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIA §132(b)(1)(B) and §133(b)(2) (29 U.S.C.A. §2863(b)(2)) based on the following:

(A) 33 1/3 percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(B) 33 1/3 percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the State; and

(C) 33 1/3 percent on the basis of the relative number of disadvantaged adults in each workforce area, compared to the total number of disadvantaged adults in the State.

(2) WIA dislocated worker employment and training activities funds not reserved by the State under §800.63(d) of this section shall be allocated to the workforce areas as provided in WIA §133(b)(2) (29 U.S.C.A. §2863(b)(2)) based on the following factors[~~workforce area measures~~]:

(A) insured unemployment;

(B) average unemployment;

(C) Worker Adjustment and Retaining Notification Act (29 U.S.C.A. §2101 *et seq.*) data;

(D) declining industries;

(E) farmer-rancher economic hardship[~~employment~~]; and

(F) long-term unemployment.

(3) WIA youth activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIA §128(b)(2) (29 U.S.C.A. §2853(b)(2)) based on the following:

(A) 33 1/3 percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(B) 33 1/3 percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the State; and

(C) 33 1/3 percent on the basis of the relative number of disadvantaged youth in each workforce area, compared to the total number of disadvantaged youth in the State.

(f) In making allocations of WIA formula funds, the Commission will apply hold harmless procedures, as set forth in federal regulations (20 CFR 667.135). [~~Availability of Funds. The Commission shall allocate funds not reserved under §800.62(c) and (d) of this section and the Agency shall award the funds through master board contract amendments within 30 days after the date the funds are made available to the State or within seven days after the Governor's approval of the local plan, whichever is later.~~]

(g) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(h) [~~(g)~~] Reserved Funds. The Commission shall make available[~~allocate~~] the funds reserved under §§800.63(c) and 800.63(d)(1) of this section to provide required and, if funds are available, allowable statewide activities as outlined in WIA §§129 and 134 (29 U.S.C.A. §§2854 and 2864). [~~The Agency shall utilize and expend the funds reserved under §800.63(d)(2) of this section for statewide rapid response activities as described in WIA §134(a)(2)(A).~~]

(i) The Commission may allocate such proportion of available WIA Alternative Funding for Statewide Activities as it determines appropriate, utilizing a distribution methodology that is based on the proportionality of all amounts of WIA formula funds allocated during the same program year, as well as an equal base amount.

(j) The Commission may allocate such amounts of available WIA Alternative Funding for Statewide Activities as funding for One-Stop Enhancements, as it determines appropriate.

(k) [~~(h)~~] Expenditure Level for Statewide Activity Funding. [~~Effective in WIA program year 2001,~~] A[~~a~~] Board shall demonstrate an 80 percent expenditure level of prior year WIA allocated funds in order to be eligible to receive WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements. The Commission may reduce the amount of WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements if a Board fails to achieve an 80 percent expenditure level of prior year WIA formula allocated funds[~~statewide activity funding~~]. [~~In WIA program year 2000, a Board shall demonstrate a 60 percent expenditure level of prior year WIA allocated funds in order to be eligible to receive statewide activity funding.~~]

§800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery and financial planning and management, to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope.

[~~(1)~~] Sections 800.71-800.75 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

(1) [~~(A)~~] Child Care;

(2) [~~(B)~~] Choices;

[~~(C) Welfare-to-Work general revenue funds;~~]

(3) Employment Services;

(4) [~~(D)~~] Food Stamp Employment and Training; [~~and~~]

(5) Project RIO;

(6) Trade Act Services;

(7) Veterans' Employment and Training;

(8) [~~(E)~~] WIA formula allocated funds[~~.~~];

(9) WIA Alternative Funding for Statewide Activities; and

(10) WIA Alternative Funding for One-Stop Enhancements.

[~~(2) Sections 800.71, 800.72, and 800.73 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for Welfare-to-Work, 42 U.S.C.A. §603 et seq.~~]

[~~(c) Effective Date. Sections 800.71-800.75 of this chapter shall be effective on September 1, 2001, and applicable to any funds made available to workforce areas or not yet expended by the Boards on or after September 1, 2001.~~]

§800.72. Reporting Requirements.

(a) A Board shall submit a monthly financial[~~expenditure~~] report, including accrued expenditures and obligations, on or before the 20th calendar day of the following month that list information as required by the Commission for the reporting period.

(b) The Commission may require that a Board amend expenditure reports as the result of Commission reviews, audits, or other evaluations.

(c) A Board shall submit a contract closeout settlement package on or before 60 days following the end of the contract period.

(d) The Commission may suspend payments, advances, or reimbursements to Boards in the cash draw system if required financial reports or contract closeout settlement packages are not submitted by the deadline.

(e) The Executive Director may approve a Board's request of extension for the submission of a required financial report or contract closeout settlement package, if such extension request is received on a timely basis with sufficient justification.

§800.73. Expenditure, Local Match, and Obligation Levels.

(a) For Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Employment Services,[~~Welfare-to-Work general revenue funds, and~~] Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may deobligate funds allocated to workforce areas,[~~Boards~~] if a Board fails to meet the following target expenditure levels applicable to the beginning of the program year allocations less any deobligated amounts:

(1) by the end of the third[~~fourth~~] month following the beginning of the program year, reported expenditure level of at least 20%[~~25%~~];

(2) for Trade Act Services, by the end of the sixth month following the beginning of the program year, reported expenditure level of at least 45%; and

(3) [~~(2)~~] by the end of the ninth[~~eighth~~] month following the beginning of the program year, reported expenditure level of at least 70%.[~~55% ; and~~]

[~~(3) by the end of the twelfth month following the beginning of the program year, reported expenditure levels of:~~]

[~~(A) at least 97% for Child Care, unless the workforce area has an allocation of less than $5,000,000, in which case the Board shall expend at least 95% for Child Care;~~]

[~~(B) at least 95% for Choices;~~]

[~~(C) at least 95% for Welfare-to-Work general revenue funds; and~~]

[~~(D) 100% for Food Stamp Employment and Training, unless federal requirements permit a lower amount, in which case the level shall be at least 95%.~~]

(b) The Commission may deobligate and reallocate, as provided in §§800.74 and 800.75 of this subchapter, relating to Deobligation of Funds and Reallocation of Funds, any differences between the reported accrued expenditures and percentage targets included in subsection (a) of this section, according to the appropriate portions of the[~~balances not expended by the end of the fourth month of the next~~] program year. The Commission may consider obligated funds in reviewing the Board's compliance with subsection (a) of this section, as well as other factors necessary to evaluate a Board's performance in determining the amount of funds to deobligate and reallocate.

(c) For unmatched federal Child Care funds that are contingent upon a Board securing local match funds, a Board shall meet the following performance requirements.

(1) By the end of the fourth month following the beginning of the program year, Boards shall secure donations, transfers and certifications totaling at least 100% of the amount a Board needs to secure in order to access the unmatched federal Child Care funds available to the workforce area at the beginning of the program year.

(2) Throughout the program year and by the end of the twelfth month, Boards shall ensure completion of all donations, transfers and certifications consistent with the contribution schedules and payment plans specified in the local agreements.

(d) For WIA formula allocated funds for each category of funding, a Board shall meet the following reported levels for each of the categories of funding:

(1) By the end of the twelfth month following the beginning of a program year, Boards shall obligate at least 80% of the allocation for each category of funding less any amount reserved up to 10% for costs of administration.

(2) By the end of the 24th month following the beginning of a program year, Boards shall expend 100% of the allocation for each category of funding.

§800.74. Deobligation of Funds.

(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Employment Services,[~~Welfare-to-Work general revenue funds, and~~] Food Stamp Employment and Training [~~funds~~], Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may, for the category of funding:

(1) deobligate all or part of the difference between a Board's accrued[~~actual~~] expenditure level and the target expenditure level described in §800.73(a) and (b) of this subchapter, relating to Expenditure, Local Match and Obligation Levels, as applicable for each category of funding for that period; and

(2) consider a Board's justification of current and projected service levels and related performance data in determining to deobligate.

(b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required as described in §800.73(c) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels.

(c) For deobligation of WIA formula allocated funds for each separate category of funds related to WIA Adult, Dislocated Worker and Youth, the Commission shall deobligate funds from each of these categories of funding as follows:

(1) after the end of the twelfth month following the beginning of a program year, any unobligated funds which exceed 20% of the allocation for each category of WIA formula allocated funds for that program year, less any amount reserved up to 10% for costs of administration; and

(2) after the end of the 24th month following the beginning of a program year, any unexpended funds of the program year allocation for each category of WIA formula allocated funds.

(d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the workforce area's allocation for one or more categories of funding. The Board chair must sign the written request and concurrently notify the designated chief elected official of the workforce area of the written request for the deobligation of funding.

§800.75. Reallocation of Funds.

(a) Reallocation.

(1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Employment Services,[~~Welfare-to-Work general revenue funds, and~~] Food Stamp Employment and Training [~~funds~~], Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may reallocate funds to an eligible workforce area based on the applicable [~~allocation~~] method of allocation, as set forth in this subchapter and may modify the amount to be reallocated by considering the following:

(A) the amount specified in a[~~the~~] Board's written request for additional funds;

(B) the demonstrated ability of a[~~the~~] Board to effectively expend funds to address the need for services in the workforce area;

(C) Board performance during the current and prior program year; and

(D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA formula fund allocations, the Commission shall reallocate funds as provided in WIA §§128 and 133.

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, Employment Services,[~~Welfare-to-Work general revenue funds, and~~] Food Stamp Employment and Training [~~funds~~], Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds, the Commission may consider whether a Board:

(A) has met targeted expenditure levels as required by §800.73(a) and (b) of this subchapter, as applicable, for that period;

(B) has not expended more than 100% of the workforce area's allocation for the category of funding;

(C) has demonstrated that expenditures conform to cost category limits for funding;

(D) has demonstrated the need for and ability to use additional funds;

(E) is current on expenditure reporting;

(F) is current with all single audit requirements; and

(G) is not under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may consider whether a Board has met the level for securing and completing local match requirements set out in §800.73(c) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) -(G).

(3) For a workforce area to be eligible for a reallocation of WIA formula allocated funds, the Commission may consider whether a Board has met the obligation or expenditure requirement for the applicable category of WIA formula allocated funds applicable to the program year. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) - (G).

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

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403407
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 463-2573

♦ ♦ ♦

40 TAC §800.61, §800.62

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

The repeals are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission.

The repeals affect Title 4, Texas Labor Code and Chapters 31, 33, and 44 of the Texas Human Resources Code.

§800.61. Welfare to Work.

§800.62. School-to-Careers.

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 May 20, 2004.

TRD-200403405
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 463-2573

♦ ♦ ♦

40 TAC §§800.65 - 800.67

The new rules are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission.

The rules affect Title 4, Texas Labor Code and Chapters 31, 33, and 44 of the Texas Human Resources Code.

§800.65. Project Reintegration of Offenders (RIO).

(a) Funds available to the Commission to provide Project RIO services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80% of the Project RIO funds will be allocated to workforce areas on the basis of:

(1) the relative proportion of the total number of parolees residing within the workforce area during the most recent calendar year to the statewide total number of parolees;

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.66. Trade Act Services.

(a) Funds available to the Commission to provide Trade Act Services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) below.

(b) At least 80% of available Trade Act Services funds will be allocated to workforce areas on the basis of:

(1) the relative proportion of equally weighted proportions of the average number of workers residing in those workforce areas included on trade petitions for the two most recent calendar years to the statewide total number of workers included on trade petitions, and the average number of trade-affected workers residing in those workforce areas who are approved for training for the two most recent calendar years to the statewide total number of trade-affected workers approved for training;

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.67. Veterans' Employment and Training.

(a) Funds available to the Commission to provide Veterans' Employment and Training services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80% of the Veterans' Employment and Training funds will be allocated to workforce areas on the basis of:

(1) the relative proportion of the total number of veterans residing within the workforce area who registered in the Texas Workforce Commission job matching system during the most recent calendar year to the statewide total number of veterans registered in the Texas Workforce Commission job matching system;

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

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

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403406
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 463-2573

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CHAPTER 847. PROJECT RIO EMPLOYMENT ACTIVITIES AND SUPPORT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §847.1

The Texas Workforce Commission (Commission) proposes amendments to Chapter 847 Project RIO Employment Activities and Support Services, Subchapter A, General Provisions, §847.1 Purpose.

Purpose

The purposes of the changes proposed are to fulfill statutory requirements embodied in Texas Labor Code §301.001, as amended, establishing the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs; to standardize, simplify, and make more consistent the procedure of determining allocations on the basis of the universe of need; to streamline and achieve administrative efficiency and effectiveness in granting allocated funds, in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services; and delete various obsolete provisions, add to various provisions to make references more accurate and complete, and make various technical corrections.

Background

Texas Labor Code §301.001, as amended, establishes the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. Texas Labor Code §302.002 directs the executive director to consolidate the administrative and programmatic functions of the programs under the authority of the Commission to achieve efficient and effective delivery of services, and also to contract with local workforce development boards for program planning and service delivery. In order to most effectively achieve an integrated workforce development system--wherein disparate and distinct programs are blended into a functionally unified whole--the Commission intends to make allocations that support integrated and consolidated workforce programs, to administer grants of allocated funds simplifying (to the maximum extent feasible) the current incongruent and confounding array of disparate federal and state programmatic requirements, funding periods, and other impediments, and to advocate and enhance achievement of integrated and consolidated workforce development by workforce development boards. By standardizing, simplifying, and making more consistent the procedure of determining allocations on the basis of need, the Commission is helping to promote the integration and consolidation of workforce development programs. By streamlining and achieving administrative efficiency and effectiveness in granting allocated funds--including administering consolidated workforce development grants according to a unified program year, and utilizing enhanced grant closeout procedures--the Commission will facilitate a more effective use of the cash draw system, accelerate contracting in general, and accomplish greater efficiency in contracting, thereby setting the stage for decreased Agency and Board administrative costs.

The Commission invites the Boards--as well as others--to comment on the proposed rules.

Section 847.1(c) is amended by striking the last sentence, thereby eliminating inconsistencies with the proposed allocation factors for Project RIO, and also providing clear direction that the Commission intends to accomplish funding integration for Project RIO.

Coordination Activities: In the development of these rules for publication and public comment the Commission sought the involvement of each of Texas' twenty-eight Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code §302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development, adopted September 24, 2002. Prior to and during this rulemaking process, the Commission considered the Boards' contributions.

During preliminary discussions regarding policy concepts covering these proposed amendments with the Texas Association of Workforce Boards in Austin on April 16, 2004 and in a telephone conference call on April 23, 2004, some concerns were expressed about the notion of proposed "equal base amounts" to be included in allocations, while others expressed support. And, while options discussed included the possibility of equal base amounts equivalent to 1/4th of 1 percent or 18% of 1 percent of selected allocations (i.e., Choices, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements) for each of the 28 workforce areas, the equal base amount proposed in these rule amendments is 1/10th of 1 percent for each of the 28 workforce areas, to be included in those allocations. This modest equal base amount is proposed in recognition of the infrastructure costs and other needs of every workforce board to provide one-stop services, whether the workforce area is urban and intensely populated or rural and sparsely populated.

Similarly, concerns were raised by one Board that allocations, while predominantly need-based, do not make provisions for differences in the cost of living. While it is true that allocations do not include allowances for costs of living, there is neither statutory guidance to do so, nor any clear methodological approach for doing so effectively or fairly.

Clearly, Texas workforce areas have what one might conclude are vast differences. Geographically, the largest Texas workforce area is 30 times the size of the smallest. The most populated Texas workforce area has 33 times the population of the least populated workforce area. No formula adjustment is capable of fairly or accurately equalizing or mitigating cost-of-living or cost-to-serve differences that may exist. Indeed, a nominal 1/10th of one percent equal base amount formally recognizes the challenges of vastly differing workforce boards in operating an integrated and effective workforce development system, but the rest must be left to local decision-making and control, and the effective partnerships created by the Commission and workforce boards across the state.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

There are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not regulated or required to do anything by the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no affect on employment conditions in this state as a result of the proposed rules.

Luis Macias, Director of Workforce and Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to streamline the definitions, allocation, deobligation and reallocation provisions to assist the Boards in the management and oversight of workforce services and activities.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to:

John.Moore@twc.state.tx.us. Comments must be received by the Agency within 30 days from the date of the publication in the *Texas Register*.

For information about the Commission please visit our web page at www.texasworkforce.org.

A public hearing on these proposed rules has been tentatively scheduled for June 8, 2004 at 2:00 p.m. in the Commission Meeting Room, Room 244, Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78701.

These amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission.

The rules affect Title 4, Texas Labor Code and Chapters 31, 33, and 44 of the Texas Human Resources Code.

§847.1. Purpose.

(a) Purpose. The purpose of Project RIO is to provide a statewide employment referral program designed to reintegrate into the labor force persons sentenced to a Texas Department of Criminal Justice (TDCJ) State Jail Division facility or the Institutional Division and persons committed to the Texas Youth Commission (TYC).

(b) Scope of Rules. The Project RIO standards and guidelines, set forth in this chapter, address the roles and responsibilities of Boards to ensure that Project RIO employment activities and support services are available statewide through the Texas Workforce Centers consistent with 40 TAC Chapter 801 relating to the One-Stop Service Delivery Network. Project RIO employment activities and support services are provided to adult and youth offenders before release by the TDCJ and the TYC. Post-release employment activities and support services are provided through the Texas Workforce Centers, and are designed to provide ex-offenders with employment activities and support services that promote employment, meet the needs of Texas employers, and help reduce recidivism. The provisions in this chapter are intended to be consistent with Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the TDCJ and the TYC.

(c) Funding Integration[~~Funds Distribution~~]. The Commission intends, to the greatest extent possible, to integrate all available funding sources in the delivery of Project RIO services, and support and expand Project RIO services by leveraging the General Revenue appropriation for Project RIO and federal FSE&T funds. [~~These funds will be distributed based on three factors, the historical service populations, the existing referral patterns, and the prior years' entered employment rates applicable to the local workforce development area (workforce area).~~]

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 May 20, 2004.

TRD-200403409
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: July 4, 2004
For further information, please call: (512) 463-2573

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WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 381. GUARDIANSHIP SERVICES

SUBCHAPTER E. STANDARDS FOR PRIVATE PROFESSIONAL GUARDIANS AND GUARDIANS WITHIN A GUARDIANSHIP PROGRAM

DIVISION 1. GENERAL

1 TAC §§381.401, 381.403, 381.405

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.401, 381.403, 381.405 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 9998).

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403370
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2004
For further information, please call: (512) 424-6576

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DIVISION 2. ADMINISTRATION

1 TAC §§381.415, 381.417, 381.419

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.415, 381.417, 381.419 which appeared in the November 14, 2004, issue of the *Texas Register* (28 TexReg 9999).

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403371
Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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DIVISION 3. RIGHTS OF THE WARD

1 TAC §§381.431, 381.433, 381.435

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.431, 381.433, 381.435 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10000).

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403372
Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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DIVISION 4. MEDICAL DECISIONS

1 TAC §§381.441, 381.443, 381.445

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.441, 381.443, 381.445 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10000).

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403373
Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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DIVISION 5. CLIENT SERVICES

1 TAC §§381.451, 381.453, 381.455, 381.457, 381.459, 381.461, 381.463, 381.465, 381.467

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.451, 381.453, 381.455, 381.457, 381.459, 381.461, 381.463, 381.465, 381.467 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10001).

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TRD-200403374
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2004
For further information, please call: (512) 424-6576

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DIVISION 6. DUTIES AND RESPONSIBILITIES

1 TAC §§381.471, 381.473, 381.475, 381.477, 381.479

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.471, 381.473, 381.475, 381.477, 381.479 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10003).

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

TRD-200403475
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2004
For further information, please call: (512) 424-6576

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SUBCHAPTER F. ADDITIONAL STANDARDS FOR PRIVATE PROFESSIONAL GUARDIANS
DIVISION 1. GENERAL

1 TAC §381.501, §381.503

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §381.501, §381.503 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10006).

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403375
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2004
For further information, please call: (512) 424-6576

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DIVISION 2. PRIVATE PROFESSIONAL GUARDIANS REGISTRATION

1 TAC §§381.515, 381.517, 381.519, 381.521

The Texas Health and Human Services Commission has withdrawn from consideration the proposed new §§381.515, 381.517, 381.519, 381.521 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10006).

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403376
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2004
For further information, please call: (512) 424-6576

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION
SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §§303.1, 303.3, 303.5, 303.7, 303.9, 303.11, 303.13, 303.15, 303.17, 303.19, 303.21, 303.23

The Texas Residential Construction Commission (the "commission") has withdrawn the rules adopted on an emergency basis relating to Registration of Builders at Title 10, Part 7, Chapter 303, Subchapter A, §§303.1, 303.3, 303.5, 303.7, 303.9, 303.11, 303.13, 303.15, 303.17, 303.19, 303.21 and 303.23, which appeared in the January 9, 2004, issue of the *Texas Register* (29 TexReg 258), as of the effective date of rules adopted on the same subject that are published in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403502
Susan Durso
General Counsel
Texas Residential Constuction Commission
Effective date: June 10, 2004
For further information, please call: (512) 475-0595

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SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §§303.100, 303.110, 303.120, 303.130, 303.140, 303.150, 303.160, 303.170

The Texas Residential Construction Commission (the "commission") has withdrawn the rules adopted on an emergency basis relating to Registration of Homes at Title 10, Part 7, Chapter 303, Subchapter B, §§303.100, 303.110, 303.120, 303.130, 303.140, 303.150, 303.160 and 303.170, which appeared in the January 9, 2004, issue of the *Texas Register* (29 TexReg 260), as of the effective date of rules adopted on the same subject that are published in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403503
Susan Durso
General Counsel
Texas Residential Constuction Commission
Effective date: June 10, 2004
For further information, please call: (512) 475-0595

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CHAPTER 318. RESIDENTIAL CONSTRUCTION ARBITRATION
SUBCHAPTER A. ARBITRATIONS BETWEEN HOMEOWNER AND BUILDERS

10 TAC §§318.1 - 318.3

The Texas Residential Construction Commission (the "commission") has withdrawn the rules adopted on an emergency basis

at Title 10, Part 7, Chapter 318, §§318.1 - 318.3, Subchapter A, relating to Arbitrations Between Homeowners and Builders, which appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2131), as of the effective date of rules adopted on the same subject that are published in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403500
Susan Durso
General Counsel
Texas Residential Constuction Commission
Effective date: June 10, 2004
For further information, please call: (512) 475-0595

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SUBCHAPTER B. CERTIFICATION OF ARBITRATORS

10 TAC §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30, 318.32

The Texas Residential Construction Commission (the "commission") has withdrawn the rules adopted on an emergency basis at Title 10, Part 7, Chapter 318, Subchapter B, §§318.20, 318.22, 318.24, 318.26, 318.28, 318.30 and 318.32 relating to Certification of Arbitrators, which appeared in the January 23, 2004, issue of the *Texas Register* (29 TexReg 578), effective May 24, 2004.

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TRD-200403501
Susan Durso
General Counsel
Texas Residential Constuction Commission
Effective date: May 24, 2004
For further information, please call: (512) 475-0595

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.2

The Texas Optometry Board has withdrawn from consideration the proposed amendments to §279.2 which appeared in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2533).

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

TRD-200403481
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: May 21, 2004
For further information, please call: (512) 305-8502

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor adopts the amendment of Subchapter A §§3.3, 3.5, 3.9, 3.19, and 3.21; Subchapter B §§3.53, 3.55, 3.77, 3.79, 3.81, 3.83, and 3.85; Subchapter C §§3.103, 3.201, 3.301, 3.305, 3.401, 3.501, 3.503, 3.505, 3.601, 3.609, 3.613, 3.721, 3.723, 3.801, 3.803, 3.901, 3.905, 3.1005, 3.1103, 3.1203, 3.1205, 3.1213, and 3.1303; Subchapter D §§3.2007, 3.2009, and 3.2013; Subchapter E §§3.2501, 3.2507, 3.2511, 3.2513, 3.2515, and 3.2529; Subchapter F §3.2601 and §3.2603; Subchapter G §§3.8115, 3.8205, 3.8215, 3.8305, and 3.8315; and Subchapter I §3.9300, without changes to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3553).

The Office of the Governor adopts the addition of Subchapter C §3.725 and §3.809, without changes to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3553).

The Office of the Governor adopts the repeal of Subchapter C §§3.1215, 3.1401, 3.1403, 3.1405, 3.1409, 3.1411, 3.1413, and 3.1415, without changes to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3553).

The Office of the Governor adopts the following proposed amendments, with changes to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3553):

(a) Subchapter A §3.7. The proposed text "pursuant to an RFA" in the second sentence of subsection (a) was deleted to clarify that the requirement applies to all grant applications submitted to CJD.

(b) Subchapter B §3.75. The commas around the words "and the Local Law Enforcement Block Grant Program" in the third sentence of subsection (c) of the proposed text and the comma after the word "leave" in the second sentence of subsection (d) of the proposed text were removed to correct grammatical errors in the proposed text.

(c) Subchapter C §3.111. The last sentence of the proposed text ("The executive director may approve exceptions to this prohibition.") was removed because it is repetitive of the language in the previous sentence that authorizes the executive director to grant an exception.

(d) Subchapter C §3.203. To correct spelling errors in the proposed text: (1) the words "community based" in paragraphs (b)(2) and (b)(16) of the proposed text were changed to "community-based"; (2) the word "familes" in subparagraph (b)(2)(B) of the proposed text was changed to "families"; and (3) the phrase "limited-English speaking" in subparagraph (b)(2)(C) of the proposed text was changed to "limited English-speaking".

(e) Subchapter C §3.303. The phrase "job training" in subparagraph (1)(G) of the proposed text was changed to "job training skills" to make the language of the proposed text match the exact language of the federal requirements for this funding source.

(f) Subchapter C §3.403. The word "Community" in subsection (g) of the proposed text was changed to "Communities" to match the title of the Act and the word "prevelance" in subparagraph (g)(1)(A) of the proposed text was changed to "prevalence" to correct a spelling error in the proposed text.

(g) Subchapter C §3.511. Paragraph (22) of the proposed text was deleted because it contained the same language as Paragraph (13), and the word "and" in paragraph (21) of the proposed text was moved to paragraph (20).

(h) Subchapter C §3.903. The word "taskforce" in subparagraphs (b)(1)(D), (b)(2)(D) and (b)(3)(D) of the proposed text was changed to "task force" to correct a spelling error in the proposed text, and the comma between the word "stalking" and the words "and/or" was removed from subparagraphs (b)(1)(D), (b)(2)(D), (b)(3)(D) and (b)(4)(B) of the proposed text to make the language consistent with the rest of the section.

(i) Subchapter C §3.1101. The comma between the citation "42 U.S.C. 3796ff" and the phrase "et seq." in subsection (b) of the proposed text was removed to make the citation consistent with other citations in this chapter.

(j) Subchapter C §3.1201. The "USC" in the citation in subsection (b) of the proposed text was changed to "U.S.C." to correct the citation in the proposed text.

(k) Subchapter C §3.1211. The word "entities" in subsection (b) of the proposed text was changed to "entity's" to correct a grammatical error in the proposed text.

(l) Subchapter E §3.2525. The phrase "day to day" in subsection (b) of the proposed text was changed to "day-to-day" to ensure the use of consistent language in this chapter.

(m) Subchapter G §3.8105. The word "council" was added between the words "the" and "acts" in subsection (b) of the proposed text to correct a typographical error in the proposed text.

The Office of the Governor adopts the following proposed additions, with changes to the proposed text as published in the April 9, 2004, issue of the *Texas Register* (29 TexReg 3553):

(a) Subchapter C §3.211. The word "Ineligibile" in the title of the proposed text was changed to "Ineligible" to correct a spelling error in the proposed text.

(b) Subchapter C §3.313. The word "outined" in the second sentence of the proposed text was changed to "outlined" to correct a spelling error in the proposed text.

(c) Subchapter C §3.811. The word "the" was added before the phrase "Bureau of Justice Assistance" in paragraph (8) of the proposed text to correct a grammatical error in the proposed text.

(d) Subchapter C §3.1111. A semicolon replaced a period at the end of paragraph (9) of the proposed text to correct a typographical error in the proposed text.

The amendment to §3.3 changes the name of the "Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source.

The amendment to §3.5 clarifies the meaning of the section by: (1) changing the word "kind" to "type" in paragraph (a)(2); and (2) removing unnecessary language in subsection (b).

The amendment to §3.7 clarifies the requirement of the Governor's Criminal Justice Division (CJD) that all grant applications be submitted directly to CJD. This allows CJD to review the applications for eligibility before they are prioritized by a review group, regional Council of Governments (COG), or other designee of CJD. In the past, certain types of grant applications were submitted directly to COGs.

The amendment to §3.9 clarifies that all grant funding decisions are within the discretion of CJD and that approval of a grant award does not give the applicant special consideration for future grant funding or entitle the applicant to additional grant funds.

The amendment to §3.19 clarifies which funding sources are exempt from the federal requirements for the Texas Review and Comment System.

The amendment to §3.21 clarifies that CJD may submit information to applicants or grantees via the Internet or other electronic means, and may require applicants or grantees to submit information to CJD in the same manner. The use of electronic communication provides for a more efficient flow of information and greater cost savings to the state, applicants and grantees.

The amendment to §3.53 sets forth the current priority needs for juvenile justice and youth projects. These priority needs were developed in coordination with the Governor's Juvenile Justice Advisory Board.

The amendment to §3.55: (1) deletes subsections (a) from this section and transfers it to §3.101 relating to the State Criminal Justice Planning (421) Fund because it sets forth the basic purpose and the central project requirement of the State Criminal Justice Planning (421) Fund; (2) deletes subsection (b) because it does not adequately define the types of projects to which it applies; and (3) deletes subsection (c) and transfers it to §3.311 relating to the State Criminal Justice Planning (421) Fund because this requirement is applicable to state funds and does not apply to the federal funding sources. The federal funding sources are regulated by federal program requirements. In addition, many of the federal funding sources fund programs for juvenile offenders, which are not subject to these requirements, or drug treatment, which is an exception to these requirements.

The amendment to §3.75: (1) clarifies that grant funds may be used to compensate court masters, magistrates, referees, or judges in juvenile courts or drug courts because the use of funds for this purpose is necessary to establish such programs; (2) deletes the reference to the "Extraordinary Costs of Investigating and Prosecuting Capital Murder and Hate Crimes Program" from the list of exceptions because the program is no longer administered by CJD; and (3) clarifies the section by transferring subsection (e) to subsection (c) regarding overtime pay.

The amendment to §3.77: (1) clarifies the requirement, set forth in the Uniform Grant Management Standards, that grantees establish a system for ensuring that subcontractors provide the products and services specified in their contracts; (2) refers grantees to the requirement that a procurement questionnaire must be submitted for all procurements that exceed $100,000 or upon CJD request.

The amendment to §3.79: (1) changes the name of the "Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source; and (2) clarifies that the exemption in subsection (b) applies only to subsection (b) and clarifies the language in this subsection to ensure the use of uniform language in this chapter.

The amendment to §3.81 clarifies that the exemption in subsection (b) applies only to subsection (b) and clarifies the language in this subsection to ensure the use of uniform language in this chapter.

The amendment to §3.83 corrects the reference in this section to indicate that "approved budget categories" is defined in §3.3(10).

The amendment to §3.85 clarifies that the exemption in subsection (d) applies only to subsection (d) and clarifies the language in this subsection to ensure the use of uniform language in this chapter.

The amendment to §3.103 conforms the project requirements under the State Criminal Justice Planning (421) Fund to the state statutory requirements for this funding source under Article 102.056 of the Texas Code of Criminal Procedure.

The amendment to §3.111: (1) deletes the language regarding renovation or retrofitting of existing facilities because it is permissive and these projects remain eligible to be funded under this funding source; and (2) adds the requirement that was transferred from §3.55(c).

The amendment to §3.201 updates the language of subsection (a) to reflect the current citation for the federal legislation that authorizes the Juvenile Justice and Delinquency Act Fund.

The amendment to §3.203 conforms the project requirements under the Juvenile Justice and Delinquency Act Fund to the federal requirements for this funding source.

The amendment to §3.301: (1) updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Title V Delinquency Prevention Act Fund; and (2) conforms the program purpose under the Title V Delinquency Prevention Act Fund to the federal requirements for this funding source.

The amendment to §3.303 conforms the project requirements under the Title V Delinquency Prevention Act Fund to the federal requirements for this funding source.

The amendment to §3.305 deletes the language regarding the local policy board and transfers it to new §3.313, which relates to local policy boards.

The amendment to §3.401: (1) updates the language of subsection (b) to reflect the current citation for the federal legislation

that authorizes the Safe and Drug-Free Schools and Communities Act Fund; and (2) conforms the program purpose under the Safe and Drug-Free Schools and Communities Act Fund to the federal requirements for this funding source.

The amendment to §3.403 conforms the project requirements under the Safe and Drug-Free Schools and Communities Act Fund to the federal requirements for this funding source.

The amendment to §3.501 conforms the program purpose under the Victims of Crime Act Fund to the federal requirements for this funding source.

The amendment to §3.503 conforms the project requirements under the Victims of Crime Act Fund to the federal requirements for this funding source.

The amendment to §3.505 conforms the list of eligible applicants and the criteria that must be met by eligible applicants under the Victims of Crime Act Fund to the federal requirements for this funding source.

The amendment to §3.511 conforms the list of ineligible activities and costs under the Victims of Crime Act Fund to the federal requirements for this funding source.

The amendment to §3.601 clarifies the language of the section.

The amendment to §3.609 clarifies that the exemption in this section applies only to this section and clarifies the language in this section to ensure the use of uniform language in this chapter.

The amendment to §3.613 clarifies that a grant awarded to a crime stoppers organization under the Crime Stoppers Assistance Fund will terminate not only when the organization is decertified, but also when the organization's Crime Stoppers certification expires.

The amendment to §3.721 clarifies that only multi-jurisdictional drug task force projects are required to certify that they will conduct drug testing. Mandatory drug testing is necessary for these projects because of task force personnel's access to confidential information and illegal drugs.

The amendment to §3.723: (1) clarifies that advisory boards are established only for multi-jurisdictional drug task force projects; and (2) deletes the language regarding task force personnel and transfers the language to new §3.725, which relates to task force personnel.

The amendment to §3.801 updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Local Law Enforcement Block Grant Program.

The amendment to §3.803 deletes the language regarding prohibited uses of grant funds under the Local Law Enforcement Block Grant Program from this section, entitled "Program Requirements", and transfers it to new §3.811, entitled "Ineligible Activities and Costs". The amendment makes the sections relating to the Local Law Enforcement Block Grant Program more consistent with the sections relating to other funding sources administered by CJD.

The amendment to §3.901 changes the "Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source.

The amendment to §3.903: (1) changes the "STOP Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source; and (2) corrects the punctuation in this section.

The amendment to §3.905 corrects the punctuation in this section.

The amendment to §3.1005 changes "nonprofit organizations" to "nonprofit corporations" to ensure the use of uniform language in this chapter.

The amendment to §3.1101 conforms the program purpose under the Residential Substance Abuse Treatment Grant Program to the federal requirements for this funding source.

The amendment to §3.1103 conforms the project requirements under the Residential Substance Abuse Treatment Grant Program to the federal requirements for this funding source.

The amendment to §3.1201 updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Juvenile Accountability Block Grant Program.

The amendment to §3.1203 conforms the project requirements under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source.

The amendment to §3.1205 conforms the list of eligible applicants and funds available to eligible applicants under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source.

The amendment to §3.1211 conforms the waiver of application process under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source and CJD's procedures.

The amendment to §3.1213: (1) conforms the requirements for local advisory boards under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source; and (2) adds the language regarding coordinated enforcement plan that was transferred to this section from §3.1215.

The amendment to §3.1303 conforms the project requirements under the Coverdell Forensic Sciences Program to the federal requirements for this funding source.

The amendment to §3.2007 clarifies the language in this section to ensure the use of uniform language in this chapter.

The amendment to §3.2009 exempts grantees that have statewide jurisdiction to make arrests and execute process in criminal cases from the requirement that they obtain the signature of each sheriff because such grantees have statewide jurisdiction and do not require the permission of the counties to exercise their jurisdiction in each county.

The amendment to §3.2013 clarifies the language in this section to ensure the use of uniform language in this chapter.

The amendment to §3.2501: (1) clarifies the language in subsection (a) to ensure the use of uniform language in this chapter; (2) encourages grantees to use every effort to ensure that grant officials have access to e-mail and the Internet to promote a more efficient flow of information and greater cost savings to the state and grantees; (3) adds a reasonable time limit for notifying CJD of changes in grant officials and contact information because current information of this type is necessary for CJD to effectively administer and monitor grants.

The amendment to §3.2507 clarifies the language in this section to ensure the use of uniform language in this chapter.

The amendment to §3.2511: (1) clarifies that advanced funds covering no more than the anticipated expenses for the next

month may be provided to a grantee by CJD; (2) exempts Local Law Enforcement Block Grant projects from subsection (a) because the federal requirements for this funding source allow grantees to receive advanced funds covering the entire amount of the grant in certain instances; and (3) requires Crime Stoppers Assistance Fund grantees to request funds once per quarter because of the small size of the grants under this funding source.

The amendment to §3.2513 corrects the reference in this section to indicate that "approved budget categories" is defined in §3.3(10).

The amendment to §3.2515 changes "nonprofit agency" to "nonprofit corporation" to ensure the use of uniform language in this chapter.

The amendment to §3.2525 clarifies that grantees are responsible for managing and monitoring the day-to-day operations of grant and subgrant supported activities to ensure that grant funds are being properly utilized.

The amendment to §3.2529 clarifies the language in this section to ensure the use of uniform language in this chapter and corrects the punctuation in this section.

The amendment to §3.2601 clarifies the language in this section to ensure the use of uniform language in this chapter.

The amendment to §3.2603 clarifies the language in this section to ensure the use of uniform language in this chapter.

The amendment to §3.8105 conforms the powers of the Crime Stoppers Advisory Council to the powers stated in Chapter 414 of the Texas Government Code.

The amendment to §3.8115 italicizes the name of the publication, *"Roberts Rules of Order".*

The amendment to §3.8205 updates the language of paragraph (a)(3) to reflect the current citation for the Juvenile Justice and Delinquency Prevention Act.

The amendment to §3.8215 italicizes the name of the publication, *"Roberts Rules of Order".*

The amendment to §3.8305 changes the "STOP Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source.

The amendment to §3.8315 italicizes the name of the publication, *"Roberts Rules of Order".*

The amendment to §3.9300 replaces the memorandum of understanding in Figure: 1 TAC §3.9300 between the Texas Department of Public Safety and CJD with the most recent version of the memorandum of understanding adopted by the parties pursuant to §411.0096 of the Texas Government Code.

The addition of §3.211 conforms the list of ineligible activities and costs under the Juvenile Justice and Delinquency Act Fund to the federal requirements for this funding source.

The addition of §3.313 establishes local prevention policy boards in accordance with the requirements of the Title V Delinquency Prevention Act Fund.

The addition of §3.725: (1) adds the language regarding task force personnel that was transferred to this section from §3.723; and (2) clarifies that, although the Texas Department of Public Safety exercises command and control over all narcotics task forces funded by the Byrne Formula Grant Program through CJD, task force employees remain employees of their assigning agencies and are not considered employees of the Texas Department of Public Safety or the other entities listed in this section.

The addition of §3.809 conforms requirements regarding indirect costs under the Local Law Enforcement Block Grant Program to the federal requirements for this funding source.

The addition of §3.811 adds to this section, entitled "Ineligible Activities and Costs", the language regarding prohibited uses of grant funds under the Local Law Enforcement Block Grant Program that was deleted from §3.803, entitled "Program Requirements". The amendment makes the sections relating to the Local Law Enforcement Block Grant Program more consistent with the sections relating to other funding sources administered by CJD.

The addition of §3.1111 conforms the list of ineligible activities and costs under the Residential Substance Abuse Treatment Grant Program to the federal requirements for this funding source.

The repeal of §3.1215 deletes the language regarding coordinated enforcement plan from this section and transfers it to §3.1213.

The repeal of §§3.1401, 3.1403, 3.1405, 3.1409, 3.1411, 3.1413, and 3.1415 deletes the language regarding the Rural Domestic Violence and Child Victimization Enforcement Program because CJD no longer administers this funding source.

The Office of the Governor reviewed the rules affecting the Criminal Justice Division grant processes and procedures with the goal of increasing efficiency and updating the rules to address changes in the administration process. The review disclosed that a number of the rules required further clarification and simplification. As a result, the Office of the Governor has determined that the sections in the Texas Administrative Code identified above should be amended, added, or repealed.

No comments were received regarding adoption of the amendments, new rules, and repeals.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §§3.3, 3.5, 3.7, 3.9, 3.19, 3.21

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.7. Selection Process.

(a) All applications must be submitted to CJD. Applications submitted to CJD are reviewed for eligibility, reasonableness, availability of funding, and cost-effectiveness. For applications submitted pursuant to an RFA, the executive director will select a review group,

COG, or other designee to prioritize the applications and submit a priority listing to the executive director, who will render the final funding decision. A review group may include staff members, experts in a relevant field, and members of an advisory board or council.

(b) For applications submitted to CJD pursuant to §3.5(b) of this chapter, the executive director will decide whether to fund the application based upon the following factors:

(1) the inherent value of the project's impact;

(2) whether the project has the potential to be a model program; or

(3) whether delaying the application would have a significant negative impact on the immediate need for the project.

(c) For applications prioritized by a COG, the CJAC must prioritize the applications and prepare the priority listing. The COG's governing body must approve the priority listing. The COG then must submit the priority listing to CJD within the time periods established by CJD. CJD will render final funding decisions on these applications based upon the COG priorities, eligibility, reasonableness, availability of funding, and cost-effectiveness.

(d) For applications prioritized by a COG and seeking funding from the State Criminal Justice Planning Fund, the Juvenile Justice and Delinquency Prevention Act Fund, or the Safe and Drug-Free Schools and Communities Act Fund, CJD will allocate funding through a formula based upon population figures and crime rates. No formula-based funding allocation exists for applications prioritized by a COG that seek grants from other funding sources.

(e) During the review of an application, CJD or its designee may request that the applicant submit additional information necessary to complete the grant review. CJD or its designee may request the applicant to provide any outstanding forms and documents to clarify or justify any part of the application or to disclose other funding sources related to the project. Such requests for information, including the issuance of a preliminary review report, do not serve as notice that CJD intends to fund an application. If CJD is not able to adequately resolve problems within an applicant's budget through the review process, CJD may make the necessary corrections to the budget to bring it into compliance with applicable state or federal requirements. Any corrections to an applicant's budget will be reflected in the award documentation.

(f) CJD will inform applicants in writing of funding decisions on their grant applications through either a Statement of Grant Award or a notification of denial. For applications prioritized by a COG that do not receive funding recommendations, the COG notification of the decision not to recommend funding serves as the applicant's notification of denial.

(g) All funding decisions made by the executive director are final and are not subject to appeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403438
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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SUBCHAPTER B. GENERAL GRANT PROGRAM POLICIES

DIVISION 1. ELIGIBILITY REQUIREMENTS

1 TAC §3.53, §3.55

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. GRANT BUDGET REQUIREMENTS

1 TAC §§3.75, 3.77, 3.79, 3.81, 3.83, 3.85

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.75. Personnel.

(a) CJD will determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary. In determining reasonableness, the following rules apply:

(1) Salaries for grant-funded positions must comply with the grantee's or applicant's salary classification schedule for employees of the applicant agency. Salaries for persons assigned to the grant

project from agencies other than the applicant must be reimbursed in accordance with the assigning agency's salary classification schedule.

(2) If the applicant or assigning agency does not have a classification schedule, then the proposed salary must be commensurate with that paid for similar work in other activities of the applicant or assigning agency. In cases where such work is not found within the applicant or assigning agency, CJD will consider reasonableness based on that paid for similar work in the labor market in which the applicant or assigning agency competes for the kind of employees involved.

(3) CJD will not pay any portion of the salary of, or any other compensation for, an elected or appointed government official. Grants that fund juvenile courts or drug courts, regardless of the funding source, are exempt from this subsection.

(b) Personnel compensated with grant funds must maintain on file personnel activity reports that reflect a distribution of actual time worked and activity performed, that are prepared at least monthly, and that are signed by the employee and a supervisory official having first hand knowledge of the work performed by the employee. Law enforcement and prosecution grant personnel whose primary function is investigating or enforcing laws or prosecuting alleged offenders are required to include the project's case or cause number (or other indicators of assignment) in the personnel activity report.

(c) Grantees may not use grant funds to provide overtime pay. Overtime pay is remuneration for hours worked in excess of full-time on a CJD grant project. Grants under the Drug Court Program and the Local Law Enforcement Block Grant Program are exempt from this subsection. Grants under the Byrne Formula Grant Program are exempt from this subsection and instead CJD may approve requests to pay overtime in accordance with agency policy only for law enforcement officers assigned to a multi-jurisdictional task force and only from program income that is not used toward the minimum cash match requirement.

(d) Grantees may not carry forward accrued leave from one grant period to another. In accordance with a grantee's or subgrantee's policy, grantees may use grant funds to compensate staff members leaving employment for accrued leave (which includes, but is not limited to, annual leave, compensatory time, and sick leave). These payments may only fund leave earned during the current grant period. The proportion of grant funds paid for leave cannot exceed the proportion of grant funds used to pay the staff member's salary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

DIVISION 1. STATE CRIMINAL JUSTICE PLANNING (421) FUND

1 TAC §3.103, §3.111

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.111. Ineligible Activities.

Grantees may not use grant funds to pay for serving adult offenders charged with, given deferred adjudication for, or convicted of, violent or other serious crimes including murder, arson, robbery, sexual assault, aggravated sexual assault, burglary, felony drug crimes, crimes against children, kidnapping, aggravated kidnapping, and manslaughter, unless the executive director grants an exception.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

1 TAC §§3.201, 3.203, 3.211

The amendment and addition of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.203. Project Requirements.

(a) Projects must meet the requirements of §3.53 of this chapter.

(b) Grant funds can support projects to prevent juvenile delinquency including:

(1) Community Based Alternatives to Incarceration. This includes projects that serve youth who need temporary placement such as crisis intervention, shelter, and after-care; and projects that serve youth who need residential placement such as a continuum of foster care or group home alternatives that provide access to a comprehensive array of services.

(2) Strengthening Families. This includes community-based programs and services that work with:

(A) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

(B) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

(C) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited English-speaking ability.

(3) Collaboration of Local Systems. This includes programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services.

(4) Treatment for Victims. This includes programs that provide treatment to juvenile offenders who are the victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such offenders will commit subsequent violations of law.

(5) Educational Programs and Supportive Services. This includes programs that:

(A) encourage juveniles to remain in elementary or secondary schools or in alternative learning situations;

(B) provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and

(C) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that:

(i) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

(ii) information regarding any learning problems identified in such alternative learning situations are communicated to the schools.

(6) Probation. This includes programs that expand the use of probation officers to address the following:

(A) permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

(B) ensuring juveniles follow the terms of their probation.

(7) Counseling, Training, and Mentoring. This includes programs in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent who is or was incarcerated, with responsible individuals who are properly trained.

(8) Learning Disabilities. This includes programs that are designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other juveniles with disabilities.

(9) Gangs. This includes programs designed to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth.

(10) Drug Treatment. This includes programs designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or non-addictive drugs.

(11) Positive Youth Development. This includes programs that promote positive youth development by assisting delinquent and other at-risk youth in obtaining a sense of safety and structure; a sense of belonging and membership; a sense of self-worth and social contribution; a sense of independence and control over life; and, a sense of closeness in interpersonal relationships.

(12) Diversion. This includes programs that encourage the courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting.

(13) Language and Other Barriers. This includes programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and other barriers that may prevent the complete treatment of juveniles and the preservation of their families.

(14) Hate Crimes. This includes programs designed to prevent and to reduce hate crimes committed by juveniles.

(15) After-School Programs. This includes after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities.

(16) Post-Placement Services to Adjudicated Juveniles. This includes community-based programs that provide follow-up and post-placement services to adjudicated juveniles, to promote successful reintegration into the community.

(17) Protect the Rights of Juveniles. This includes programs designed to protect the rights of juveniles affected by the juvenile justice system.

(18) Mental Health Services for Incarcerated Juveniles. This includes programs designed to provide mental health services for incarcerated juveniles suspected to be in need of such services, including assessment, development of individualized treatment plans, and discharge plans.

§3.211. Ineligible Activities and Costs.

Grantees may not use grant funds to pay for the following services, activities, and costs:

(1) construction;

(2) medical services;

(3) fundraising activities;

(4) lobbying activities; and

(5) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. TITLE V DELINQUENCY PREVENTION ACT FUND

1 TAC §§3.301, 3.303, 3.305, 3.313

The amendment and addition of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.303. Project Requirements.
Projects must:

(1) meet the requirements of §3.53 of this chapter;

(2) provide juvenile delinquency prevention programs and activities for youth who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including:

(A) alcohol and substance abuse prevention services;

(B) tutoring and remedial education;

(C) child and adolescent health and mental health services;

(D) recreation services;

(E) leadership and youth development activities;

(F) teaching accountability;

(G) assistance in the development of job training skills; and

(H) other data-driven evidence based prevention programs.

§3.313. Prevention Policy Board.
Before an applicant may receive the CJD-funded portion of a grant project, the applicant must have a local prevention policy board that will direct the project and develop a three-year delinquency prevention plan. The plan serves as the project narrative and must follow the general format for a project narrative as outlined in the grant application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT FUND

1 TAC §3.401, §3.403

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.403. Project Requirements.

(a) Projects must meet the requirements of §3.53 of this chapter.

(b) Priority is given to projects that prevent illegal drug use and violence for:

(1) children and youth who are not normally served by state educational agencies or local educational agencies; or

(2) populations that need special services or additional resources (such as youth in juvenile detention facilities, runaway or homeless children and youth, pregnant and parenting teenagers, and school dropouts).

(c) Special consideration is given to grantees that pursue a comprehensive and collaborative approach to drug and violence prevention that includes providing and incorporating mental health services related to drug and violence prevention in their project.

(d) Projects must meet the following principles of effectiveness:

(1) be based on an assessment of objective data regarding the incidence of violence and illegal drug use in the elementary schools and secondary schools and communities to be served, including an objective analysis of the current conditions and consequences regarding violence and illegal drug use, including delinquency and serious discipline problems among students who attend such schools (including private school students who participate in the drug and violence prevention program) that is based on on-going local assessment or evaluation activities;

(2) be based on an established set of performance measures aimed at ensuring that the elementary schools, secondary schools, and communities to be served by the program have a safe, orderly, and drug-free learning environment;

(3) be based on scientifically-based research that provides evidence that the program to be used will reduce violence and illegal drug use;

(4) be based on an analysis of the data reasonably available at the time, of the prevalence of risk factors, including high or increasing rates of reported cases of child abuse and domestic violence; protective factors, buffers, assets; or other variables in schools and communities in the State identified through scientifically-based research; and

(5) include meaningful and ongoing consultation with and input from parents in the development of the application and administration of the program or activity.

(e) Grant funds can support projects that provide the following services, activities or costs:

(1) age appropriate and developmentally based activities that:

(A) address the consequences of violence and the illegal use of drugs, as appropriate;

(B) promote a sense of individual responsibility;

(C) teach students to recognize social and peer pressure to use drugs illegally and the skills for resisting illegal drug use;

(D) engage students in the learning process; and

(E) incorporate activities in secondary schools that reinforce prevention activities implemented in elementary schools.

(2) activities that involve families, community sectors (which may include appropriately trained seniors), and a variety of drug and violence prevention providers in setting clear expectations against violence and illegal use of drugs and appropriate consequences for violence and illegal use of drugs.

(3) dissemination of drug and violence prevention information to schools and the community.

(4) professional development and training for, and involvement of, school personnel, pupil services personnel, parents, and interested community members in prevention, education, early identification and intervention, mentoring, or rehabilitation referral, as related to drug and violence prevention.

(5) drug and violence prevention activities that may include the following:

(A) community-wide planning and organizing activities to reduce violence and illegal drug use, which may include gang activity prevention.

(B) acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies.

(C) reporting criminal offenses committed on school property.

(D) developing and implementing comprehensive school security plans or obtaining technical assistance concerning such plans, which may include obtaining a security assessment or assistance from the School Security and Technology Resource Center at the Sandia National Laboratory located in Albuquerque, New Mexico.

(E) supporting safe zones of passage activities that ensure that students travel safely to and from school, which may include bicycle and pedestrian safety programs.

(F) the hiring and mandatory training, based on scientific research, of school security personnel (including school resource officers) who interact with students in support of youth drug and violence prevention activities under this part that are implemented in the school.

(G) expanded and improved school-based mental health services related to illegal drug use and violence, including early identification of violence and illegal drug use, assessment, and direct or group counseling services provided to students, parents, families, and school personnel by qualified school-based mental health service providers.

(H) conflict resolution programs, including peer mediation programs that educate and train peer mediators and a designated faculty supervisor, and youth anti-crime and anti-drug councils and activities.

(I) alternative education programs or services for violent or drug abusing students that reduce the need for suspension or expulsion or that serve students who have been suspended or expelled from the regular educational settings, including programs or services to assist students to make continued progress toward meeting the State academic achievement standards and to reenter the regular education setting.

(J) counseling, mentoring, referral services, and other student assistance practices and programs, including assistance provided by qualified school-based mental health services providers and the training of teachers by school-based mental health services providers in appropriate identification and intervention techniques for students at risk of violent behavior and illegal use of drugs.

(K) programs that encourage students to seek advice from, and to confide in, a trusted adult regarding concerns about violence and illegal drug use.

(L) drug and violence prevention activities designed to reduce truancy.

(M) age-appropriate, developmentally-based violence prevention and education programs that address victimization associated with prejudice and intolerance, and that include activities designed to help students develop a sense of individual responsibility and respect for the rights of others, and to resolve conflicts without violence.

(N) consistent with the fourth amendment to the Constitution of the United States, the testing of a student for illegal drug use or the inspecting of a student's locker for weapons or illegal drugs or drug paraphernalia, including at the request of or with the consent of a parent or legal guardian of the student, if the local educational agency elects to so test or inspect.

(O) emergency intervention services following traumatic crisis events, such as a shooting, major accident, or a drug-related incident that have disrupted the learning environment.

(P) establishing or implementing a system for transferring suspension and expulsion records, consistent with §444 of the General Education Provisions Act, 20 U.S.C. 1232g, by a local educational agency to any public or private elementary school or secondary school.

(Q) developing and implementing character education programs, as a component of drug and violence prevention programs, that take into account the view of parents of the students for whom the program is intended and such students.

(R) establishing and maintaining a school safety hotline.

(S) community service, including community service performed by expelled students, and service-learning projects.

(T) conducting a nationwide background check of each local educational agency employee, regardless of when hired, and prospective employees for the purpose of determining whether the employee or prospective employee has been convicted of a crime that bears upon the employee's fitness to be responsible for the safety or well-being of children; to serve in the particular capacity in which the employee or prospective employee is or will be employed; or to otherwise be employed by the local educational agency.

(U) programs to train school personnel to identify warning signs of youth suicide and to create an action plan to help youth at risk of suicide.

(V) programs that respond to the needs of students who are faced with domestic violence or child abuse.

(6) the evaluation of any of the activities authorized under this funding source and the collection of objective data used to assess program needs, program implementation, or program success in achieving program goals and objectives.

(f) Projects must not duplicate the efforts of the Texas Education Agency's Safe and Drug-Free Schools Act program or those of local education agencies with regard to the provision of school-based drug and violence prevention activities.

(g) Projects must undergo a periodic evaluation to assess its progress toward reducing violence and illegal drug use in schools to be served. The results shall be used to refine, improve, and strengthen the program, and to refine the performance measures, and shall also be made available to the public upon request, with public notice of such availability provided. Performance measures, described in the Safe and Drug-Free Schools and Communities Act, §4114(d)(2)(B), consist of:

(1) performance indicators for drug and violence prevention programs and activities including:

(A) specific reductions in the prevalence of identified risk factors; and

(B) specific increases in the prevalence of protective factors, buffers, or assets if any have been identified; and

(2) levels of performance for each performance indicator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. VICTIMS OF CRIME ACT FUND

1 TAC §§3.501, 3.503, 3.505, 3.511

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.511. Ineligible Activities and Costs.
Grantees may not use grant funds to pay for the following services, activities, and costs:

(1) lobbying and administrative advocacy;

(2) perpetrator rehabilitation and counseling or services to incarcerated individuals;

(3) needs assessments, surveys, evaluations, and studies;

(4) prosecution activities;

(5) fundraising activities;

(6) reimbursing crime victims for expenses incurred as a result of the crime;

(7) Most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergencies), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a victimization, except for forensic medical examinations for sexual assault victims;

(8) Relocation expenses. Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) Administrative staff expenses. Grantees may not use grant funds to pay salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs;

(10) development of protocols, interagency agreements, and other working agreements;

(11) costs of sending individual crime victims to conferences;

(12) activities exclusively related to crime prevention or community awareness;

(13) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(14) victim-offender meetings that serve to replace criminal justice proceedings;

(15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(16) training to persons or groups outside the applicant agency; however, the grantee may invite staff members from other organizations to attend training activities held for the grantee's staff if the VOCA-related project incurs no additional costs;

(17) indirect organization costs such as the following: liability insurance on buildings; major maintenance on buildings; capital improvements; newsletters, including supplies, printing, postage, and staff time; security guards and body guards; and employment agency fees;

(18) any activities or related costs for diligent search;

(19) job skills training;

(20) alcohol or drug abuse treatment; and

(21) Property loss. Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 6. CRIME STOPPERS ASSISTANCE FUND

1 TAC §§3.601, 3.609, 3.613

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

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DIVISION 7. BYRNE FORMULA GRANT PROGRAM

1 TAC §§3.721, 3.723, 3.725

The amendment and addition of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

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DIVISION 8. LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

1 TAC §§3.801, 3.803, 3.809, 3.811

The amendment and addition of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.811. Ineligible Activities and Costs.

Grantees may not use grant funds to purchase, lease, rent, or acquire any of the following:

(1) tanks or armored vehicles;

(2) fixed-wing aircraft;

(3) limousines;

(4) real estate;

(5) yachts;

(6) consultants;

(7) vehicles not primarily used for law enforcement; and

(8) New construction. However, renovations of facilities are permitted when specifically approved by the Bureau of Justice Assistance and the Office of the Comptroller. These costs may not exceed 10% of the total federal funds utilized in a given purpose area.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 9. S.T.O.P. VIOLENCE AGAINST WOMEN ACT FUND

1 TAC §§3.901, 3.903, 3.905

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.903. Project Requirements.

(a) Projects must meet at least one of the eligible purpose areas established by the federal Violence Against Women Office and codified at 28 C.F.R. §90.

(b) In addition to subsection (a) of this section, projects must address at least one of the following state priorities developed in coordination with the S.T.O.P. Violence Against Women Planning Council:

(1) Priorities for Victim Services Projects:

(A) Provide essential victim services related to family violence, sexual assault, stalking and dating violence.

(B) Promote outreach and services into under-served communities for family violence, sexual assault, stalking and dating violence.

(C) Provide or improve training for victim advocates.

(D) Establish or maintain a family violence, sexual assault, stalking and/or dating violence task force that promotes a coordinated community response, including multi-jurisdictional efforts.

(2) Priorities for Law Enforcement Projects:

(A) Promote or improve training for law enforcement agencies related to family violence, sexual assault, stalking and dating violence.

(B) Develop specialized family violence, sexual assault, stalking, dating violence and/or victim service divisions within law enforcement agencies.

(C) Collaborate, plan and initiate unified policies among the different law enforcement and social services agencies for family violence, sexual assault, stalking and dating violence.

(D) Establish or maintain a family violence, sexual assault, stalking and/or dating violence task force which promotes a coordinated community response, including multi-jurisdictional efforts.

(3) Priorities for Prosecution Projects:

(A) Develop specialized family violence, sexual assault, stalking, dating violence and/or victim service divisions within prosecutors' offices.

(B) Provide or improve training for prosecution agencies related to family violence, sexual assault, stalking and dating violence.

(C) Promote outreach and services into underserved communities for family violence, sexual assault, stalking and dating violence.

(D) Establish or maintain a family violence, sexual assault, stalking and/or dating violence task force that promotes a coordinated community response, including multi-jurisdictional efforts.

(4) Priorities for Court Projects:

(A) Promote or improve training for judges and court personnel related to family violence, sexual assault, stalking and dating violence.

(B) Provide specialized courts and/or court services aimed at family violence, sexual assault, stalking and/or dating violence.

(C) Provide in-court victims assistance for family violence, sexual assault, stalking and dating violence victims.

(D) Promote outreach and services into underserved communities related to family violence, sexual assault, stalking and dating violence.

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DIVISION 10. CHALLENGE GRANT PROGRAM

1 TAC §3.1005

The amendment of this rule is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

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DIVISION 11. RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANT PROGRAM

1 TAC §§3.1101, 3.1103, 3.1111

The amendment and addition of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

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No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.1101. Source and Purpose.

(a) All rules in this division relate to the Residential Substance Abuse Treatment Grant Program (RSAT). The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §1001, as amended, Public Law 90-351, 42 U.S.C. 3796ff et seq.

(c) The program's purpose is to develop and implement residential substance abuse treatment projects within state and local correctional facilities and jail-based substance abuse projects within jails and local correctional facilities.

§3.1111. Ineligible Activities and Costs.
Grantees may not use grant funds to pay for the following activities and costs:

(1) rent or building leases, except for leases of space for the delivery of treatment services such as offices for counselors and group events;

(2) utilities;

(3) building and lawn maintenance;

(4) insurance;

(5) meals and snacks;

(6) medical and dental care;

(7) vehicle expenses unless for treatment purposes;

(8) uniforms for personnel;

(9) training for continuing education and licensing requirements, unless this benefit is also provided to all non-RSAT funded personnel;

(10) administrative costs;

(11) construction or land acquisition;

(12) services in a private treatment facility; or

(13) aftercare services provided after the project participant is released from the facility.

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DIVISION 12. JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM

1 TAC §§3.1201, 3.1203, 3.1205, 3.1211, 3.1213

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No other statutes, articles, or codes are affected by the amendment of these rules.

§3.1201. Source and Purpose.

(a) All rules in this division relate to the Juvenile Accountability Block Grant Program. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. 3796ee et seq., as amended. All grants awarded from this fund must comply with the requirements contained therein.

(c) The program's purpose is to develop programs that promote greater accountability in the juvenile justice system.

(d) In addition to the rules related to this funding source contained in this chapter, applicants and grantees must comply with the federal regulations contained in 28 C.F.R. §95, which are hereby adopted by reference.

§3.1211. Waiver of Application.

(a) Any entity receiving a local allocation may waive their ability to apply for funds.

(b) Funds may be waived to CJD or to another larger or neighboring city, county, or Native American tribe that will still benefit the waiving entity's area.

(1) To waive funds to CJD, the entity's governing body must complete and return to CJD the JABG Waiver of Funds Form provided in the grant application kit.

(2) To waive funds to a larger or neighboring city, county, or Native American tribe, the entity's governing body must complete and forward the JABG Waiver of Funds Form to the governing body of the city, county, or Native American tribe intended to receive the funds.

(3) Failure to complete either a grant application or JABG Waiver of Funds Form will result in the local allocation reverting back to CJD.

(c) Cities, counties, and Native American tribes requesting funds through the Juvenile Accountability Block Grant program are responsible for obtaining written authorization from each entity that chooses to waive an allocation.

(d) CJD will not award waived funds to a city, county, or Native American tribe until a signed JABG Waiver of Funds Form is received.

This agency 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 May 20, 2004.

TRD-200403452

David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 463-1919

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1 TAC §3.1215

The repeal of this rule is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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DIVISION 13. COVERDELL FORENSIC SCIENCES PROGRAM

1 TAC §3.1303

The amendment of this rule is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman
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Office of the Governor
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For further information, please call: (512) 463-1919

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DIVISION 14. RURAL DOMESTIC VIOLENCE AND CHILD VICTIMIZATION ENFORCEMENT PROGRAM

1 TAC §§3.1401, 3.1403, 3.1405, 3.1409, 3.1411, 3.1413, 3.1415

The repeal of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2007, 3.2009, 3.2013

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200403460
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§3.2501, 3.2507, 3.2511, 3.2513, 3.2515, 3.2525, 3.2529

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2525. Evaluating Project Effectiveness.

(a) CJD grantees must regularly evaluate the effectiveness of their projects. This includes a reassessment of project activities and services to determine whether they continue to be effective. Grantees must show that their activities and services effectively address and achieve the project's stated purpose. CJD will monitor grantee success through required progress reports, on-site visits, and desk reviews. Grantees must maintain information related to project evaluations in the project's files, and that information must be available for review by CJD.

(b) Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities, including those of their contractors and subcontractors. Grantee monitoring must cover each program, function and activity. Grantees must develop, implement, and maintain a standardized monitoring program to continuously assure grant and subgrant supported activities are monitored. The monitoring program will include, at a minimum, mechanisms by which grantees will ensure they are achieving performance goals and receiving contracted deliverables as specified in agreements and contracts.

This agency 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 May 20, 2004.

TRD-200403461

David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 463-1919

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SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2601, §3.2603

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200403462
David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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SUBCHAPTER G. CRIMINAL JUSTICE DIVISION ADVISORY BOARDS
DIVISION 1. CRIME STOPPERS ADVISORY COUNCIL

1 TAC §3.8105, §3.8115

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.8105. General Powers.

(a) Pursuant to Chapter 414 of the Texas Government Code, the council is authorized to:

(1) certify a crime stoppers organization to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure;

(2) decertify an organization, thereby rendering the organization ineligible to receive such repayments or payments; and

(3) adopt rules to carry out its function; however, the council may not adopt rules that conflict with rules relating to grants adopted by CJD.

(b) In addition, the council acts in an advisory capacity to the executive director of CJD, who will relate their recommendations and those of CJD to the governor as needed.

This agency 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 May 20, 2004.

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David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
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For further information, please call: (512) 463-1919

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DIVISION 2. GOVERNOR'S JUVENILE JUSTICE ADVISORY BOARD

1 TAC §3.8205, §3.8215

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403464

David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 463-1919

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DIVISION 3. GOVERNOR'S S.T.O.P. VIOLENCE AGAINST WOMEN PLANNING COUNCIL

1 TAC §3.8305, §3.8315

The amendment of these rules is adopted under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2004.

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David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 463-1919

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SUBCHAPTER I. MEMORANDUM OF UNDERSTANDING

1 TAC §3.9300

The amendment of this rule is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements §411.0096 of the Texas Government Code, which provides that the Office of the Governor, Criminal Justice Division (CJD) and the Texas Department of Safety (DPS) by rule shall adopt a joint memorandum of understanding on coordinating the drug law enforcement efforts of DPS and CJD.

No other statutes, articles, or codes are affected by the amendment of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2004.

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David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 463-1919

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CHAPTER 3. CRIMINAL JUSTICE DIVISION
SUBCHAPTER H. CRIME STOPPERS PROGRAM CERTIFICATION
DIVISION 1. CRIME STOPPERS PROGRAM CERTIFICATION

1 TAC §§3.9000, 3.9005, 3.9010, 3.9013

The Crime Stoppers Advisory Council ("Council") adopts the amendment of Subchapter H §§3.9005, and 3.9010; and the addition of Subchapter H §3.9013, without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2133).

The Crime Stoppers Advisory Council ("Council") adopts the amendment of Subchapter H §§3.9000, with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2133). The following changes were made to correct typographical errors in the proposed text: (1) the words "tax exempt" were changed to "tax-exempt" in paragraph (d)(1); (2) the word "and" was moved from subparagraph (d)(6)(B) to subparagraph (d)(6)(C); and (3) the word "and" was moved from subparagraph (e)(5)(B) to subparagraph (e)(5)(C).

The amendment to §3.9000: (1) clarifies that the requirements applicable to Annual Probation Fee and Repayment Reports are found in §3.9010; and (2) requires a crime stoppers organization that is currently certified or whose certification expired within the last 3 years to provide the Council any Quarterly Statistical Reports that have not been submitted to the Council in order for the Council to evaluate the general conduct of the organization when deciding whether to certify the organization.

The amendment to §3.9005 clarifies that: (1) §3.9000(b), which is referenced in this section, is contained in Chapter 3 of the Texas Administrative Code; and (2) a crime stoppers organization may be decertified for violating state law, federal law, or the administrative rules established by the Council found in Subchapter H.

The amendment to §3.9010: (1) removes the word "postmarked" because the Annual Probation Fee and Repayment Report may be submitted to the director of the Council not only by mail, but also by fax, by hand-delivery, or by electronic mail; and (2) adds the word "calendar" to clarify that the report must be submitted each calendar year.

The addition of §3.9013 conforms the administrative rules to current practice by setting forth the requirement that certified crime stoppers organizations must submit Quarterly Statistical Reports

to the director of the Council on specified dates each calendar year. This requirement allows the Council to evaluate the general conduct of the organization as part of the Council's continuing duty to review or audit the organization's finances or programs.

No comments were received regarding the amendments and additions of these rules.

The amendment of §§3.9000, 3.9005, and 3.9010, and the addition of §3.9013, are adopted under the Texas Government Code, Title 4, §414.006, which provides the Council the authority to adopt rules to carry out its functions.

The amendment of §§3.9000, 3.9005, and 3.9010, and the addition of §3.9013, implement the Texas Government Code, Title 4, §414.011, which requires the Council to certify qualified crime stoppers organizations to receive payments and reward repayments, review or audit the finances or programs of certified crime stoppers organizations, and decertify crime stoppers organizations if it determines that the organizations no longer meet the certification requirements.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.9000. Certification.

(a) The Crime Stoppers Advisory Council shall, on application by a crime stoppers organization as defined by §414.001(2) of the Texas Government Code, determine whether the organization meets the requirements to be certified to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure.

(b) The Crime Stoppers Advisory Council shall, in its discretion, certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the organization, the Council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(c) Certification is valid for two years from the date of issuance. If a crime stoppers organization's certification expires, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure, until the organization obtains certification. The two-year certification period may be extended under the following circumstances:

(1) If an organization's application to renew its certification is received by the director of the Crime Stoppers Advisory Council before the two-year certification period expires, the organization's certification shall continue in effect until the Council makes a decision regarding the renewal of its certification.

(2) The chairman of the Crime Stoppers Advisory Council may extend the two-year certification period for a period of time not to exceed 90 days if:

(A) one of the following extenuating circumstances occurs before the two-year certification period expires:

(i) natural or man-made disaster;

(ii) serious illness, incapacity, or death of the chairman, treasurer, or secretary of the organization's board of directors;

(iii) serious illness, incapacity, or death of one of the organization's law enforcement/civilian coordinators; or

(iv) death of a member of the immediate family of one of the officials listed in clauses (ii) and (iii) of this subparagraph;

(B) one of the extenuating circumstances listed in subparagraph (A) of this paragraph has a detrimental effect on the organization's ability to submit an application for certification before the two-year certification period expires; and

(C) the director of the Crime Stoppers Advisory Council receives the organization's written request to extend the certification period no later than 20 calendar days after one of the extenuating circumstances listed in subparagraph (A) of this paragraph occurs.

(d) A private, nonprofit crime stoppers organization must submit the following information to the director of the Crime Stoppers Advisory Council in order to obtain certification:

(1) Documentation from the Internal Revenue Service granting the organization tax-exempt status;

(2) Proof that the following persons completed a training course provided by CJD and the Crime Stoppers Advisory Council, or their designee, within the year prior to submission of its application for certification:

(A) one member of the organization's board of directors, and

(B) one of the organization's law enforcement/civilian coordinators;

(3) A completed and signed Conditions of Certification Form;

(4) The names, addresses and telephone numbers of the members of the organization's board of directors, and the position held by each member;

(5) The names, addresses and telephone numbers of the organization's law enforcement/civilian coordinators; and

(6) If the organization is currently certified by the Crime Stoppers Advisory Council or the organization's most recent certification expired within three years prior to submission of its application for certification, the organization must submit the following additional information:

(A) financial statements covering the two-year certification period on a form prescribed by the Crime Stoppers Advisory Council;

(B) documentation from the relevant community supervision and corrections departments stating the amount of probation fees disbursed to the organization during the two-year certification period;

(C) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Crime Stoppers Advisory Council as required by §3.9010 of this chapter; and

(D) any Quarterly Statistical Reports that have not been submitted to the director of the Crime Stoppers Advisory Council as required by §3.9013 of this chapter.

(e) A public crime stoppers organization must submit the following information to the director of the Crime Stoppers Advisory Council in order to obtain certification:

(1) Proof that one of the organization's law enforcement/civilian coordinators completed a training course provided by CJD and the Crime Stoppers Advisory Council, or their designee, within the year prior to submission of its application for certification;

(2) A completed and signed Conditions of Certification Form;

(3) The names, addresses and telephone numbers of the members of the organization's governing board, and the position held by each member;

(4) The names, addresses and telephone numbers of the organization's law enforcement/civilian coordinators; and

(5) If the organization is currently certified by the Crime Stoppers Advisory Council or the organization's most recent certification expired within three years prior to submission of its application for certification, the organization must submit the following additional information:

(A) financial statements covering the two-year certification period on a form prescribed by the Crime Stoppers Advisory Council;

(B) documentation from the relevant community supervision and corrections departments stating the amount of probation fees disbursed to the organization during the two-year certification period;

(C) any Annual Probation Fee and Repayment Reports that have not been submitted to the director of the Crime Stoppers Advisory Council as required by §3.9010 of this chapter; and

(D) any Quarterly Statistical Reports that have not been submitted to the director of the Crime Stoppers Advisory Council as required by §3.9013 of this chapter.

(f) Decisions regarding the certification of crime stoppers organizations shall be made by the Crime Stoppers Advisory Council.

This agency 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 May 20, 2004.

TRD-200403437
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: June 9, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 463-1919

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 112. HUMAN RESOURCES PROGRAM
SUBCHAPTER A. EMPLOYEE TRAINING AND DEVELOPMENT PROGRAM

1 TAC §§112.1, 112.3, 112.5, 112.7

The Texas Building and Procurement Commission adopts the repeal of 1 TAC Chapter 112, Subchapter A, §§112.1, 112.3, 112.5, and 112.7, concerning the Human Resources Program, as published in the March 12, 2004 edition of the *Texas Register* (29 TexReg 2487). The chapter established agency procedures regarding employee training and development programs. The repeal of Chapter 112 is necessary because the agency no long offers the programs as stated in the rules.

The agency no longer offers the training programs as set forth in the repealed rules.

The discontinued training will be eliminated from the Code and developed as in-house policy matters.

The comment period ended April 11, 2004. No comments were received.

The repeal is adopted under the authority of the Texas Government Code, Title D Subtitle 2152, §2152.003.

The following code is affected by these rules: Government Code, Title 10, Subtitle D, Chapter 112 and Chapter 2152.

This agency 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 May 19, 2004.

TRD-200403399
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: June 8, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 463-4257

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CHAPTER 122. FACILITIES PLANNING
SUBCHAPTER A. APPLICATION FOR STATE-LEASED OR OWNED FACILITIES

1 TAC §122.2

The Texas Building and Procurement Commission adopts amendments without changes to Title 1, TAC, Chapter 122 - Facilities Planning, Subchapter A, §122.2, relating to requests for allocation, relinquishment or modification of space in state-leased or owned facilities, as published in the March 5, 2004 edition of the *Texas Register* (29 TexReg 2138).

The amendments bring the rule into compliance with HB 3042 amendments to §2165.104 of the Texas Government Code regarding space allocation limitation exceptions including a requirement for agency certification of funds with each request for space or building modifications.

The rule will enable the Commission to analyze the specific needs of a requesting agency and prepare a space allocation that efficiently complies with the statute and provides the occupying agencies with suitable space to carry out their statutory mandates. In addition, the rule established that the Commission makes the final decision on interpretating agency guidelines.

The comment period ended April 4, 2004. No comments were received.

The amendment was made under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003, 2165.102 and 2165.108.

The following code is affected by these rules: Texas Government Code, Title 10, Subtitle D, §§2165, 2166.260, and 2167.

This agency 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 May 19, 2004, 2004.

TRD-200403400
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Effective date: June 8, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 463-4257

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.308 without changes to the proposed text published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 2993).

The amendment was undertaken to: (1) give nursing facility providers participating in the direct care staff enhancement program greater flexibility in meeting their staffing requirements with staff time or increased staff wages and/or benefits; (2) make the distribution of enhancement levels among nursing facilities more equitable; and (3) increase provider understanding of the enhancement program. This action was prompted by recommendations from HHSC's ad hoc Nursing Facility Rate Methodology Workgroup.

HHSC received no comments regarding adoption of the amendment.

The amendment is adopted 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 Human Resources Code, Chapter 32.

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

This agency 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 May 17, 2004.

TRD-200403341
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: June 6, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 438-3734

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §§303.1, 303.3, 303.5, 303.7, 303.9, 303.11, 303.13, 303.15, 303.17, 303.19, 303.21, 303.23

The Texas Residential Construction Commission (the "commission") adopts new rules at Title 10, Part 7, Chapter 303, Subchapter A, §§303.1, 303.3, 303.5, 303.7, 303.9, 303.11, 303.13, 303.15, 303.17, 303.19, 303.21 and 303.23, relating to the registration of builders in the State of Texas as provided for in Title 16, Property Code. The new rules are adopted with changes to the proposed text as published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 271).

At the Open Meeting on December 18, 2004, the commission adopted emergency rules relating to the registration of builders and approved the publication of the proposed rules in the January 9, 2004, issue of the *Texas Register*.

The rules were published for comment in the January 9, 2004, issue of the *Texas Register* (29 TexReg 271).

Written comments were due February 9, 2004. Written comments were submitted by Tom Lammers of Houston Structural, Inc. ("HSI") and Jay Dyer of the Texas Association of Builders ("TAB"). No party requested a hearing pursuant to the Administrative Procedure Act, Government Code §2001.029.

In a letter dated January 28, 2004, Mr. Lammers commented that the term "moral turpitude" in §303.11, as that term relates to the criminal history of an applicant, should be replaced with "poor business ethic and practices." Mr. Lammers expressed a concern that the requirement provides for an unnecessary intrusion into an applicant's personal conduct as it relates to whether a person committed adultery or used a controlled substance. The proposed rule text uses the language of §416.002 of the Act, which states in part that the applicant must disclose "misdemeanors involving moral turpitude." The phrase "involving moral turpitude" in fact embodies a limitation on unnecessary disclosure because it requires the disclosure of only certain types of misdemeanors (crimes), i.e., those that are related to the issues of honesty and trustworthiness. Since the term "moral turpitude" tracks the language of the Act, the commission declines to make the suggested modification.

In a letter dated February 5, 2004, TAB submitted a number of proposed changes to the proposed text in its written comments. TAB suggested that the words "builder" or "builders" be replaced with the "person" or "persons" in §303.1. The replacement would

further clarify the builder registration requirement. The commission agrees that this clarification is helpful and has modified the language of the text accordingly.

TAB commented that adding the phrase "the commission's receipt" in §303.3(a) would further clarify the time period when a provisional registration may be issued. The revision suggested might cause the provision to be read that once the background check is received, the provisional license is no longer appropriate. As stated in the proposed text, the provisional license can be issued, pending not only receipt of the background check but also evaluation of the results of the check. Therefore, the commission declines to make the suggested modification but modifies the language to make clear that a decision will be made and action will be taken promptly once a review of the application is complete.

TAB commented that the term "unfavorable" should be replaced or defined in §303.3(b) due to its subjective meaning. The commission agrees that the term "unfavorable" is vague and has replaced it with "unacceptable." Additionally, TAB commented that the last clause in §303.3(b) should be revised to replace "registration form" with "certificate of registration." This modification makes it clear that it is the application for registration that is the object of the denial, not the form. In the interest of clarity, the proposed text has been modified. In addition, the commission has added language in §303.5 regarding the factors considered by the commission in reviewing an application in which an applicant has a criminal history to provide further guidance to applicants on the process of review.

TAB further commented that the term "registration form" in §303.3(c) should also be replaced with "certificate of registration" and the phrase "...and state its reasons for denying the revocation" should be added. For clarity, §303.3 has been revised to more accurately reflect the actions of the commission.

TAB commented that §303.7(c) should be deleted because its wording was inconsistent with §416.003 of the Act. The commission has revised this section to more accurately reflect its intent to convey that, in the context of the rule, the term "applicant" may apply to someone who is registering as a builder and someone who is the designated agent.

TAB commented that §303.19(a) should be revised to replace "may" with "shall" because renewal is not a mandatory requirement. The commission agrees that to the extent a person chooses not to continue doing business in this state as a "builder" that person is not required to renew its certificate. The commission has made modifications to the rule text accordingly.

TAB again commented that the term "registration form" should be replaced with "certificate of registration" in §303.21. For purposes of clarity and consistency, the term has been replaced. TAB also noted that there was an inconsistency between §303.3 and §303.21 with regard to the date that the applicant is notified of denial of the certificate of registration. The commission agrees that the time frames are different, but for an appropriate reason. The statute requires that the commission issue a certificate of registration to an applicant, who meets the requirement of Property Code Chapter 416 not later than fifteen (15) days after receipt of the application. If the commission is unable to issue a certificate of registration within that time frame it may issue a provisional certificate. Section 303.3(c) is directed only at the instance in which a provisional certificate has been issued. Therefore, the three-day notice of the denial of the certificate of registration and the revocation of the provisional certificate provided for under §303.3(c) is designed to expedite the return of the provisional certificate to prevent continued work by an applicant who does not meet the requirements of Chapter 416.

Finally, TAB commented that §303.23(b) should be revised to begin the section with "Upon its receipt of a request for a hearing under this section, the commission shall: ..." The commission has determined that the proposed text as it relates to the hearings procedure is best maintained separately in a rule adopted for the purpose of describing the hearings process. Therefore, the commission has deleted proposed rule language and referenced the requirements of Property Code §416.008(g) that a hearing on the denial of a certificate of registration will be conducted in accordance with Government Code, Chapter 2001 and in more comprehensive rules devoted to the hearings procedures to be adopted by the commission.

In addition to written public comments received concerning the builder registration rules, the commission held informal public meetings around the state between January and March of 2004 and gathered comments on a variety of issues pending before the commission, including rule comments. During those informal meetings, an unidentified private citizen commented that due to the number of builders operating in Texas, it would be in the public interest for the commission to require that builders submit to an examination as part of the registration requirements. The commission agrees that builder competency is crucial to the safety of Texas citizens but at this time the commission declines to address additional requirements for builder education and training because the Act does not expressly provide for them.

All comments regarding these rules, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the proposed rule text for the purpose of clarifying its intent and improving style and readability.

The new rules are adopted to implement provisions of House Bill 730 (Act effective September 1, 2003, 78th Legislature Regular Session, Chapter 458, §1.01) and specifically provisions of Chapter 416, Property Code, which provides, in part, that the commission must begin registering builders by March 1, 2004, and, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code (Act effective September 1, 2003, 78th Legislature, Regular Session, Chapter 458, §1.01).

The statutory provisions affected by the adoption of these rules are those set forth in Property Code, Chapters 408 and 416 and House Bill 730, 78th Legislature, Regular Session, Chapter 458, §1.01.

No other statutes, articles, or codes are affected by this adoption.

§303.1. Process.

All persons must register with the commission, using a commission-prescribed form, in order to conduct business as a builder in the state of Texas. A person must submit a completed application for registration and filing fee for issuance of a certificate of registration in the name of each entity under which the applicant intends to operate as a builder in this state. The commission shall issue a certificate of registration to an applicant who meets the eligibility requirements for builder registration within fifteen (15) days of receipt of the completed registration application form and required fee.

§303.3 Provisional Registration.

(a) If the commission determines it is in the public interest, it may issue a provisional registration certificate pending receipt and evaluation of the results of a criminal background check.

(b) If a provisional registration certificate has been issued and the commission has determined that the results of the criminal background check are acceptable, the commission shall issue a certificate of registration within fifteen (15) days of the commission's approval of the application.

(c) If a provisional registration certificate has been issued and the results of the background check are unacceptable, the commission shall deny the application for registration and revoke the provisional certificate.

(1) Upon a denial of registration and revocation of the provisional certificate, the commission shall issue a written notice via certified mail, return receipt requested, to the applicant within three (3) business days of its decision containing the commission's reason(s) for the denial of the application and revocation of the provisional registration.

(2) The applicant shall return the provisional certificate to the commission in person or by mail not later than three (3) business days after receipt of the denial and revocation notice.

(3) Failure to return the provisional certificate to the commission may result in the imposition of administrative penalties upon the applicant or other enforcement action within the discretion of the commission.

(d) This section expires January 1, 2005.

§303.5. Application for Registration.

(a) The application for registration shall contain a request for information from the applicant that is sufficient for the commission to conduct a criminal background check to determine the applicant's eligibility for registration under the Act.

(b) In reviewing an application to determine if an applicant is eligible for registration under this subchapter, the commission shall consider, among other things, whether the applicant has a criminal history and if so:

(1) the nature and seriousness of any crimes to which the applicant has pled guilty or pled no contest, or for which the applicant has a prior conviction or convictions, including whether such a crime involves moral turpitude;

(2) the extent to which acting as a registered builder might offer the applicant an opportunity to engage in further criminal activity of a same or similar nature as that for which the applicant has a prior conviction;

(3) the extent and nature of the applicant's past criminal activity;

(4) the age of the applicant when any criminal activity discovered occurred;

(5) the remoteness in time between the submission of the application and the date of the applicant's last criminal conviction;

(6) the applicant's overall work history in relation to the dates of any criminal convictions;

(7) evidence of the applicant's successful rehabilitation efforts while incarcerated or after release, including but not limited to, restitution to the victim, completion of probationary requirements and completion of community service; and

(8) other evidence of the applicant's eligibility to serve as a registered builder, as requested by the commission.

(c) An applicant must respond to a commission request for further information in reviewing the application in order to complete the application process.

§303.7. Designated Agents.

(a) To be eligible to receive a certificate of registration under this subchapter all applicants must designate an individual as an agent. Each designated agent must adhere to the same registration requirements and meet the same eligibility requirements as any person applying for builder registration under this subchapter.

(b) A corporation must designate one or more of its officers as the designated agent(s).

(c) A limited liability company must designate one or more of its managers as the designated agent(s).

(d) A partnership, limited partnership or limited liability partnership must designate one of its managing partners as the designated agent or, if there are no individuals serving as a managing partner, a partnership, limited partnership or limited liability partnership must designate an individual officer among its managing partners as the designated agent.

(e) A corporation, limited liability company, partnership, limited partnership or limited liability partnership is not eligible for registration as a builder and may not act as a builder unless the entity's designated agent is individually eligible for registration as a builder.

§303.9. Eligibility Requirements.

At the time the application for registration is filed with the commission, an applicant must be at least 18 years of age and a citizen of the United States or a lawfully admitted alien and must demonstrate to the satisfaction of the commission that the applicant is honest, trustworthy and has integrity.

§303.11. Information Regarding Past Criminal History.

(a) The applicant must disclose on the application for registration:

(1) whether the applicant has entered a plea of guilty or nolo contendere (no contest) to any felony charge or to a misdemeanor charge for a crime involving moral turpitude; or

(2) whether the applicant has been convicted of any felony charge or of a misdemeanor charge for a crime involving moral turpitude and that the time for appeal of the conviction has elapsed or that the conviction was affirmed on appeal.

(b) The commission will conduct a criminal background check of each applicant and may conduct a criminal background check on any other person responsible for the registration if the commission determines it necessary to further the purposes of the Act.

(c) Any information obtained from an applicant as a result of the criminal background check that is not a public record at the time the commission obtains the information is deemed confidential. The commission may not release or otherwise disclose the confidential information except pursuant to a court order, subpoena or with the written consent of the applicant.

(d) For purposes of this section, an applicant who has received a deferred adjudication for any felony charge or for a misdemeanor charge for a crime involving moral turpitude shall disclose that charge on the application for registration.

§303.13. Designated Address.

(a) Each builder shall designate in the application for registration a fixed physical address located in this state to serve as its principal place of business.

(b) Each designated agent shall provide in the application for registration a fixed physical address in Texas.

(c) Each builder shall submit a commission-prescribed change of information form and the required fee not later than thirty (30) days from the date the builder moves from the address designated on its certificate of registration.

(d) Each designated agent shall submit a commission-prescribed change of information form and the required fee not later than thirty (30) days from the date the designated agent moves from the address provided on its application.

§303.15. Change of Registered Name.

(a) Within forty-five (45) days from the date a builder commences operation under a name different from the builder name designated on its current certificate of registration, the registered builder shall submit written notice to the commission of the new entity name under which it is operating.

(b) A change in the name of the registered builder resulting from a change in the form of business organization for that builder requires the submission of a new application for a certificate of registration.

§303.17. Material Change in Information.

Except as otherwise expressly provided in this subchapter, each builder and designated agent shall report to the commission in writing using a commission-prescribed form any material change in the information provided to the commission in the application for certificate of registration within thirty (30) days of the change.

§303.19. Renewal.

(a) After March 1, 2004, a person operating as a builder in this state must keep a current certificate of registration and must renew its certificate of registration prior to the expiration of the effective period shown on the certificate of registration. A builder who fails to maintain a current certificate of registration may be subject to an administrative penalty as determined by the commission.

(b) In order to renew a certificate of registration, a builder shall submit a completed application for renewal of a certificate of registration and the required fee to the commission not later than thirty (30) days prior to the expiration of the effective period shown on the current certificate of registration.

§303.21. Denial of Registration.

(a) If the commission denies a certificate of registration, the commission shall provide written notice to the applicant not later than the 15th day after the date the commission receives the completed application for registration and the required fee.

(b) The commission shall state the reason(s) for denial of a certificate of registration in its written notice to the applicant and provide notice of the opportunity for appeal.

§303.23. Appeal from Denial.

(a) An applicant may file a written request for a hearing to appeal the denial of its certificate of registration not later than thirty (30) days from the date of receipt of the denial notification.

(b) A hearing for an appeal under this subsection will be conducted in accordance with the Administrative Procedures Act, Government Code, Chapter 2001 and procedures adopted by the 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 May 21, 2004.

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Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 10, 2004
Proposal publication date: January 9, 2004
For further information, please call: (512) 475-0595

SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §§303.100, 303.110, 303.120, 303.130, 303.140, 303.150, 303.160, 303.170

The Texas Residential Construction Commission (the "commission") adopts new rules at Title 10, Part 7, Chapter 303, Subchapter B, §§303.100, 303.110, 303.120, 303.130, 303.140, 303.150, 303.160 and 303.170, regarding the registration of a homes in the State of Texas as provided for in Title 16, Property Code. The new rules are adopted with changes to the proposed text as published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 274). The new rules are adopted to implement provisions of House Bill 730 (Act effective September 1, 2003, 78th Legislature, Regular Session, Chapter 458, §1.01) and specifically provisions of Chapter 426, Property Code, which provides, in part, that builders must register a new home with the commission or register an existing home if the builder's work constitutes a material improvement to the home or is an interior renovation with a cost in excess of $20,000, and generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, House Bill 730 (Act effective September 1, 2003, 78th Legislature, Regular Session, Chapter 458, §1.01).

At the Open Meeting on December 18, 2004, the commission adopted emergency rules relating to the registration of homes and approved the publication of the proposed rules for the January 9, 2004, issue of the *Texas Register*. The new rules are adopted to implement provisions of House Bill 730 (Act effective September 1, 2003, 78th Legislature, Regular Session, Chapter 458, §1.01) and, more specifically, provisions of Chapter 426 of the Property Code.

The rules were published for comment in the January 9, 2004, issue of the *Texas Register* (29 TexReg 274).

Written comments were due February 9, 2004. Tom Lammers of Houston Structural, Inc. ("HSI") and Jay Dyer of the Texas Association of Builders ("TAB") submitted written comments for the commission's consideration during the comment period. No party requested a hearing pursuant to the Administrative Procedure Act, Government Code §2001.029.

In a letter dated January 28, 2004, Mr. Lammers commented that §303.100(b) should be revised to replace the word "earlier" with "later" as it relates to the time period when a builder must register a new home for a transaction governed by the Act for which there is no transfer of title. Mr. Lammers's concern was due to instances in which a homeowner and builder enter into

an agreement months before the actual work on the home commences. Although circumstances as described by Mr. Lammers do exist, the rule tracks the language of §426.003 of the Act. Since the plain wording of the statute connotes the Legislature's intention that home registration occur sooner, rather than later, the commission declines to accept the suggested change. However, the commission has made revisions to clarify that the time period is to be calculated from the date on which the parties enter an agreement that is not subject to any contingency. Such revisions are in §303.100(c) and §303.110(b).

In a letter dated February 5, 2004, TAB submitted a number of proposed changes to the proposed text in its written comments. TAB suggested that a new subsection be added to §303.100 to provide a time period for builders to register a new home when there is to be no transfer of title. The commission agrees the proposed rule text did not fully address the circumstance described by TAB. Accordingly, the commission added a new subsection, §303.100(c), to ensure that the registration requirement encompasses new home construction governed by the Act regardless of whether there is a transfer of title.

TAB suggested that the phrase "governed by this Act" be deleted from §303.100(a) because the phrase is unnecessary due to the two defined terms contained within the rule. The commission has defined the term "transaction governed by the Act" in its rule on definitions and believes that its use in this section adds clarity to the rule. Therefore, while the rule text has been revised to enhance readability, the term has been retained in §303.100(a). TAB's comment also suggested that the term "enter" in §303.100(b) be replaced with "execute" to indicate the signing of an agreement for construction. The commission notes that the term "enter" is statutory and, perhaps, was utilized by the Legislature to connote that an agreement could be oral or be written but unsigned. Therefore, the commission has retained the term as used in the statute. TAB also commented regarding this subsection that language should be added to state that the builder's obligation for home registration only applies to construction projects in which the agreement is entered into or the construction work is commenced after January 1, 2004. As a result of other changes in the proposed rule text and to signal to builders that the obligation to register home construction projects began on January 1, 2004, the language suggested by TAB has been included in the rule text. TAB further commented that a new subsection (d) should be added to state that builders have no obligation to register homes for which construction described by a transaction governed by the Act commenced before January 1, 2004. The commission believes that the rule language as modified has clarified that the builder's obligation to register homes began on January 1, 2004 and the suggested new subsection would be superfluous.

TAB commented that the phrase "for consideration" in §303.120(b) should be replaced with "when the cost of the work." Although, the commission chose the term "consideration" to reflect the required element for a contractual agreement between a builder and homeowner and to embrace forms of compensation other than cash, the commission has revised the definition of "improvement to the interior of an existing home when the cost of the work exceeds $20,000" to make clear that compensation in any form is relevant to determining the cost of the work. However, due to other modifications in §303.120, the comment is no longer relevant to the rule text.

TAB commented that §303.150(b) should be revised to add the word "home" and delete the word "registration." The commission has revised the proposed text of this subsection and believes that the revisions encompass this TAB comment.

In addition to written public comments received concerning the home registration rules during the public comment period, the commission held informal public meetings around the state between January and March of 2004 and gathered comments on a variety of issues pending before the commission, including rule comments. During those informal meetings, Becky Oliver, Greater San Antonio Builders Association, commented that in instances of new home construction on property not owned by the builder §303.110(b) should be revised to read "fifteen days from the signing of the mechanic's lien contract" instead of "not later than the fifteenth day after the date that the builder and the homeowner enter into an agreement." Mr. Buford Chapman, a building official for the City of Lufkin, made a similar comment regarding the withdrawal of home registration for agreements that fall through. As mentioned in the above response to TAB's comments, the commission agrees that clarification is needed in this subsection and has added language to make clear that the trigger date for registration is the date upon which the parties enter into an agreement that is not subject to a contingency, such as the approval of financing. These comments on the failure of projects to commence as a result of financing issues also prompted numerous comments on the question of procedures for home registration withdrawal that was provided for in the proposed rule text under §303.110(c). One such comment was received from Mr. Harris Connell, a homebuilder in San Antonio.

An additional comment regarding §303.110 was received from Mr. Lawrence Cronk of Sugar Land. Mr. Cronk commented that determining when to register a home for projects with multiple agreements with consideration that totals $20,000 in a twelve-month period may be difficult, for example, if one project under $20,000 commenced in January and second project commenced in June. As a result of that comment and others with a similar focus, the commission has replaced the language of §303.110(c) to reflect Mr. Cronk's comment. The commission will propose a new §303.115 regarding withdrawal as proposed in §303.110(c) to address Mr. Connell's comment.

All comments regarding these rules, including any not specifically referenced herein, were fully considered by the commission. As a result of those comments and the commission's desire to improve the clarity of its intent and the readability of the rules, the commission has made other modifications to the proposed rule text.

The statutory provisions affected by the adoption of these rules are those set forth in Property Code Chapters 27, 408, 426 and House Bill 730, 78th Legislature, Regular Session.

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

§303.100. New Home Registration.

(a) On or after January 1, 2004, a builder shall register with the commission all new home construction resulting from a transaction governed by the Act.

(b) For new home construction involving a title transfer from the builder to the initial homeowner, the builder shall submit a home registration form and the appropriate fee to the commission on or before the 15th day of the month that follows the month in which the title transfer takes place.

(c) For new home construction that does not involve a title transfer from the builder to the initial homeowner, a builder shall register a home by submitting a home registration form and the appropriate

fee to the commission not later than the 15th day after the date that the builder enters into a transaction governed by the Act that is not subject to any contingency or the date of commencement of the work on the home, whichever date is earlier.

§303.110. Registration of Existing Homes by a Builder.

(a) On or after January 1, 2004, a builder who enters into a transaction governed by the Act for an existing home shall register the home with the commission.

(b) A builder shall register a home under this subsection by submitting a home registration form and the appropriate fee to the commission not later than the 15th day after the date that the builder enters into a transaction governed by the Act that is not subject to a contingency or the date of commencement of the work on the home, whichever date is earlier.

(c) A builder shall not intentionally divide an agreement to improve the interior of an existing home into more than one agreement each with consideration of less than $20,000 for the purpose of avoiding the requirements of this subchapter.

§303.120. Registration for Purposes of the State-sponsored Inspection and Dispute Resolution Process.

A person who files a request with the commission to initiate the state-sponsored inspection and dispute resolution process for an alleged construction defect(s) resulting from a transaction governed by the Act, must register the home with the commission at the time of filing the request if the home has not been registered previously with the commission.

§303.130. Homes Not Eligible for Registration.

The commission shall not register a home under this subchapter if:

(1) the home was built by the homeowner acting in the capacity of a builder with or without the assistance of the homeowner's hired employees or independent contractors; and

(2) the home has been used or will be used by the homeowner as the homeowner's primary residence for at least one year after completion or substantial completion of construction of the home.

§303.140. Home Registration Process.

(a) A person registering a home under this subchapter shall use a commission-prescribed home registration form.

(b) A completed home registration form must be submitted to the commission with the appropriate fee by first class mail, personal delivery or, if provided by the commission, an electronic method of submission.

§303.150. Fees.

(a) Home registration fees shall be made payable to the Texas Residential Construction Commission via check, money order, credit card or other payment method acceptable to the commission.

(b) A builder who fails to register a new or an existing home with the commission pursuant to the requirements of this subchapter may register the home not later than sixty (60) days after the required registration period has expired by submitting the home registration form with payment of the home registration fee and a late home registration penalty in an amount set by the commission.

(c) A builder who has been granted tax-exempt status by the Internal Revenue Service under the Internal Revenue Code §501(c)(3) may request a waiver of a home registration fee by submitting a commission-prescribed fee waiver form and documentation verifying the builder's Internal Revenue Code §501(c)(3) tax-exempt status.

§303.160. Public Information.

(a) Within thirty (30) days of the receipt of a completed home registration form, the commission shall provide to the homeowner of the registered home the following:

(1) information regarding the functions of the commission;

(2) information on the limited statutory warranty and building and performance standards adopted by the commission;

(3) a description of the state-sponsored inspection and dispute resolution process;

(4) a description of the commission complaint resolution procedures; and

(5) other information as determined by the commission.

(b) The commission shall notify a builder in writing that a home has been registered under the builder's name.

§303.170. Administrative Penalties.

The commission may assess an administrative penalty and/or take other disciplinary action within its authority against a builder:

(1) who fails to register a home with the commission pursuant to the requirements of this subchapter;

(2) who fails to pay a late home registration penalty required under this subchapter;

(3) who registers a home more than sixty (60) days after the expiration of the registration period required under this subchapter; or

(4) who is found to have intentionally divided an agreement to improve the interior of an existing home into more than one agreement, each with consideration of less than $20,000, for the purpose of avoiding the requirements of this subchapter.

This agency 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 May 21, 2004.

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Texas Residential Construction Commission
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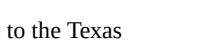

CHAPTER 318. RESIDENTIAL CONSTRUCTION ARBITRATION

SUBCHAPTER A. ARBITRATIONS BETWEEN HOMEOWNERS AND BUILDERS

10 TAC §§318.1 - 318.3

The Texas Residential Construction Commission (the "commission") adopts new rules at Title 10, Part 7, Chapter 318, Subchapter A, §§318.1 - 318.3, relating to Arbitrations between Homeowners and Builders. Section 318.1 and §318.2 are adopted without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register*(29 TexReg

2165). Section 318.3 is adopted with changes to the proposed text as published as set forth below.

Section 318.1 states the purpose and scope of the rule. Section 318.2 defines the terms arbitration and arbitrator. Section 318.3 states the instances in which arbitration awards related to residential construction must be filed with the commission and the instances in which the filing is voluntary.

The commission received written comments from the Texas Association of Builders ("TAB") and from an unidentified member of the public regarding the new sections. TAB commented that the term "arbitration" in §318.2 should be defined instead of cross-referenced to §154.027, Civil Practices and Remedies Code. An unidentified member of the public commented that the Act and §318.1 both state that they supplement the requirements of Chapter 171 of the Civil Practices and Remedies Code with regard to a court's jurisdiction over an arbitration award, but that the court's authority is only over binding arbitration awards and the proposed definition of arbitration by referring to §154.027 of the Civil Practices and Remedies Code refers to both non-binding and binding arbitration agreements. The proposed text restates the language of the Act verbatim. The definition proposed by TAB alters the language of the Civil Practices and Remedies Code and does not allow for amendments to the Civil Practices and Remedies Code. The commission declines to adopt the suggested language and instead retains the statutory reference in order to allow for any amendments to the section of the Civil Practices and Remedies Code referenced in the Act.

TAB also commented that §318.3(b)(4) should be revised to replace the term "party" with "arbitration service provider." The commission did not define or use the term arbitration service provider because it is a self-explanatory term. However, the commission did not intend that use of the term "party" in §318.3(b)(4) would be interpreted as a reference to a "party" to the arbitration process, but rather to a third-party; therefore, it has replaced "party" with "third-party." TAB further suggested that if the term "arbitration service provider" was used, then it should be defined in §318.2. As a result of the commission's response to the previous comment, no definition has been added. TAB further suggested that §318.3(b)(7) should be revised to require that the amount of the arbitrator's monetary award be included in the award summary, if any. The commission agrees that the award amount is a necessary item and has modified the rule to reflect the change. Finally, TAB requested that "an amount not to exceed $100" be set forth as the late penalty for failure to file an arbitration award. The commission has adopted penalty fees for various late filings and has made the amount of those fees publicly available. Moreover, the commission has adopted a rule that provides it with the flexibility to review fees and revise them as necessary at least annually. Therefore, to avoid repeated amendments to this subsection, the commission declines to modify the rule as suggested.

Members of the State Bar of Texas Alternative Dispute Resolution Section commented that the requirement to file an award summary within thirty days of the date that the award is made, if the award is filed in a court of competent jurisdiction, creates a dilemma. Most arbitration awards are not filed with the court before thirty days have elapsed from the date of award in order to give the parties time to comply with the arbitrator's decision. However, the time frame for filing the award summary is statutory; therefore, the commission is not able to modify the language to accommodate the issue raised.

All comments regarding these rules, including any not specifically referenced herein, were fully considered by the commission. As a result of those comments and the commission's desire to improve the clarity of its intent and the readability of the rules, the commission has made other modifications to the proposed rule text.

The new sections are adopted to implement new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective September 1, 2003, 78th Legislature, Regular Session, Chapter 458, §1.01), including Title 16, Property Code. Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. Section 430.001 requires that certain persons file arbitration awards relating to residential construction with the commission.

The statutory provisions affected by the proposal are those set forth in Title 16, Property Code Chapters 408 and 430 and House Bill 730, 78th Legislature, Regular Session, Chapter 458, §1.01.

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

§318.3. Filing of Arbitration Awards.

(a) Mandatory. If an arbitration award to which this subchapter applies is filed in a court of competent jurisdiction in this state, the filer shall also file a summary of the arbitration award with the commission not later than the thirtieth day after the date of the arbitrator's award.

(b) The arbitration award summary shall include:

(1) the names of the parties to the dispute;

(2) the name of each party's attorney, if any;

(3) the name of the arbitrator(s) who conducted the arbitration;

(4) the name of the third-party who administered the arbitration, if any;

(5) the total fee charged to the parties to conduct the arbitration;

(6) a general statement of each issue in dispute;

(7) the arbitrator's determination, including the party that prevailed on each issue in dispute;

(8) the amount of the award; and

(9) the date of the arbitrator's award.

(c) Any agreement to prohibit the disclosure of the information listed in subsection (b) of this section is unenforceable.

(d) If a person is required to file an award under this section and fails to do so in the time period required by subsection (a) of this section, that person shall pay a late fee as established by the commission.

(e) A party to an arbitration or an attorney for a party may report to the commission the failure to file an award by the person responsible for filing under subsection (a) of this section.

(f) Voluntary filing. Any party to an arbitration award covered by this section may voluntarily file the information contained in subsection (b) of this section.

(g) This section applies only to an arbitration that is initiated on or after January 1, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200403483
Susan Durso
General Counsel
Texas Residential Construction Commission
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Proposal publication date: March 5, 2004
For further information, please call: (512) 475-0595

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.14

The Texas Historical Commission (THC) adopts a new §26.14 of Chapter 26 (Title 13, Part 2 of the Texas Administrative Code) relating to a Memorandum of Understanding with Texas Department of Transportation with changes to the text as published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1782).

The changes to the text involved additions in the areas concerning definitions and administrative procedures and a correction to the numbering of §26.27(g)(1). These changes also help clarify responsibilities and protocols between the two agencies that are called for under the MOU.

No public comments were received regarding adoption of this new MOU, but the staffs of both the THC and Department of Transportation determined that the changes referenced above were warranted.

This new MOU is adopted under §442.005(q), Title 4 of the Texas Government Code, and §191.052, Title 9 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter. No other statutes, articles, or codes are affected by these amendments.

These adopted new rules implement §442.005(b) and (e) of the Texas Government Code and §191.051 of the Texas Natural Resources Code.

§26.14. Memorandum of Understanding with Texas Department of Transportation.

(a) Purpose.

(1) It is the policy of the both the Texas Historical Commission and the Texas Department of Transportation (TxDOT) to:

(A) identify the environmental impacts of TxDOT transportation projects, to coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordination in the environmental documentation for each project;

(B) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;

(C) receive input from the public through the public involvement process;

(D) utilize a systematic interdisciplinary approach as an essential part of the development process for transportation projects; and

(E) strive for environmentally sound transportation activities through appropriate avoidance, treatment or mitigation, where feasible and prudent, in coordination with appropriate resource agencies.

(2) In order to pursue this policy, the Texas Department of Transportation and the Texas Historical Commission (THC) have agreed to adopt this new Memorandum of Understanding (MOU), which will supercede the MOU, which became effective on December 13, 1998.

(3) This MOU is entered into by THC and TxDOT pursuant to the Government Code, Sections 442.005 and 442.007, Natural Resources Code, Section 191.0525(f), and Transportation Code, Section 201.607 to adequately provide for coordination of projects with THC. It is the intent of this MOU to provide a formal mechanism for THC review of TxDOT projects that have the potential to adversely affect cultural resources in order to assist TxDOT in making environmentally sound decisions, and to develop with TxDOT a system by which information developed by TxDOT and THC may be exchanged to their mutual benefit. This MOU also provides for an efficient and streamlined review of TxDOT projects in keeping with state and national initiatives for environmental streamlining.

(b) Authority.

(1) Texas Transportation Code, Section 201.607, directs TxDOT to adopt MOUs with appropriate environmental resource agencies, including THC. The rules for coordination of state-assisted transportation projects found in 43 TAC Subchapter 2, Sections 2.40-2.51 of the Transportation Code (relating to Environmental Review and Public Involvement for Transportation Projects), underline the need for and importance of comprehensive environmental coordination for transportation projects.

(2) The Texas Transportation Code, Section 201.607(a)(5) also authorizes and contemplates other agreements necessary for the effective coordination of the review of the historic or archeological effect of highway projects.

(3) Provisions of this MOU may in part be implemented through a Programmatic Agreement (PA) among the Federal Highway Administration (FHWA), the Texas State Historic Preservation Officer (TSHPO), the Advisory Council on Historic Preservation (Council), and TxDOT. TxDOT and THC will seek to revise the existing PA, executed in 1995, to reflect the streamlined procedures contained in this MOU.

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

(1) Antiquities Code of Texas (ACT)--The state statute (Natural Resources Code, Chapter 191) hat designates the Texas Historical Commission as the legal custodian of all cultural resources, historic or prehistoric, within the public domain of the state, and as the body that issues antiquities permits, in accordance with this Chapter.

(2) Antiquities permit--A permit issued by the Texas Historical Commission in order to regulate the taking, alteration, damage, destruction, salvage, archeological survey, testing, excavation and study of state archeological landmarks including prehistoric and historic archeological sites, and the preservation, protection, stabilization,

conservation, rehabilitation, restoration, reconstruction, or demolition of historic structures and buildings designated as a State Archeological Landmark or listed in the National Register of Historic Places.

(3) Area of potential effects--The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, as defined in 36 CFR Part 800, if any such properties exist.

(A) The area of potential effects for archeological properties on federal undertakings will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations, and project-specific locations designated by TxDOT.

(B) Unless TxDOT and THC in consultation determine a need for a wider area of potential effects, the area of potential effects for other properties on federal undertakings will be:

(i) 300 feet beyond the proposed right of way for projects constructed on new location;

(ii) 150 feet beyond the proposed right of way for projects constructed in existing transportation corridors, including abandoned railroad lines.

(C) The area of potential effects for all non-federal undertakings will be confined to the limits of the proposed project right of way (including permanent and temporary easements), utility relocations, and project-specific locations specifically designated by TxDOT.

(4) Cultural resources--A general term referring to buildings, structures, objects, sites, and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(5) Eligibility--A property's eligibility for the National Register of Historic Places as set forth in 36 CFR Part 60 and 36 CFR Part 800, or for designation as a State Archeological Landmark, as set forth in this Chapter (Sections 26.7-26.10).

(6) Environmental Document: a decision-making document that incorporates environmental studies, coordination, documentation, and consultation efforts, and engineering elements. Documents may include categorical exclusion documentation, environmental assessment, and environmental impact statements.

(7) Historic property--Any prehistoric or historic district, site, building, structure, or object which is included or eligible for inclusion in the National Register of Historic Places, as defined in 36 CFR Part 800 and 36 CFR Part 60, or meets the requirements for designation as a State Archeological Landmark as set forth in this Chapter (Sections 26.7-26.10).

(8) Historic-age property--Any site, building, structure, or object that will be 50 years old or older in age at the time of the award of the construction contract.

(9) Impact Evaluation--Field inspection by a qualified archeologist to determine the extent to which physical conditions affect the eligibility of known or unknown archeological deposits within the area of potential effects of the proposed project.

(10) National Register--The National Register of Historic Places (NRHP), which is the nation's inventory of historic places maintained by the U.S. Secretary of the Interior. (Historic properties included in or eligible for inclusion must meet National Register criteria for evaluation, as defined in 36 CFR Part 60.)

(11) Project specific location--The location of specific material sources (base material, borrow, sand pits, etc.) and other sites used by a construction contractor for a specific project.

(12) Quarterly report--A report that TxDOT submits to THC 20 days after the end of each quarter listing all projects for which TxDOT has documented that no historic properties are present in the project's area of potential effect, and those where the projects will have no adverse effects on historic properties as determined by background research and/or, field investigation and project review, as appropriate, that is used to fulfill TxDOT's reporting requirements under this MOU.

(13) State Archeological Landmark (SAL)--Archeological and historic-age properties that are designated or eligible for designation as landmarks as defined in Subchapter D of the Antiquities Code of Texas (ACT) and identified in accordance with this Chapter.

(14) State Historic Bridge Inventory--An ongoing evaluation effort to determine the eligibility of historic-age bridges in the state.

(d) Responsibilities.

(1) Texas Department of Transportation. The responsibilities of TxDOT pertain primarily to its functions as a transportation agency, and include:

(A) planning and designing safe, efficient, effective, and environmentally sensitive transportation facilities while avoiding, minimizing, or compensating for impacts to cultural resources to the fullest extent practicable;

(B) the timely and efficient construction of transportation facilities, in a manner consistent with approved plans, agreements and commitments that TxDOT has executed regarding the protection of historic properties;

(C) ongoing maintenance to provide safe, efficient, and environmentally sound transportation facilities for the traveling public;

(D) coordinating projects with THC through TxDOT's Environmental Affairs Division or its successor as established by TxDOT administration; and

(E) provide funding to THC to enable THC to implement measures to facilitate early coordination, streamlining and expedited review of TxDOT's transportation projects.

(2) Texas Historical Commission. The responsibilities of THC relate primarily to its functions as a cultural resource agency, and include:

(A) serving as the State Historic Preservation Office in Texas with responsibility under 36 CFR Part 800--the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

(B) reviewing federally assisted, licensed, or permitted undertakings with the potential to affect properties included in or eligible for inclusion in the National Register of Historic Places;

(C) providing assistance to agencies in their efforts to comply with the Section 106 process;

(D) regulating the identification, disposition and management of State Archeological Landmarks which are affected by non-federal undertakings, as described in the ACT and this Chapter (Sections 26.17-26.20);

(E) issuing permits for the taking, excavation, restoration, rehabilitation, or study of State Archeological Landmarks as provided in ACT (Sections 191.054 and 191.091-098); and

(F) applying TxDOT's funding solely to the review of TxDOT's projects in a manner that most efficiently streamlines THC's effective review and early coordination.

(e) Early project planning for cultural resources.

(1) TxDOT and THC agree that routine roadway maintenance projects, by their nature and definition, do not require review by THC under 36 CFR Part 800 or this Chapter. Such projects include, activities (such as vegetation control, traffic control, and routine painting and striping) that do not have the potential to affect State Archeological Landmarks or properties listed or eligible for listing on the National Register. TxDOT and the THC also agree that the following activities do not require review:

(A) installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;

(B) earthmoving projects involving less than 100 cubic yards of excavation below the original grade;

(C) routine structural maintenance and repair of non-historic bridges, highways, railroad crossings, picnic areas and rest areas;

(D) in-kind repair, replacement of non-historic lighting, signals, curb and gutter, sidewalks;

(E) crack seal, overlay, milling, grooving, resurfacing, and restriping;

(F) replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts constructed after the depression-era period (i.e. after 1939); except in association with historic bridges;

(G) intersection improvements that require no additional right of way;

(H) placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;

(I) all maintenance work between a highway and an adjacent frontage road;

(J) installation of noise barriers or alterations to existing publicly owned buildings less than 50 years old, to provide for noise reduction except in potential or listed National Register districts;

(K) driveway and street connections;

(L) all work within interchanges and within medians of divided highways except where graves are present;

(M) all work between the flowlines of the ditches and channels and above the original line and grade;

(N) ditch and channel maintenance provided removal of fill is above the original line and grade;

(O) repairs needed as a result of an event, natural or man-made, which causes damage to a designated state highway, resulting in an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce; or

(P) other kinds of undertakings jointly agreed to in writing by THC and TxDOT.

(2) TxDOT is committed to performing early identification efforts for cultural resources located within the area of potential effects of proposed transportation projects and initiating THC coordination during the early planning stages of these projects, when the widest range of alternatives is open for consideration.

(3) TxDOT is committed to implementing, in appropriate cases and as a part of early project planning and coordination, alternative methods, techniques, and other strategies that are reasonable and feasible and that will enhance efficiency in complying with cultural resource laws. These include, but are not limited to, programmatic approaches to coordination of selected types of cultural resources, evaluation of existing conditions affecting the integrity of cultural resources, geoarcheological research to assist in early planning and to reduce archeological liabilities, development of significant eligibility standards with THC, and development and implementation of alternative mitigation strategies. TxDOT may seek to utilize alternative strategies for procedures set forth in this MOU. Upon the written concurrence of THC, TxDOT may implement the alternative strategy in lieu of the procedures specified in this MOU.

(4) TxDOT is also committed to providing the public and interested parties with opportunities to provide input and express their views concerning potential project impacts to historic properties.

(A) TxDOT will ensure that cultural resource issues are incorporated into its regular public participation programs carried out under the National Environmental Policy Act (42 USC 4321-4347 et seq.), and Sections 2.42-2.43 of the Transportation Code (relating to Highway Construction Projects-Federal Aid, and Highway Construction Projects-State Funds), as far as practicable.

(B) TxDOT will also ensure that federally recognized Indian tribes (as specified in 36 CFR 800) are provided early project information and information on Native American sites that will be affected by TxDOT projects in order to provide comments.

(C) If concerns related to historic and archeological issues arise after the NEPA public involvement process is complete, or if new information about historic or archeological issue is found, TxDOT and THC shall independently re-evaluate their findings

(5) Cultural resource investigations by consultants.

(A) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards of this Chapter (Section 26.5), and as required by 36 CFR Part 800.

(B) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC through TxDOT's Environmental Affairs Division or its successor as established by TxDOT administration.

(f) Procedures for coordination regarding archeological resources. Provided the work is completed in accord with the provisions of this MOU, survey and eligibility testing of archeological resources performed by the archeological staff of TxDOT's Environmental Affairs Division is authorized under this MOU and will not be considered an operation that might require an antiquities permit under ACT, Sections 191.054 or 191.131. All other archeological investigations shall require an antiquities permit.

(1) Identification.

(A) TxDOT will undertake sufficient background research to determine which proposed projects require archeological surveys. Background research may include a search of records and files at THC and/or the Texas Archeological Research Laboratory

(TARL), gathering information on soils, a geomorphic history of the projects, Texas Historic Sites Atlas, and impact evaluations.

(B) Based on the results of background research, TxDOT will identify projects requiring archeological investigation for archeological resources.

(C) TxDOT will prepare a list of projects which do not require individual coordination for archeological sites, and will provide THC with a list of such projects, including those where impact evaluations were performed, on a quarterly basis or upon request by THC.

(D) Eligibility determinations that TxDOT performs under this MOU may not require field investigations if sufficient background information exists to demonstrate that the portion of the site to be affected does not have potential research value.

(E) Eligibility determinations that TxDOT performed under this MOU may be based on impact evaluations if it can be demonstrated that the portion of the site to be affected does not have sufficient integrity to be eligible.

(2) Archeological surveys.

(A) All projects, and portions of projects, recommended for survey by TxDOT during background research will be subjected to archeological survey using the methods in conformance with 36 CFR Part 800 and THC's Archeological Survey Standards, or with other appropriate methods. TxDOT reserves the right to depart from published survey standards in cases where it deems appropriate. THC reserves the right to review non-standard procedures for their adequacy.

(B) An archeological survey will be conducted by a TxDOT professional archeological staff member or other archeologist who meets the state and federal standards. Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these are sufficient to determine that any sites present are unlikely to be eligible.

(C) When the archeological survey has been completed, TxDOT will submit the results of the survey to THC:

(i) as part of a quarterly list of investigations where no sites were found, where sites were found but were not recommended for further work, or upon request by THC; or

(ii) as an individual report when sites are present and recommended for further work; or

(iii) as an individual report when no further work is recommended, but THC comment is a desirable element of TxDOT's NEPA compliance.

(D) All TxDOT survey reports will include:

(i) details of the results of the survey, including project description, anticipated project impact, and existing disturbance in the project area;

(ii) environmental data on topography, soils, land use, survey methodology, survey results, and recommendations;

(iii) the project location plotted on 7.5' Series USGS quadrangle maps;

(iv) descriptions of any sites found;

(v) submission of electronic and paper copies of archeological site survey forms to TARL; and

(vi) recommendations regarding whether the site(s) merit archeological testing or archeological monitoring.

(E) THC will respond within 20 days of receipt of the TxDOT request for review of any survey results and recommendations. The response will include:

(i) a statement of concurrence or non-concurrence with the results of the survey and its recommendations; and

(ii) any other comments relevant to the archeological resources which could be affected by the project.

(F) TxDOT will summarize the results of the archeological survey and recommendations in the environmental document for the project, to the extent completed to date.

(3) Archeological eligibility testing phase.

(A) All sites and portions of sites recommended for eligibility testing by THC will be subject to archeological testing, using the methods agreed upon in writing by TxDOT and THC.

(B) THC may send a representative to observe any or all of the testing procedures.

(C) At the completion of testing, TxDOT will prepare a formal report of the results of testing.

(i) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 CFR Part 60 and 36 CFR Part 800.

(ii) For sites affected by non-federal undertakings, the report will include recommendations regarding the eligibility of the site for designation as a State Archeological Landmark, in accordance with ACT, Sections 191.091-092, and this Chapter (Section 26.8).

(iii) TxDOT may submit interim reports on testing to expedite project review, provided such reports contain sufficient information on which to base recommendations of eligibility and, if relevant, additional work. Interim reports shall not be substituted for final report.

(D) TxDOT will send the testing report to THC with a request for review.

(E) In accordance with 36 CFR Part 800, THC will respond to the report within 20 days of receipt of TxDOT's request for review and in accordance with 36 CFR Part 800. The response will include:

(i) a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review; and

(ii) a determination of the site's eligibility for listing in the National Register of Historic Places, or for designation as a State Archeological Landmark, and

(iii) if THC does not respond within 20 days, TxDOT will assume that the THC concurs with TxDOT's determination regarding a site's eligibility and will proceed with the project in accordance with the procedures required within this MOU.

(F) When appropriate, TxDOT will work with THC to develop public educational outreach projects associated with significant test level investigations.

(4) Archeological excavation/data recovery.

(A) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or eligible for designation as a State Archeological Landmark (for non-federal undertakings) based on consultation with THC, will be subjected to data recovery in conformance with a data recovery plan that has the concurrence of THC

when avoidance is not feasible and provided that they are not eligible for preservation in place.

(B) TxDOT, in consultation with THC, will develop a data recovery plan for each eligible site on a case-by-case basis, in accordance with 36 CFR Part 800 for federal undertakings and ACT for non-federal undertakings. Final data recovery plans must be approved by THC prior to their implementation.

(C) Results of data recovery will be published as required by 36 CFR Part 800 and/or ACT. To expedite transportation project planning, design, and construction, interim reports on data recovery may be used for consultation to determine whether field work commitments have been fulfilled. Interim reports shall not be substituted for final reports.

(D) All data recovery will be performed under an antiquities permit.

(E) When appropriate, TxDOT and THC may agree to substitute alternative mitigation in lieu of data recovery.

(F) When appropriate, TxDOT will work with THC to develop public educational outreach projects associated with significant data recovery investigations.

(G) THC will respond to the report within 20 days of receipt of TxDOT's request for review and comment on whether field work commitments have been fulfilled. TxDOT shall take THC comments into account prior to proceeding with the project. If THC does not respond within 20 days, TxDOT will assume that THC concurs that the field work commitments have been fulfilled.

(5) Archeological sites found after award of contract.

(A) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction or any other activities that would affect the site.

(B) TxDOT will inform THC and, if appropriate, federally recognized tribes, of discovery of previously unknown archeological remains and invite them to accompany TxDOT staff (or consultants) to the location within 48 hours of the discovery.

(C) TxDOT will evaluate the need, if any, for further investigations upon visiting the location of the discovery.

(D) If TxDOT determines that the discovery is an unrecorded archeological site, then TxDOT shall complete a State of Texas Archeological Site Data Form.

(E) If TxDOT determines that the site does not warrant further investigations, will write to THC and, if appropriate, federally recognized tribes outlining reasons and requesting their concurrence within one business day of the visit to the discovery location. The THC and, if appropriate, federally recognized tribes will have two business days to respond. No response will be deemed to represent concurrence and construction will resume.

(F) If TxDOT determines that the site warrants further investigation, a scope of work for investigations will be developed within 24 hours of the visit to the site. The scope of work will be submitted to THC and appropriate federally recognized tribes who will have one business day to review and comment on the scope of work. No response will be deemed to represent concurrence and the scope shall be implemented. If comments are received, TxDOT and, if appropriate, FHWA shall take into account those comments and carry out the final scope of work. Upon completion of the approved work, construction may proceed as planned. A report of the investigations will be completed within the timeframe established by the scope of work and copies provided to all consulting parties.

(G) The procedures in this subsection shall be used to satisfy the permit requirements of this Chapter, for emergency permitting under Section 26.20(13) when conditions of natural or man-made disasters necessitate immediate action.

(6) Artifact recovery and curation.

(A) Artifact recovery.

(i) The type and quantity of artifacts to be recovered during testing and data recovery will be detailed in the scope of work and will be selected to address the research questions.

(ii) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation unless the artifacts or samples are approved by THC for discard under this Chapter (Section 26.27).

(iii) To ensure proper care and curation, recovery methods must conform to 36 CFR Part 800, and this Chapter (Section 26.27).

(B) Artifact curation.

(i) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, artifacts and accompanying documentation must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(ii) Artifacts and samples will be placed at an appropriate artifact curatorial repository which fulfills 36 CFR Part 79, or the ACT, as approved by THC. When appropriate, TxDOT will consult with THC to identify for disposal collections or portions of collections that do not have identifiable value for future research or public interpretation. Final approval regarding the disposition of collections will be made by THC.

(iii) TxDOT is responsible for the curatorial preparation of all artifacts to be submitted for curation so that they are acceptable to the receiving curatorial repository and fulfill 36 CFR Part 79 and this Chapter (Section 26.27), as approved by THC.

(g) Early project development procedures for coordination regarding non archeological historic properties. For purposes of this subsection and subsections (h), (i) and (j) of this section, the term historic properties will refer only to non-archeological historic properties.

(1) TxDOT and THC agree (for federal and non-federal projects) that certain types of undertakings do not require individual coordination. These undertakings are projects where no historic properties are present, or where the undertakings will have a minimal potential to affect historic properties if such are present in the area of potential effects. TxDOT will document these undertakings and include them in a quarterly report to THC unless they are the subject of individual coordination with THC. Examples of such undertakings include:

(A) construction of bicycle and pedestrian lanes, paths and facilities if not located in a listed or eligible National Register historic district;

(B) road widening within existing or minimal new right of way if not located in a listed or eligible National Register historic district;

(C) correction of roadway geometric and intersections within existing or minimal new right of way;

(D) bridge deck rehabilitation and stabilization; and

(E) other classes of undertakings jointly agreed to in writing by THC and TxDOT.

(2) Early in the project development process, TxDOT will determine whether federally assisted, licensed, or permitted transportation projects (federal projects) constitute undertakings with the potential to affect historic properties. In consultation with THC, it has been determined that individual coordination with THC is not necessary for projects where background research indicates that no historic properties are present or where they are present but the project will not have the potential to affect them. TxDOT will maintain documentation of efforts taken to reach this conclusion, and will include these projects in the quarterly report, or provide documentation upon request by THC.

(3) Early in the project development process, TxDOT will review its non-federal transportation improvements occurring on any lands of the State of Texas (non-federal projects) to determine whether they have the potential to affect historic properties under the terms of ACT and this Chapter. Effects include the removal, alteration, or renovation of one or more contributing elements to a historic property. TxDOT and THC agree that individual coordination with THC is not necessary when no historic properties are present or when the project does not have the potential to adversely affect historic properties, provided TxDOT has complied with the provisions of this MOU. TxDOT will maintain documentation of efforts taken to reach this conclusion, and will include these projects in the quarterly report or provide documentation upon request by THC.

(4) If TxDOT determines that a project has the potential to affect a historic property, TxDOT will then individually coordinate the project with THC, in accordance with the provisions provided in this MOU.

(h) Identification and evaluation of historic properties.

(1) For non-federal and federal projects requiring individual THC coordination, TxDOT will identify historic properties within the project's area of potential effects. TxDOT will conduct a search of available records, including listings of the Texas Historic Sites Atlas, Recorded Texas Historic Landmarks, State Archeological Landmarks, and properties listed in the National Register. THC will render all reasonable assistance to TxDOT in performing record searches on historic properties.

(2) TxDOT will conduct field surveys for all projects that may have historic-age properties within their area of potential effects. These surveys will be conducted in order to determine if historic properties are present.

(3) If the identification efforts reveal historic-age properties, TxDOT will evaluate the eligibility of each property to determine if the property:

(A) qualifies as a SAL as defined by ACT (Section 191.092) for non-federal projects; or

(B) is eligible for inclusion or listed in the National Register, for federal projects.

(4) If a non-federal or federal project has the potential to affect a historic-age bridge-class structure the following procedures apply unless the structure is of a categorically excluded type as defined by SHBI criteria. Categorically excluded structures are generally not eligible bridges that have been widened, non-depression era simple span concrete box culverts and timber stringer bridges. There are exceptions to these exclusions and other categorically excluded structures may be added by written agreement between TxDOT and THC in the future.

(A) If a non-federal or federal project has the potential to affect a historic-age bridge-class structure that has not been included in the SHBI, as formally accepted by THC, TxDOT will assess the eligibility of the structure in consultation with THC.

(B) If a historic-age bridge-class structure has been determined not eligible, either under the SHBI or in individual consultation with THC, TxDOT will coordinate with appropriate local entities to determine if the structure has local interest or significance.

(i) If no local interest or significance is identified, TxDOT will add the project to the quarterly report.

(ii) If TxDOT or THC identifies local interest or significance in a structure, TxDOT will re-assess the eligibility with THC. If TxDOT and THC concur that the bridge-class structure is still not eligible, TxDOT will document the project in the quarterly report.

(C) If a historic-age bridge-class structure has been determined eligible, either under the SHBI or in individual consultation with THC, TxDOT shall follow the procedures outlined in subsection (i) below, regarding assessing and mitigating effects on historic properties.

(D) If TxDOT has reason to believe that a bridge-class structure is no longer eligible, TxDOT will consult with THC to re-assess the eligibility.

(E) If TxDOT and THC concur that the bridge-class structure is no longer eligible, TxDOT will document the project in the quarterly report.

(i) Assessing and mitigating effects on historic properties. TxDOT will assess the effects of projects on properties that qualify as SALs for non-federal projects and on properties determined to be listed or eligible for inclusion in the National Register for federal projects. TxDOT will then consult with THC using the following procedures.

(1) For a non-federal project, TxDOT will consult with THC to determine if a historic structures permit is required for any proposed removals, alterations, or renovations to SALs or to properties for which THC will initiate an SAL nomination in accordance with this Chapter (Section 26.12) and ACT (Section 191.098).

(2) For a federal project, TxDOT will apply the criteria of effect and in cases of a determination of adverse effects, will consult with THC in accordance with the provisions set forth in 36 CFR Part 800.

(3) For a project involving a bridge-class structure that TxDOT and THC concur is eligible, TxDOT shall evaluate the preservation options in the following order of preference: full vehicular use; reduced level of vehicular use, non-vehicular use at original site; relocation for vehicular use; relocation for non-vehicular use; or demolition. TxDOT will document the evaluation of each preservation option including identification of the preferred option with supportive reasoning, and will submit the documentation to THC.

(A) When an eligible bridge-class structure will be retained for non-vehicular use at the original site or relocated, TxDOT will provide THC with an agreement signed by the bridge-class structure owner that includes language that ensures maintenance of the bridge-class structure, and provides THC the opportunity to review and concur that current and future proposed work on the bridge-class structure, beyond normal maintenance, complies with the Secretary of the Interior's Standards for Rehabilitation.

(B) Upon receipt of complete documentation THC shall have 20 days to review and comment on the project. TxDOT shall take THC comments into account in making decisions on the project involving the bridge-class structure.

(4) TxDOT will, to the maximum extent practicable, provide an early opportunity for the public and interested parties to receive information and to express their views on projects when a historic property may be negatively affected by a transportation project.

(5) TxDOT will also consult with THC to seek ways to avoid, minimize, or mitigate any negative effects on historic properties caused by federal and non-federal projects in accordance with the following procedures.

(A) Non-federal project. TxDOT shall take THC comments into account when projects will have an adverse effect on historic properties.

(B) Federal project. TxDOT will follow the consultation procedures set out in 36 CFR Part 800.

(j) Project documentation by TxDOT.

(1) THC may audit TxDOT project file for specific undertakings submitted in the quarterly report. Projects involving non-archeological properties that are submitted individually to THC or included in the quarterly report, will be documented by TxDOT and will include:

(A) a project description and scope, including project drawings, photographs, reports and other information where needed to clearly describe the proposed project;

(B) a map showing the location of the project and all historic-age properties within the APE of the project;

(C) a statement of the efforts and methodology used to identify historic-age properties in the project area;

(D) documentation on each identified property, including at least one photograph of the property, the address if known, an architectural description, date of construction (estimated or known), an integrity assessment, and any known local, state or national historical designations;

(E) the results of any coordination with interested parties concerning the eligibility of identified historic-age properties; and

(F) the results of TxDOT's determination of eligibility for each identified historic-age property.

(G) TxDOT's assessment of potential project effects on historic properties, including evaluations, reports and other documentation relevant to the determination of effect.

(2) If the project is submitted to THC for review of non-archeological properties, THC will respond within 20 days of receipt of complete documentation and TxDOT's request for review as follows.

(A) For a non-federal project, THC's response will indicate whether the project will require a historic structures permit for an SAL, whether THC intends to initiate SAL nomination of a property not previously designated as an SAL, or if THC has knowledge that another party intends to initiate SAL nomination in accordance with Section 26.11, 26.12 and 26.22 of this Chapter, and ACT, Section 191.098. If THC does not respond within 20 days, TxDOT will assume that THC concurs with TxDOT's determination regarding historic-age property eligibility or project effects, and TxDOT will proceed with the project in accordance with the procedures required in this MOU.

(B) For a federal project, all coordination with THC will follow the provisions of 36 CFR Part 800 and the PA between TxDOT, FHWA and THC.

(3) Projects involving archeological properties that are submitted individually to THC or included in the quarterly report will be documented by TxDOT in the manner described in this subsection. THC may audit TxDOT project files for specific undertakings submitted in the quarterly report. For archeology, project documentation will consist of a statement for "no survey" or a report of an archeological impact evaluation or an archeological survey report. Each project file at a minimum will include:

(A) a description of the project;

(B) project location map;

(C) information about soils and geology in project location, as appropriate;

(D) information on previously recorded archeological sites in project location;

(E) level of effort for identification of archeological sites; and

(F) results and recommendations.

(k) Environmental document and public involvement. TxDOT will summarize information on its efforts to identify archeological sites and historic properties, to determine the effects of projects on archeological sites and historic properties, and to mitigate any negative effect on these sites or properties in the environmental document, if one is prepared, and will include this information in public involvement activities to the maximum extent practicable.

(l) Denial of access. In cases where access to private land for conducting archeological survey is denied prior to the approval of the environmental document, TxDOT will make a commitment to complete testing, evaluation of site eligibility, or data recovery prior to any construction related impacts.

(m) MOU to govern TxDOT procedures. TxDOT satisfies applicable THC requirements if it utilizes the procedures of this MOU in lieu of other THC procedures. In cases where TxDOT is utilizing this MOU in lieu of other THC procedures, TxDOT must follow the requirements of this MOU.

(n) THC audit. THC may audit TxDOT project files for specific undertakings carried out under this MOU.

(o) Annual meeting. TxDOT and THC staff will meet annually to discuss topics of mutual interest.

(p) Dispute Resolution.

(1) If THC and TxDOT cannot reach agreement on any plans or actions carried out pursuant to this MOU, THC and TxDOT will consult to resolve the objection.

(2) If THC and TxDOT cannot reach a compromise solution or otherwise resolve the objection through consultation, either TxDOT or THC may choose to invoke the dispute resolution provisions which are set forth in paragraph (3) of this subsection.

(3) When these dispute resolution provisions are invoked, if TxDOT and THC cannot resolve their disagreement, the two agencies will resolve their dispute in accordance with the procedures established under state and federal rules.

(A) Federal undertakings will follow the dispute resolution procedures as stipulated in 36 CFR Part 800.

(B) Non-federal projects will follow the appeal procedures provided in Title 13, Part 2, Chapter 27 of the Texas Administrative Code.

(q) Review of MOU. This memorandum shall be reviewed and updated as provided by law or by agreement between the parties.

This agency 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 May 19, 2004.

TRD-200403386
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: June 8, 2004
Proposal publication date: February 27, 2004
For further information, please call: (512) 463-5711

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13 TAC §26.15

The Texas Historical Commission adopts the repeal of §26.15 of Chapter 26 (Title 13, Part 2 of the Texas Administrative Code) relating to Memoranda of Understanding and Agreement, as published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1788).

No public comments were received regarding adoption of this repeal.

Repeal of this subsection is adopted under §442.005(q), Title 13 Part 2 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter.

These repeal also assists in the implementation of §442.005(b) and (e) of the Texas Government Code and §191.051 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2004.

TRD-200403391
F. Lawerence Oaks
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-5711

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13 TAC §26.15

The Texas Historical Commission adopts a new §26.15 of Chapter 26 (Title 13, Part 2 of the Texas Administrative Code) relating to the Memorandum of Understanding between the Texas Historical Commission and the Texas Water Development Board, without changes to the text as published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 1789).

No public comments were received regarding adoption of this new MOU. These changes will help clarify responsibilities and protocols between the two agencies that are called for under the MOU.

This new MOU was adopted under §442.005(q), Title 4 of the Texas Government Code, and §191.052, Title 9 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter. No other statutes, articles, or codes are affected by these amendments.

These adopted new rules implement §442.005(b) and (e) of the Texas Government Code and §191.051 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2004.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

The Texas Education Agency (TEA) adopts amendments to §§89.1053, 89.1055, 89.1076, and 89.1096, and the repeal of §89.1095, concerning special education services for students with disabilities. The sections clarify federal regulations and state statutes pertaining to delivering special education services to students with disabilities. The amendments to §89.1053 and §89.1055 are adopted with changes to the proposed text as published in the February 20, 2004, issue of the *Texas Register* (29 TexReg 1564). The amendments to §89.1076 and §89.1096 and the repeal of §89.1095 are adopted without changes to the proposed text as published in the February 20, 2004, issue and will not be republished. The adopted changes reflect revised rules and a repeal resulting from revisions to the Texas Education Code (TEC) and expiration of a rule.

During the 78th Texas Legislative Session, 2003, several sections of law impacting special education were amended. As a result of the changes to the state law, 19 TAC Chapter 89, Subchapter AA, must be amended to incorporate these changes to ensure school district compliance with new procedural requirements. The adopted amendments address the legislative requirements by providing clarification to 19 TAC §§89.1053, 89.1055 and 89.1076. Additionally, this adopted

rule action repeals 19 TAC §89.1095, which expired on June 30, 2001, and amends 19 TAC §89.1096.

The adopted amendments and repeal related to 19 TAC Chapter 89, Subchapter AA, include the following.

Section 89.1053, Procedures for Use of Restraint and Time-Out, is amended to reflect changes made in TEC, §37.0021, related to the definitions of restraint and time-out and the applicability of the law and rules to certain individuals and entities. During the legislative session in 2003, TEC, §37.0021, was amended to revise language related to the procedures for use of confinement, restraint, seclusion, and time-out. The definitions for restraint and time-out were revised, and language was added to indicate that the law, and any rules or procedures adopted under the law, do not apply to peace officers while performing law enforcement duties; juvenile probation, detention, or corrections personnel; or an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district. In response to public comment received subsequent to filing the proposal, the rule is further amended to clarify issues surrounding the revised definition of restraint and to clarify that, while specific references to the Public Education Information Management System (PEIMS) will not be included in rule language related to data reporting for restraint, the information will be reported to the Texas Education Agency in an electronic format in accordance with reporting standards specified by the Agency. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes.

Section 89.1055, Content of the Individualized Education Program (IEP), is amended to reflect legislative intent related to transition and to add language related to the new transition requirements as reflected in TEC, §29.011. The amended law no longer requires a memorandum of understanding (MOU) on transition planning for students with disabilities, but requires the ARD committee to consider, and, if appropriate, address in the IEP nine issues related to needed transition services for students with disabilities. In response to public comment received subsequent to filing the proposal, the rule is further amended to clarify age requirements related to certain transition planning activities based on an additional review of information from the Office of Special Education Programs (OSEP), U.S. Department of Education.

Section 89.1076, Interventions and Sanctions, is amended to reflect language changes made in TEC, §39.131. The amended law revises language related to the appointment of a conservator, as opposed to a master, to oversee the operations of a district, and the adopted amendment to 19 TAC §89.1076 reflects this revised reference consistent with the statute. Language also is adopted to reflect that, in building a new monitoring system for educational programs, the focus has expanded beyond compliance-based issues to encompass student performance, including program effectiveness.

Section 89.1095, Provision of Services for Students Placed by their Parents in Private Schools, which expired on June 30, 2001, is repealed since it is no longer in effect.

Section 89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities, is amended to remove its expiration date of June 30, 2004, and reference to 19 TAC §89.1095. These changes reflect both the repeal of §89.1095 and the commissioner's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 and 4. The extension of this requirement will allow students with disabilities ages 3 and 4 to continue to be dually enrolled in both public and private schools and to receive the services and protections available under an individualized education plan. The adopted amendment also clarifies that the protections afforded to 3- and 4-year-old children under this section are intended to impact those students not yet eligible to attend kindergarten in a public school district.

A two-day stakeholder meeting of parents, advocates, school districts, education service centers, institutions of higher education, support personnel organizations, teacher organizations, administrator organizations, and the school board association was convened in December 2003 to discuss major issues surrounding the development of rules related to restraint/time-out and transition. Statewide public hearings were held on March 1, 2004, and March 8, 2004. In addition, the public was given the opportunity to submit written/electronic comments.

Advocates generally are supportive of rule changes that align commissioner's rule with state law, continue the practice of dual enrollment for young students with disabilities enrolled by their parents in private schools, and expand the focus of agency monitoring systems to include student performance and program effectiveness. However, advocates generally requested removal of rule language related to the use of restraint to calm students and clarification of rule language related to the collection of data on the use of restraint. Advocates also requested changes to rule language related to the age at which certain transition planning activities will begin. School personnel and organizations that represent them generally support the revisions to rule language to reflect statutory definition changes related to restraint and time-out but requested certain changes to provide school personnel more latitude related to the use of restraint. Certain school personnel and an educational organization also requested additional guidance and/or information related to the transition process for students with disabilities. Certain educational organizations also requested that dual enrollment provisions for young students with disabilities enrolled by their parents in private schools be allowed to expire. The commissioner's rules attempt to balance these interests along with legislative intent and mandate. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendments and repeal related to 19 TAC Chapter 89, Subchapter AA.

Comment. The executive director for the Texas Youth Commission (TYC) expressed appreciation for the opportunity to review the rule proposals and indicated that TYC staff feels the rules are fine as drafted.

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of public comment.

Comment. A parent requested that training be provided to parents on their participation in the admission, review, and dismissal (ARD) committee meeting process. The parent stated that training would make parents better able to advocate for the needs of their children in cases in which districts are not providing full support to students and when lack of training and support to teachers impacts student progress.

Agency response. The agency agrees that parents' knowledge and understanding of the ARD process contributes to collaborative decision-making and positive planning for students with disabilities. The agency is committed to continuing efforts to provide parents with information and training related to the special education process.

§89.1053. Procedures for Use of Restraint and Time-Out.

Comment. An assistant superintendent indicated no recommendations for change to the rule section.

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of other public comments.

Comment. A children's policy specialist at the University of Texas noted that the changes in subsections (a), (b)(2), (b)(3)(B), (f), (f)(2), and (f)(3) appear to accurately reflect the language in legislation and expressed appreciation that the agency did not attempt to expand the language beyond legislative intent. The specialist further noted that continuing questions related to interpretation should be addressed through ongoing training.

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of other public comments.

Comment. An elementary principal indicated agreement with changes made to subsections (a), (b)(2), (b)(3)(B), (f), (f)(2), (f)(3), (g)(2), (k), and (l).

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of other public comments.

Comment. A representative of Advocacy, Inc., and a representative of The ARC of Texas indicated that the changes to subsections (a)-(e) accurately reflect changes made by the Texas Legislature.

Agency response. The agency agrees.

Comment. A representative of the Texas Classroom Teachers Association (TCTA) commented, in reference to §89.1053(b)(1)(A), that the word "serious" be deleted from the phrase "imminent, serious physical harm" so that educators could use professional judgment and protect the student or other students from any harm and suggested that the current rule language would require an action to meet the level of an aggravated assault under the Penal Code before restraint could be used.

Agency response. The comment addresses issues outside the scope of the current rule proposal. However, as was noted in the response to a previous comment from the organization, the agency disagrees because it believes that the threat of physical harm should be serious before the use of potentially risky physical force is implemented in the form of restraint. Additionally, school staff members are not held to the definition of serious bodily harm as indicated in the Penal Code when making professional determinations under the current rule language.

Comment. A special education director indicated concerns about the wording order in subsection (b)(3)(B).

Agency response. The agency notes that the wording in this subsection is drawn directly from Texas Education Code (TEC), §37.0021(b)(3)(B).

Comment. An executive director of support services for a school district noted that the language in (b)(3)(B) provides good clarification.

Agency response. The agency notes that the wording in this subsection is drawn directly from Texas Education Code (TEC), §37.0021(b)(3)(B).

Comment. A representative of the TCTA commented, in reference to (c), that limiting restraint to emergencies is a laudable goal, but unrealistic and undesirable because it takes the decision out of the hands of the ARD committee and precludes a teacher from using any kind of physical force to remove a disruptive child from the classroom if they refuse to leave on their own.

Agency response. The comment addresses issues outside the scope of the current rule proposal. However, as was noted in the response to a previous comment from the organization, the agency disagrees because it believes it is appropriate and in alignment with the intent of TEC, §37.0021, to limit the use of restraint to emergency situations. The agency also believes that the rule is consistent with professionally accepted practices and standards. The agency further notes that the definition of restraint has been revised to apply to significant restrictions to the free movement of all or a portion of a student's body. Interventions which do not meet this definition are not considered restraint under the TEC.

Comment. A representative of the TCTA requested, in reference to (c)(1), that language be added to clarify that it is the educator, in his or her professional judgment, who determines when use of reasonable force is necessary.

Agency response. The comment addresses issues outside the scope of the current rule proposal. Additionally, the agency believes that this clarification is unnecessary and inappropriate since the subsection in question applies not only to educators, but to school volunteers and independent contractors.

Comment. A representative of the TCTA requested, in reference to (c)(4), that the term "basic human necessities" be defined.

Agency response. The comment addresses issues outside the scope of the current rule proposal. However, the agency believes that this phrase effectively communicates rule intent and that further definition is unnecessary.

Comment. A representative of the TCTA requested, in reference to (d), that the rule make clear that it is the district's responsibility to train school employees, volunteers, and independent contractors.

Agency response. The comment addresses issues outside the scope of the current rule proposal. However, the agency disagrees that this additional language is necessary in rule.

Comment. A representative of the TCTA requested, in reference to (e), that the rule make clear who is responsible for documentation related to use of restraint and that the rule should make clear that teachers are not required to complete more paperwork than already is required under TEC, Chapter 37. It was further requested that, if this was not done, the rule should include a provision that requires automatic review of the support services available to the teachers under 19 TAC §89.63(c)(1) each time they must file documentation related to restraint.

Agency response. The comment addresses issues outside the scope of the current rule proposal. However, the agency feels that documentation of restraint episodes is necessary and that

the current rule language is appropriate. Issues related to responsibility for documentation are subject to local decision making.

Comment. A representative of the TCTA requested, in reference to subsection (e)(5)(H), that the word "any" should be added before the phrases "efforts made" and "alternatives" to reflect that these actions aren't required when there isn't time to perform them.

Agency response. The comment addresses issues outside the scope of the current rule proposal. However, the agency disagrees because it wishes to encourage the consideration of efforts made to de-escalate students and alternatives to the use of restraint prior to the implementation of restraint. However, notification and documentation related to the use of restraint could note and justify circumstances in which the nature of the emergency precluded these efforts.

Comment. A special education director commented that the changes in subsection (f) helped clarify that the use of adaptive equipment as okay.

Agency response. The agency appreciates the comment but believes the previous rule language already clarified situations related to the appropriate use of adaptive equipment.

Comment. A director of special education agreed with the clarification in subsection (f) related to the use of restraint and time-out.

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of public comment.

Comment. A representative of the Texas Association of School Boards (TASB) asserted that subsection (f) is vague and that it is not clear whether the items in paragraphs (1)-(4) are inclusive or exclusive of all the items that are not considered restraint or significant restriction.

Agency response. The agency disagrees and believes that the language added to subsection (f) provides guidance in alignment with the intent of TEC, §37.0021.

Comment. A representative of the Texas Council of Administrators of Special Education (TCASE) commented that the inclusion of items in subsection (f)(1)-(4) will be confusing if it is not made clear that the examples are illustrative only and suggested that qualifiers such as "including, but not limited to," or "for example" be added to subsection (f).

Agency response. The agency disagrees and believes that the language added to subsection (f) provides guidance in alignment with the intent of TEC, §37.0021, and that additional qualifying phrases are unnecessary in the context of the information included in this subsection.

Comment. A representative of the TASB commented that the changes in subsection (f)(2) are appreciated as they provide much-needed latitude and common sense to the rule.

Agency response. The agency, in general, agrees with this comment. However, slight modifications have been made to subsection (f)(2) as a result of public comment.

Comment. A representative of the TCTA commented that the changes in subsection (f)(2) referencing redirection and guidance to a location are appreciated.

Agency response. The agency appreciates the comment.

Comment. A representative of Advocacy, Inc., and a representative of The ARC of Texas commented that the language in subsection (f)(2) exceeds changes made by the Legislature in that the addition of the word "calm" could inadvertently increase the inappropriate use of physical restraint. The commenter asserted that the word "comfort" is adequate to cover those situations in which an adult may need to affectionately hold a distraught child and requested that the word "calm" be removed.

Agency response. The agency agrees that the word "comfort" is adequate and has removed the word "calm" from subsection (f)(2).

Comment. A parent and a representative of the Texas Council for Developmental Disabilities (TCDD) commented that the word "calm" could be interpreted to mean and/or result in physical restraint rather than comfort. The representative of the TCDD specifically requested that the word "calm" be deleted from subsection (f)(2).

Agency response. The agency agrees that the word "comfort" is adequate and has removed the word "calm" from subsection (f)(2).

Comment. A director of special education commented that the new statements in subsection (f)(2) were needed and that they make clear when restraint does not apply.

Agency response. The agency, in general, agrees with this comment. However, slight modifications have been made to subsection (f)(2) as a result of public comment.

Comment. A counselor for a school district expressed appreciation for the public opportunities provided for people to express their deeply held opinions related to the use of restraint. The commenter noted that, comparatively speaking, the initial physical and psychological trauma experienced by a child rarely comes at the hands of a teacher or teacher assistant in a school setting, and that, far more often, the outside world subjects children to such damaging initial experiences. In these cases, the commenter noted, educators have the task of trying to undo these effects. The commenter stated that oftentimes the cornerstone for reconnecting with a child is the use of therapeutic physical contact by trained, caring and loving adults. The commenter advocated for continued interpretations of the word "significant" in the definition of restraint, especially as it relates to subsection (f)(2) and for increased training requirements for those who might be in a position to use physical contact to help a child.

Agency response. The agency agrees that limited physical contact to provide comfort can be supportive of children and has specifically noted in rule that this is not considered to be restraint. However, restraint is defined in TEC, §37.0021, and physical contact which meets the statutory definition of restraint is regulated through the procedures and rules reflected in this section. The agency has made adjustments to the language proposed in subsection (f)(2) in response to other commenters but continues to reference the ability to provide comfort to students.

Comment. A representative of the TCDD suggested that the language in subsection (f)(3) be revised to say "with the expectation that instruction will be based on a functional behavioral assessment and the resulting behavior intervention plan and will be reflected in the individualized education program (IEP) to reduce and/or prevent the need for ongoing intervention."

Agency response. The agency, in general, disagrees with the comment and doesn't believe the additional references to functional behavioral assessments and behavior intervention plans

are necessary to ensure that instructional issues are addressed as appropriate. However, modifications to subsection (f)(3) have been made as a result of public comment.

Comment. A representative of the TCTA requested that language be added to subsection (f)(3) to allow the removal of a disruptive child, as follows, "limited physical contact with a disruptive student to remove him/her from the classroom. Such removal shall be performed by individuals who have been trained and designated to do so." It was suggested that further language be added to state, "Nothing in these rules shall abrogate or modify a school employee's rights pursuant to Texas Penal Code section 9.62."

Agency response. The agency disagrees. Clarifications regarding appropriate use of restraint already are included in subsection (f). Additionally, Penal Code, §9.62, stands on its own merits, and it is not necessary to reference it in these rules.

Comment. A representative of the TASB commented that the additional language proposed for subsection (f)(3) is unclear and exceeds legislative intent and authority and requested removal of the phrase. It was suggested that, if the phrase were kept, the language should be revised to indicate a recommendation, rather than a requirement, to reflect instruction in the IEP.

Agency response. The agency, in general, disagrees. The agency believes the proposed language was clear, but has added additional statutory references to align the rule requirements to the requirements contained in federal regulations.

Comment. A representative of the TCASE commented that subsection (f)(3) is vague, ambiguous, and unnecessary and exceeds legislative intent and authority.

Agency response. The agency, in general, disagrees. The agency believes the proposed language was clear, but has added additional statutory references to align the rule requirements to the requirements contained in federal regulations and to clarify that the foundation of the rule authority is found in federal regulations.

Comment. A director of special education commented that the additions to (f)(3) were excellent as it will force staff to address the problem and not just apply physical contact and/or use adaptive equipment.

Agency response. The agency agrees.

Comment. A children's policy specialist at the University of Texas expressed concern about removal of the reference to the Public Education Information Management System (PEIMS) from proposed subsection (k), if the removal of the reference means that information regarding the use of restraint will not be readily available to the public, expressing a belief that data reporting should be accurate and easily accessible.

Agency response. The agency agrees that data regarding the use of restraint should be accurate and easily accessible. The removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. However, in response to the expressed concerns, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency.

Comment. A representative of Advocacy, Inc., and a representative of The ARC of Texas expressed concern about removal of the reference to PEIMS from proposed subsection (k), stating that the intent of the PEIMS requirement was to ensure that the data would be reported through the data system currently used by the agency and requesting that the proposed rule be amended to read, "...must be reported through the Agency's data management system."

Agency response. The agency agrees in part and disagrees in part. The agency agrees that data regarding the use of restraint should be accurate and easily accessible. The removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. The rule language proposed in the comment was not adopted. However, in response to the expressed concerns, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency.

Comment. A representative of the Mental Health Association in Texas expressed concern about removal of the reference to PEIMS from proposed subsection (k) without specifying a reporting system to be used. The commenter requested that the original language be retained or that reference to "the TEA information management system" be added. A concern was expressed about the authority of the agency to collect the data in a standardized way under the proposed rule language, noting that standardized data would be necessary for comparisons to be made among districts.

Agency response. The agency agrees in part and disagrees in part. The agency agrees that data regarding the use of restraint should be reported and collected in a standardized format. The removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. The rule language proposed in the comment was not adopted. However, in response to the expressed concerns, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency.

Comment. An executive director of support services at a school district expressed concern about removal of the reference to PEIMS from proposed subsection (k), questioning if not PEIMS, then what system would be used.

Agency response. The agency agrees that data regarding the use of restraint should be reported and collected in a standardized format. The removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. However, in response to expressed concerns, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency.

Comment. A consultant at an education service center expressed concern about removal of the reference to PEIMS from proposed subsection (k), noting that people already had been trained on the use of PEIMS to report the data and that districts are familiar with the system already in place. The consultant expressed interest in seeing the documentation available from the PEIMS submissions.

Agency response. The agency agrees in part and disagrees in part. The agency agrees that data regarding the use of restraint should be reported and collected in a standardized format. However, the removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. In response to the expressed concerns regarding access to documentation, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency.

Comment. A parent expressed concern about removal of the reference to PEIMS from proposed subsection (k), questioning if not PEIMS, then what system would be used. The commenter noted that the rule should reference specifically the system to be used to collect data.

Agency response. The agency agrees that data regarding the use of restraint should be reported and collected in a standardized format. The removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. However, in response to expressed concerns, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency. However, specific reference to the PEIMS system has been removed from the adopted rules.

Comment. A representative of the TCDD expressed concern about removal of the reference to PEIMS from proposed subsection (k), noting that the data must be reported in a way that is easily available and accessible to the public. The commenter stated that the proposed language did not make it clear that the data would be as available as other data collected in the current system.

Agency response. The agency agrees that data related to the use of restraint must be reported in a way that is easily available and accessible to the public. The removal of the specific reference to PEIMS was proposed as part of a consolidated agency effort to remove from Texas Administrative Code specific methodology references regarding how data will be reported and collected. This effort is in alignment with an upcoming broad-based review of the PEIMS system, and it will allow flexibility as the agency examines, revises, and updates data reporting and collection systems over the next several years. The removal of specific reference to PEIMS complies with agency practice to not include specific names of agency organizational units or programs in rule text to avoid the need to update rules solely because of future name changes. However, in response to expressed concerns, the rule language has been revised to reflect the agency's commitment to collect and make available data on the use of restraint in an electronic format in accordance with reporting standards specified by the agency.

Comment. A director of special education indicated complete agreement with the addition of subsection (l) related to the exemption of peace officers performing law enforcement duties on campus.

Agency response. The language in subsection (l) reflects the statutory requirements found in TEC, §37.0021(g).

Comment. An executive director of support services at a school district indicated that the addition of subsection (l) was needed, stating that, as a district, some resistance has been met from peace officers not wanting to use other methods not part of law enforcement.

Agency response. The language in subsection (l) reflects the statutory requirements found in TEC, §37.0021(g).

Comment. A parent advocate expressed her strong belief that the exemption for peace officers in subsection (l) should be removed from the proposed rule, noting her concern that peace officers are trained for the use of restraint for criminal adults, and that additional training should be required to address issues of children with developmental disabilities or other neurological disabilities such as autism in hopes of avoiding circumstances such as the handcuffing of students with autism. The parent advocate also requested that requirements be established to investigate any district that has more than one restraint in a calendar year of children under the age of seven.

Agency response. The language in subsection (l) reflects the statutory requirements found in TEC, §37.0021(g), related to the exemption of peace officers performing law enforcement duties from procedures adopted under this rule. Therefore, the rule has been revised to reflect the limitations on agency authority in this area. The agency appreciates the comment related to the use of restraint data to promote investigations of districts and will use the data, once available, to make decisions related to district interventions.

Comment. An attorney for Advocacy, Inc. expressed appreciation that the agency has taken the opportunity to make changes to the rule that accurately reflect the changes made by the legislature and only those changes consistent with legislative action. The commenter expressed the belief that it is important that the rules related to restraint and time-out continue to be strong so that the use of restraint is restricted to emergency situations as opposed to use as a routine behavior intervention.

Agency response. The agency agrees.

§89.1055. Content of the Individualized Education Program (IEP).

Comment. A consultant at an education service center noted that there has been a history of confusion regarding the age at which certain transition planning activities must begin and that the proposed rule language in subsection (g) remains confusing and is not aligned with previous interpretations. The commenter requested clarification and interpretation from the agency related to the requirements as they relate to the rule and the Individuals with Disabilities Education Act, Part B.

Agency response. The agency agrees that additional clarification and interpretation is necessary and has revised the adopted rule language to clarify that "beginning at age 14" means prior to a student's fourteenth birthday. This revision is based on a review of additional information contained in documents disseminated by the Office of Special Education Programs (OSEP), U.S. Department of Education.

Comment. A consultant at an education service center noted that Texas Education Code (TEC), §29.011, charges the commissioner to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs and requires that the procedures must specify the manner in which a student's admission, review, and dismissal (ARD) committee must consider, and, if appropriate, address the nine items listed in the statute. The commenter asserted that the proposed rule does not provide any guidance as to the manner in which an ARD committee must consider the items, nor does it provide procedures, and requested that more specific guidance be provided. The commenter also requested that there be some recognition that some of the nine listed areas are duplicative of transition areas addressed in federal statute. The commenter further stated that the proposed language regarding the age at which certain transition planning activities must begin would create misalignment with federal requirements.

Agency response. The agency agrees in part and disagrees in part. The agency agrees that additional clarification and interpretation is necessary as it relates to the age at which certain transition planning activities must begin and has revised the adopted rule language to clarify that "beginning at age 14" means prior to a student's fourteenth birthday. This revision is based on a review of additional information contained in documents disseminated by the OSEP, U.S. Department of Education. However, the agency believes the references in the rule to federal requirements recognize the relationship of the adopted rules to federal requirements already in place, and the agency has included an additional federal reference in the adopted rule based on other public comment. The agency disagrees that additional guidance regarding procedures and the manner by which ARD committees are to address transition services is necessary in rule. The adopted rule indicates that the ARD committee will consider the nine items and address appropriate items by including them in the content of the individualized educational program (IEP) of the student. Additional technical assistance, support, and training on the items and issues will be developed and provided subsequent to the rule adoption.

Comment. A director of special education requested that the agency retain the language in 34 Code of Federal Regulations (CFR) §300.29(a) instead of listing the nine items in subsection (g) related to what ARD committees must consider and retain the language of 34 CFR §300.347(b) instead of requiring a full transition plan at age 14. In regard to subsection (g)(4), the commenter also expressed concern that the ARD committee would be responsible for ensuring the availability of and paying for post-secondary education options. The commenter also stated that, in regard to subsection (g)(7), ARD committees should not be forced to consider options which may not exist in the community. Additionally, in regard to subsection (g)(9), the commenter asked what defines appropriate circumstances.

Agency response. The agency, in general, disagrees. The adopted language in subsection (g) reflects the statutory requirements found in TEC, §29.011. Therefore, both the state law and federal requirements must be implemented by districts. The statutory requirements, as well as the requirements adopted in rule, state that the ARD committee, if appropriate, must consider the nine items listed in law and rule and, if appropriate, integrate the items into the IEP. The agency believes that this language provides the flexibility to address individual student circumstances in developing the IEP and planning for the transition of the student. The agency expects that ARD committees will be able to make thoughtful, informed decisions related to the transition of students with disabilities based on the use of student and community data and in accordance with federal and state requirements.

Comment. A representative of Advocacy, Inc. and a representative of The ARC of Texas noted that the items in subsection (g)(1)-(9) accurately reflect changes made by the Legislature but expressed concerns that the introductory language in subsection (g) was not clear in regard to when transition begins. The commenters suggested that the language needed to be rewritten to be clear that the planning process must occur in advance of the student's fourteenth birthday. The representative of The ARC of Texas cited Appendix A to the federal regulations in making this suggestion.

Agency response. The agency agrees and has revised the language in subsection (g) to reflect these and other comments.

Comment. An executive director of support services for a district indicated that the changes in subsection (g) make it very clear that the responsibility for transition services belongs to districts.

Agency response. The agency agrees that the adopted rule, in addition to other federal and state requirements, outlines the responsibility of districts for transition planning and services. However, transition planning is enhanced when all stakeholders in the process participate in coordinated planning and implementation.

Comment. A special education director questioned why the parenthetical statement was added to subsection (g) regarding "prior to date on which a student turns 15 years of age," noting that all of age 14 is prior to the student turning 15 years of age. The commenter also asked why items (1)-(9) of subsection (g) were added when the CFR doesn't specifically require all of these items and requested that only the language found in federal regulations be used.

Agency response. The agency has added the language found in subsection (g) based on the requirements of TEC, §29.011. The parenthetical language in the introduction of subsection (g) has been revised to reflect federal requirements. However, the agency believes the structure of the parenthetical statement provides clarification of the requirements and has adopted the parenthetical language, as revised to reflect 14 rather than 15 years of age, into rule.

Comment. A consultant at an education service center stated that, in addition to references to 34 CFR §300.29 and §300.347, a reference to 34 CFR §300.344 should be included in the rule language in subsection (g).

Agency response. The agency agrees and has added the additional reference.

Comment. A consultant at an education service center commented that, in the past, transition procedures were spelled out in a memorandum of understanding (MOU), and that, with the elimination of the MOU, there has been no state guidance regarding how transition will be addressed in the IEP and requested a better delineation of procedures that say how and where in the IEP transition planning will be addressed.

Agency response. The agency disagrees that additional procedural language regarding transition planning is necessary in the adopted rules. The adopted rule indicates that the ARD committee will consider the nine items and address appropriate items by including them in the content of the IEP of the student. Additional technical assistance, support, and training on the items and issues related to transition planning will be developed and provided subsequent to the rule adoption.

Comment. A parent noted that the transition process is frightening to all parents and that the elimination of the MOU has a dramatic effect on everyone. The parent expressed concerns about the availability of adequate resources to parents and adequate funding for schools to provide the necessary support to parents. The parent expressed a plea for the IEP to be a useful document that will lead an adult student to be a productive member of the community.

Agency response. The agency agrees that the purpose of transition planning is to promote meaningful, post- school results for students with disabilities and further agrees that the IEP is intended to be a useful document in meeting the needs of students and their families. The agency is committed to improving opportunities for parents to participate in the educational process for their children and is dedicated to technical support for parents and professionals involved in the transition planning process.

Comment. An elementary principal noted that all of the items in subsection (g) are good.

Agency response. The agency has adopted the items in rule based on the requirements of TEC, §29.011, but has made certain changes based on other rule comments. The agency agrees that meaningful implementation of the items can promote positive, post-school results for students with disabilities.

Comment. An assistant superintendent had no recommendations for changes to this subsection.

Agency response. The agency, in general, agrees but has made certain changes based on other rule comments.

Comment. A parent commented that transition planning should begin at age 14 and service should begin by age 15 and requested that the rule language in subsection (g) be reworded to ensure that services actually begin at age 14.

Agency response. The agency agrees that additional clarification and interpretation is necessary as it relates to the age at which certain transition planning activities must begin and has revised the adopted rule language to clarify that "beginning at age 14" means prior to a student's fourteenth birthday. This revision is based on a review of additional information contained in documents disseminated by the OSEP, U.S. Department of Education. The age requirements related to transition planning activities and transition services are reflected in federal regulations and reinforced in the adopted rule.

Comment. A representative of the Texas Council for Developmental Disabilities urged that the language in subsection (g)(9) be revised to direct the ARD committee to make a referral as appropriate. The representative further stated a concern related to the reference in subsection (g)(9) to governmental agencies, noting that the language could be restrictive and questioning why other service entities such as Goodwill or Ticket to Work would also not be appropriate referral agencies.

Agency response. The agency agrees in part and disagrees in part. The language in subsection (g)(9) is reflective of the language in TEC, §29.011(9). Therefore, the language will not be revised in the adopted rule. However, the requirements of the law and this subsection do not preclude appropriate referrals to other entities by ARD committees or others.

Comment. The executive director of the Texas Council of Administrators of Special Education noted that the proposed rule is essentially a restatement of the legislative change eliminating the separate practice of conducting a separate meeting for transition planning and developing a transition plan separate from the IEP. The commenter expressed that it would be helpful if the rule restated that compliance with the statute or rule does not require a separate meeting or a separate plan. In addition, the commenter stated that the development of "best practice" professional development materials would be appreciated given the brevity of the rule to ensure general understanding of the federal requirements noted in the introductory language of subsection (g). The commenter further urged that the rule or professional development materials note that the rule provisions are not meant to exceed any federal requirement under the federal law.

Agency response. The agency agrees in part and disagrees in part. The agency does not believe it is necessary to restate that the requirement to conduct a separate transition meeting and complete a separate transition planning document has been eliminated. Additionally, the agency disagrees with the request to add a note to rule or professional development materials

stating that rule provisions are not meant to exceed federal requirements. While the nine items listed in state statute and the adopted rule are complementary to federal requirements and in alignment with the intent of federal regulations related to transition planning, there is language included in the statute and rule that is not directly noted in federal regulations. The agency agrees that additional professional development materials will be beneficial, and additional technical assistance, support, and training will be developed and provided subsequent to the rule adoption.

§89.1076. Interventions and Sanctions.

Comment. An assistant superintendent had no recommendations for changes to this subsection.

Agency response. The agency agrees and will adopt the section without further modification.

Comment. A director of special education commented that the wording changes are fine.

Agency response. The agency agrees and will adopt the section without further modification.

Comment. A representative of Advocacy, Inc. and a representative of The ARC of Texas supported the addition of the word "program" to rule language and commended the agency for taking a step toward looking at the performance of students with disabilities.

Agency response. The agency appreciates the comment and will adopt the section without further modification.

Comment. A representative of the Texas Council for Developmental Disabilities expressed appreciation of the agency's initiative in establishing new monitoring systems to include program effectiveness, the foundation for student performance.

Agency response. The agency appreciates the comment and will adopt the section without further modification.

§89.1095. Provision of Services for Students Placed by their Parents in Private Schools.

Comment. An assistant superintendent noted the deletion of the entire section.

Agency response. This section, which expired on June 30, 2001, is repealed since it is no longer in effect.

Comment. An elementary principal noted that the repeal of this section is good.

Agency response. This section, which expired on June 30, 2001, is repealed since it is no longer in effect.

Comment. A special education director indicated concern with the repeal of this section based on the observation that students who leave public schools to attend private schools and then return to public schools display signs of being further behind than they were when they left public schools. The commenter requested the return of dual enrollment on a case-by-case basis based on discussion at the admission, review, and dismissal committee meeting.

Agency response. This comment goes beyond the scope of the proposed action on this section. This rule section, which expired on June 30, 2001, is repealed since it has not been in effect for several years. However, a district can implement a local policy that reflects a higher standard than the requirements currently in federal regulations and agency rule related to the provision of services to students with disabilities enrolled by their parents in a private school.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

Comment. An assistant superintendent made no recommendations for change to this section.

Agency response. The agency appreciates the comment and has made no modifications to the rule language as proposed.

Comment. An elementary principal noted that all changes to this section are good.

Agency response. The agency appreciates the comment and has made no modifications to the rule language as proposed.

Comment. A special education director expressed confusion over the language contained in current subsection (d) related to the use of federal funds for the provision of special transportation and questioned the clarity of the current rule language.

Agency response. The comment goes beyond the scope of the current rule proposal. However, additional clarification can be obtained as necessary through a request for technical assistance from a regional education service center.

Comment. A consultant at an education service center requested that dual enrollment be denied to students with disabilities ages 3 and 4 who have available to them public school programs through early education or pre- kindergarten, noting that public school staff have intensive training based on the requirements of the No Child Left Behind Act.

Agency response. The agency disagrees. The adopted rules reflect the agency's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 and 4. The agency continues to work to improve the scope of educational options available through public schools to students with disabilities ages 3 and 4. At this time, the agency chooses to extend the dual enrollment requirement for these students to allow additional options for parents of students with disabilities in this age range.

Comment. A director of special education strongly agrees with the provision that no eligible student placed by a parent in a private school has an individual right to receive some or all of the special education that students who are enrolled in a public school receive, except as provided by 34 Code of Federal Regulations (CFR) §§300.450- 300.462.

Agency response. The agency, in general, agrees. However, this section carves out a specific exception to the general federal standard and provides additional options and opportunities for dual enrollment to students with disabilities ages 3 and 4.

Comment. A special programs specialist and a teacher of students in a preschool program for children with disabilities (PPCD) noted that extending dual enrollment for 3- and 4-year-old students is problematic in that students may attend only sporadically under dual enrollment, and it is difficult to create continuity for the child and in the classroom. The commenters expressed the belief that dual enrollment should expire for this population.

Agency response. The agency, in general, disagrees. While the agency acknowledges that continuity of instruction supports learning for all students, the adopted rules reflect the agency's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 or

4. The agency continues to work to improve the scope of educational options available through public schools to students with disabilities ages 3 and 4. At this time, the agency chooses to extend the dual enrollment provision for these students to allow additional options for parents of students with disabilities in this age range. However, under dual enrollment, admission, review, and dismissal committees can make individualized decisions for students that limit, to the extent possible, fragmentation to instructional programs.

Comment. A teacher of students in a PPCD indicated personal witness of the harmful effects dual enrollment can cause for children 3 and 4 years of age noting that the transition to school for children this age can be traumatic and that needed structure for the students is lost when children attend public school only one to three days each week.

Agency response. The agency, in general, disagrees. While the agency acknowledges that appropriate instructional structure supports learning for all students, the adopted rules reflect the agency's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 or 4. The agency continues to work to improve the scope of educational options available through public schools to students with disabilities ages 3 and 4. At this time, the agency chooses to extend the dual enrollment provision for these students to allow additional options for parents of students with disabilities in this age range. However, under dual enrollment, admission, review, and dismissal committees can make individualized decisions for students that limit, to the extent possible, fragmentation to instructional programs.

Comment. A parent noted that she was against eliminating dual enrollment, stating that, in her personal experience, the public school provided a classroom for students with disabilities that allowed only limited interaction with pre-kindergarten students without disabilities. She expressed further concerns about the staff to student ratio at the public school, noting that, at the private school in which her daughter is enrolled, the teacher student ratio is lower and each classroom contains a significant number of students without disabilities. She further noted that the private school program is a full-day program, while the public school offered only a half-day program. The parent requested the continuation of dual enrollment and expressed concerns about the ability to fund private therapy should dual enrollment be eliminated.

Agency response. The agency agrees in part and disagrees in part. The adopted rules reflect the agency's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 or 4. The agency continues to work to improve the scope of educational options available through public schools to students with disabilities ages 3 and 4. At this time, the agency chooses to extend the dual enrollment provision for these students to allow additional options for parents of students with disabilities in this age range. However, the rule proposal was not intended to change policy related to dual enrollment for older students with disabilities, and, at this time, the agency does not propose to extend dual enrollment opportunities to students beyond this age range.

Comment. A director of special education noted that the proposed rule would continue dual enrollment availability for 3 and 4 year olds and noted that the addition of wording about kindergarten eligibility was good. The director further requested that, in regard to subsection (c)(3), the words "special education" be added before the words "personnel" and "instructional materials."

Agency response. The agency appreciates the comment related to the addition of language related to kindergarten eligibility. However, the additional language suggestions are beyond the scope of the current rule proposal and are not considered necessary at this time.

Comment. Two teachers of students who are deaf and hard of hearing and a speech therapist expressed strong support for serving students who are 3 or 4 years of age and who are enrolled in private schools or facilities by their parents, noting that, without this provision, students who are deaf or hard of hearing could lose access to very necessary speech and language therapy, auditory training, and the stimulation of their hearing peers.

Agency response. The agency agrees and has made no modifications to the rule language as proposed.

Comment. A representative of Advocacy, Inc., and a representative of The ARC of Texas expressed their support for the removal of the expiration date related to the provision of dual enrollment as an option for 3 and 4 year olds and commended the agency for recognizing the continued need to address least restrictive environment options for students with disabilities in this age range. The commenters noted that parents still need the dual enrollment option.

Agency response. The agency, in general, agrees. The adopted rules reflect the agency's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 or 4. The agency continues to work to improve the scope of educational options available through public schools to students with disabilities ages 3 and 4. At this time, the agency chooses to extend the dual enrollment provision for these students to allow additional options for parents of students with disabilities in this age range.

Comment. A representative of the Texas Council for Developmental Disabilities commented in support of subsection (c), which allows 3 and 4 year old students to receive special education services from a public school while also being enrolled in private preschool programs and commended the agency for taking this step to ensure that the least restrictive environment is available for this age group.

Agency response. The agency agrees and has made no modifications to the rule language as proposed.

Comment. A director of special education requested clarification related to subsection (c), stating that the added language relating to kindergarten eligibility is in conflict with current agency guidance materials produced on the topic of students enrolled by their parents in private schools and could cause confusion.

Agency response. Agency guidance materials will be revised to reflect official changes to agency policy as adopted in rule.

Comment. The executive director of the Texas Council of Administrators of Special Education (TCASE) and a representative of the Texas Association of School Boards (TASB) expressed concern with the extension of the timeline related to dual enrollment of students with disabilities ages 3 and 4. The TCASE representative noted that the continuation of the availability of dual enrollment exceeds the scope of federal law and does not serve the public since scarce resources are drained from public education. The TASB representative noted their support of the expiration date on this section and stated that a decision to

extend this section is inconsistent with federal clarifications. In addition, both commenters stated that the scope of services to be provided under the dual enrollment provision remains unclear and/or ambiguous. The representatives of both organizations urged the agency to allow expiration of the dual enrollment provision for young students, but, in the alternative, suggested that language be added to subsection (c) to read, "or until the student is eligible to attend a district's public school pre- kindergarten or kindergarten program, whichever comes first..."

Agency response. The agency disagrees. The adopted rules reflect the agency's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 or 4. The agency continues to work to improve the scope of educational options available through public schools to students with disabilities ages 3 and 4. At this time, the agency chooses to extend the dual enrollment provision for these students to allow additional options for parents of students with disabilities in this age range.

19 TAC §§89.1053, 89.1055, 89.1076, 89.1096

The amendments are adopted under the Texas Education Code, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; TEC, §29.011, which authorizes the commissioner to adopt by rule procedures for compliance with federal requirements relating to transition; and TEC, §37.0021, which authorizes the commissioner to adopt by rule procedures for the use of restraint and time-out.

The adopted amendments implement 34 Code of Federal Regulations (CFR), §300.347 and §300.452, and TEC, §§29.001, 29.005, 29.011, 37.0021, 37.004 and 39.131.

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint shall be discontinued at the point at which the emergency no longer exists.

(3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint shall not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) Not later than April 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) After April 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).

(5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:

(A) name of the student;

(B) name of the staff member(s) administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior that prompted the restraint;

(H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(I) information documenting parent contact and notification.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR §300.346(a)(2)(i) and (c) to promote student learning and reduce and/or prevent the need for ongoing intervention; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force shall not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.

(2) After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time- out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. Beginning with the 2003-2004 school year, with the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency in accordance with reporting standards specified by the Agency.

(l) The provisions adopted under this section do not apply to:

(1) a peace officer while performing law enforcement duties;

(2) juvenile probation, detention, or corrections personnel; or

(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

§89.1055. Content of the Individualized Education Program (IEP).

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.346 and §300.347, and Part 300, Appendix A.

(b) The IEP must include a statement of any individual allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the ARD committee determines that the student will not participate in a particular state- or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:

(1) why that assessment is not appropriate for the child; and

(2) how the child will be assessed using a locally developed alternate assessment.

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services from the student's current IEP.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of TEC, §30.002(e).

(e) For students with autism/pervasive developmental disorders, information about the following shall be considered and, when needed, addressed in the IEP:

(1) extended educational programming;

(2) daily schedules reflecting minimal unstructured time;

(3) in-home training or viable alternatives;

(4) prioritized behavioral objectives;

(5) prevocational and vocational needs of students 12 years of age or older;

(6) parent training; and

(7) suitable staff-to-students ratio.

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e)(1)-(7) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) In accordance with 34 CFR §300.29, §300.344, and §300.347, for each student with a disability, beginning at age 14 (prior to the date on which a student turns 14 years of age) or younger, if determined appropriate by the ARD committee, the following issues must be considered in the development of the IEP, and, if appropriate, integrated into the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for 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 May 18, 2004.

TRD-200403366
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: June 7, 2004
Proposal publication date: February 20, 2004
For further information, please call: (512) 475-1497

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19 TAC §89.1095

The repeal is adopted under the Texas Education Code (TEC), §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The adopted repeal implements 34 Code of Federal Regulations (CFR), §300.347 and §300.452, and TEC, §§29.001, 29.005, 29.011, 37.0021, 37.004 and 39.131.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER E. FEES

22 TAC §1.81

The Texas Board of Architectural Examiners adopts an amendment to §1.81 for Title 22, Chapter 1, Subchapter E, pertaining to examination fees, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3735). The section is being adopted with changes.

The section specifies the fees charged by the board, including examination fees. As amended, section 1.81 lists the fees for taking the Landscape Architect Registration Examination to be administered during 2004 and 2005, lists the fees for the administration of the examination for registration as an interior designer during 2005, and repeals the administrative fee charged by the board for the administration of the interior designer registration examination. The board changed Section § 1.81 as proposed by repealing an obsolete fee specified for the administration of the examination for registration as an interior designer during April 2004.

The amended section repeals other obsolete fees charged for examinations that have been administered. The amendment increases the examination fees for registration as a landscape architect and for registration as an interior designer. Examination providers that sell the examinations to the board have increased the charge imposed upon the board. The amendment to §1.81 increases the fees to cover the additional cost to the board of purchasing the examinations. The interior designer examination provider is assuming the services previously rendered by the board. The amendment repeals the administrative fee that the board has imposed to cover the cost for the services.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The board also is authorized to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering chapters 1051, 1052, and 1053, Tex. Occupations Code Annotated, relating to architects, landscape architects, and interior designers, pursuant to Sections 1051.651(a), 1052.054(a), and 1053.052(a) of Tex. Occupations Code Annotated, respectively.

§1.81. General.

(a) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board:
Figure: 22 TAC §1.81(a)

(b) The Board cannot accept cash as payment for any fee.

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

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

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

This agency 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 May 20, 2004.

TRD-200403411
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: June 9, 2004
Proposal publication date: April 16, 2004
For further information, please call: (512) 305-8535

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER E. FEES

22 TAC §3.81

The Texas Board of Architectural Examiners adopts an amendment to §3.81 for Title 22, Chapter 3, Subchapter E, pertaining to examination fees, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3746). The section is being adopted with changes.

Section 3.81 specifies the fees charged by the board, including examination fees. As amended, §3.81 lists the fees for taking the Landscape Architect Registration Examination to be administered during 2004 and 2005, lists the fees for the administration of the examination for registration as an interior designer during 2005, and repeals the administrative fee charged by the board for the administration of the interior designer registration examination. The board changed §3.81 as proposed by repealing an obsolete examination fee for the administration of the examination for registration as an interior designer that was administered during April 2004.

The amended section repeals other obsolete fees charged for examinations that have been administered. The amendment increases the examination fees for registration as a landscape architect and for registration as an interior designer. Examination providers that sell the examinations to the board have increased the charge imposed upon the board. The amendment increases the fees to cover the additional cost to the board of purchasing the examinations. The interior designer examination provider is assuming the services previously rendered by the board. The amendment repeals the administrative fee that the board has imposed to cover the cost for the services.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to §1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The board also is authorized to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering chapters 1051, 1052, and 1053, Tex. Occupations Code Annotated, relating to architects, landscape architects, and interior designers, pursuant to §§1051.651(a), 1052.054(a), and 1053.052(a) of Tex. Occupations Code Annotated, respectively.

§3.81. General.

(a) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board:
Figure: 22 TAC §3.81(a)

(b) The Board cannot accept cash as payment for any fee.

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

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200403412

Cathy L. Hendricks, ASID/IIDA
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Proposal publication date: April 16, 2004
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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER E. FEES

22 TAC §5.91

The Texas Board of Architectural Examiners adopts an amendment to §5.91 for Title 22, Chapter 5, Subchapter E, pertaining to examination fees, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3755). The section is being adopted with changes.

Section 5.91 specifies the fees charged by the board, including examination fees. As amended, the section lists the fees for taking the Landscape Architect Registration Examination to be administered during 2004 and 2005, lists the fees for the administration of the examination for registration as an interior designer during 2005, and repeals the administrative fee charged by the board for the administration of the interior designer registration examination. The board changed Section §5.91 as proposed by repealing an obsolete fee charged for the administration of the examination for registration as an interior designer that was administered in April 2004.

The amended section repeals other obsolete fees charged for examinations that have been administered. The amendment increases the examination fees for registration as a landscape architect and for registration as an interior designer. Examination providers that sell the examinations to the board have increased the charge imposed upon the board. The amendment increases the fees to cover the additional cost to the board of purchasing the examinations. The interior designer examination provider is assuming the services previously rendered by the board. The amendment repeals the administrative fee that the board has imposed to cover the cost for the services.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.202 of Tex. Occupations Code Annotated ch. 1051, which provides the board with general authority to promulgate rules necessary to the administration of its statutory responsibilities. The board also is authorized to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering chapters 1051, 1052, and 1053, Tex. Occupations Code Annotated, relating to architects, landscape architects, and interior designers, pursuant to Sections 1051.651(a), 1052.054(a), and 1053.052(a) of Tex. Occupations Code Annotated, respectively.

§5.91. General.

(a) In addition to any fees established elsewhere in these rules, by the Act, or by another provision of Texas law, the following fees shall apply to services provided by the Board:
Figure: 22 TAC §5.91(a)

(b) The Board cannot accept cash as payment for any fee.

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

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200403413
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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Proposal publication date: April 16, 2004
For further information, please call: (512) 305-8535

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.7

The Texas Funeral Service Commission adopts an amendment to Title 22, Texas Administrative Code, Chapter 203, Section 203.7 (relating to Price Disclosures). Notice of the proposed action was published in the March 12, 2004 issue of the *Texas Register* (29 TexReg 2530). The amended section is adopted without changes to the proposed text.

The amendment to Section 203.7 is adopted to clarify that the statement of funeral goods and services selected must be itemized and list the funeral goods and services selected by a person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement.

The Alderwoods Group and Jerry Miller of Hewitt, Texas commented favorably on the proposed new chapter and section.

The amendment to section 203.7 is adopted under Texas Occupations Code, Section 651.152. The commission interprets section 651.152 as authorizing it to adopt rules as necessary to administer Chapter 561.

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

This agency 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 May 20, 2004.

TRD-200403467
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: June 9, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 936-2474

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22 TAC §203.17

The Texas Funeral Service Commission adopts an amendment to Title 22, Texas Administrative Code, Chapter 203, Section 203.17 (relating to Clarification of Other Facilities Necessary in a Preparation Room). Notice of the proposed action was published in the March 12, 2004 issue of the *Texas Register* (29 TexReg 2531). The amended section is adopted without changes to the proposed text.

The amendment to Section 203.17 is adopted because existing subsections 203.17(b) and (c) simply parrot the language of Occupations Code, Section 651.351(g). The statute is self-explanatory. The rule is redundant.

The Alderwoods Group and Jerry Miller of Hewitt, Texas commented favorably on the proposed new chapter and section.

The amendment to section 203.17 is adopted under Texas Occupations Code, Section 651.152. The commission interprets section 651.152 as authorizing it to adopt rules as necessary to administer Chapter 561.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200403468
O. C. Robbins
Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2474

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22 TAC §203.35

The Texas Funeral Service Commission adopts a new rule at Title 22, Texas Administrative Code, Chapter 203, Section 203.35 (relating to Clarification of Establishment Chapel Requirements). The new rule is proposed in order to clarify required facilities under Texas Occupations Code, Section 651.351. Notice of the proposed action was published in the March 12, 2004 issue of the *Texas Register* (29 TexReg 2531). The new section is adopted without changes to the proposed text.

The Alderwoods Group and Jerry Miller of Hewitt, Texas commented favorably on the proposed new chapter and section.

The new section 203.35 is adopted under Texas Occupations Code, Section 651.152. The commission interprets section 651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200403470
O. C. Robbins
Executive Director
Texas Funeral Service Commission
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Proposal publication date: March 12, 2004
For further information, please call: (512) 936-2474

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CHAPTER 207. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §207.1

The Texas Funeral Service Commission (commission) adopts new chapter 207 (relating to Alternative Dispute Resolution) and new §207.1 (relating to Alternative Dispute Resolution Policy and Procedure). Notice of the proposed action was published in the March 12, 2004 issue of the *Texas Register* (29 TexReg 2532). The new chapter and section are adopted with changes to the proposed text.

New §207.1 implements the legislative directive of Occupations Code, §651.167 to develop and implement a policy to encourage the use of alternative dispute resolution procedures for the resolution of internal and external disputes. The section closely tracks the Guidelines developed by the State Office of Administrative Hearings. The changes made from the published version include putting the language of the first paragraph in the active voice, substituting the word "counsel" for "legal" in subsection (b)(7), removing an unnecessary semicolon in subsection (i)(4), and removing the word "of" from subsection (i)(5).

The Alderwoods Group and Jerry Miller of Hewitt, Texas commented favorably on the proposed new chapter and section.

The new chapter and section are adopted under Texas Occupations Code, §§651.152 and 651.167. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651. The commission interprets §651.167 as requiring it to adopt alternative dispute resolution procedures.

No other statutes, articles, or codes are affected by new chapter and section.

§207.1. Alternative Dispute Resolution Policy and Procedure.

(a) Policy. The Texas Funeral Service Commission encourages the resolution and early settlement of all contested matters through voluntary settlement procedures. Commission employees shall implement this policy.

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

(1) ADR--Alternative Dispute Resolution.

(2) Alternative dispute resolution director or ADR procedure--A nonjudicial and informally conducted forum for the voluntary settlement of contested matter through intervention of an impartial third party.

(3) Alternative dispute resolution director or ADR director--The director of the agency office empowered by the commission to coordinate and oversee ADR procedures and mediators.

(4) Contested matter--A request for an order or other formal or informal authorization from the commission that is opposed.

(5) Mediator--The person appointed by the ADR office director to preside over ADR proceedings regardless of which ADR method is used.

(6) Parties--The agencies, employees, managers, supervisors or customers who are in conflict.

(7) Participants--The executive director, the agency legal counsel, the complainant, the respondent, the person who timely filed hearing requests which gave rise to the dispute or if parties have been named, the named parties.

(8) Private mediator--A person in the profession of mediation who is not a Texas state employee and who has met all the qualifications prescribed by Texas law for mediators.

(c) Referral of Contested Matter for Alternative Dispute Resolution Procedures. The commission or the ADR director may seek to resolve a contested matter through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending at the State Office of Administrative Hearing (SOAH) and in the state's district courts.

(d) Appointment of Mediator.

(1) For each matter referred for ADR procedures, the ADR director shall assign a mediator, unless the participants agree upon the use of a private mediator. The ADR director may assign a substitute or additional mediator to a proceeding as the ADR director deems necessary.

(2) A private mediator may be hired for commission ADR procedures provided that:

(A) the participants unanimously agree to use a private mediator;

(B) the participants unanimously agree to the selection of the person to serve as the mediator;

(C) the mediator agrees to be subject to the direction of the commission's ADR director and to all time limits imposed by the director, the judge, statute or regulation.

(3) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity that is a statutory party to the hearing.

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

(e) Qualifications of Mediators.

(1) The commission shall establish a list of mediators to resolve contested matters through ADR procedures.

(A) To the extent practicable, each mediator shall receive 40 hours of formal training in ADR procedures through programs approved by the ADR director.

(B) Other individuals may serve as mediators on an ad hoc basis in light of particular skills or experience which will facilitate the resolution of individual contested matters.

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

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

(B) Each mediator shall have some knowledge in the area of the contested matter.

(C) 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.

(f) Commencement of ADR.

(1) The commission encourages the resolution of disputes at any time, whether under this policy and procedure or not. ADR procedures under this policy may begin, at the discretion of the ADR director, anytime once deemed administratively complete and at least one letter of appeal has been filed with commission.

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

(g) Stipulations. When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the judge assigned to conduct the hearing on the merits and shall be included in the hearing record.

(h) Agreements. Agreements of the participants reached as a result of ADR must be in writing and are enforceable in the same manner as any other written contract.

(i) Confidentiality of Communications in Alternative Dispute Resolution Procedures.

(1) Except as provided in subsections (3) and (4) of this section a communication relating to the subject matter made by the participant in an ADR procedure whether before or after the institution of formal proceedings, is confidential, is not subject to disclosure and may not be used as evidence in any further proceedings.

(2) 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.

(3) An oral communication or written material used in or made a part of and ADR procedure is admissible or discoverable independent of the procedure.

(4) 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.

(5) The mediator may not, directly or indirectly, communicate with the judge or any commissioner, of any aspect of ADR negotiations made confidential by this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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O. C. Robbins
Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2474

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 473. FEES

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts amendments to §473.3, concerning Annual Renewal Fees (Not Refundable) without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2171)

The amendments are being adopted to correct implementation of HB 2985 which requires the agency to raise annual licensure renewal fees.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency 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 May 18, 2004.

TRD-200403356
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 7, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 305-7700

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22 TAC §473.5

The Texas State Board of Examiners of Psychologists adopts amendments to §473.5, concerning Miscellaneous Fees (Not Refundable) without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2172).

The amendments are being adopted to clarify miscellaneous fees.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 7, 2004
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For further information, please call: (512) 305-7700

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy adopts an amendment to §501.52 concerning Definitions without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3322). The text of the rule will not be republished.

The amendment to §501.52 will add the Administrative Code citation for the board's rules, place quotation marks around terms to be defined and add limited liability partnerships and limited liability companies to the definition of a CPA firm.

The amendment will function by clarifying the definitions and making them easier to read.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §501.53

The Texas State Board of Public Accountancy adopts an amendment to §501.53 concerning Applicability of Rules of Professional Conduct without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3324). The text of the rule will not be republished.

The amendment to §501.53 will add §501.78 (regarding Withdrawal or Resignation) to the list of rules of professional conduct that are applicable to CPAs that do not engage in the client practice of public accountancy.

The amendment will function by being applicable to all licensed CPAs.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.80

The Texas State Board of Public Accountancy adopts an amendment to §501.80 concerning Practice of Public Accountancy without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3325). The text of the rule will not be republished.

The amendment to §501.80 will clearly state that a person must possess both a certificate and a current license in order to represent that they are a Certified Public Accountant.

The amendment will function by clearly stating that unlicensed persons may not represent that they are CPAs.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.6

The Texas State Board of Public Accountancy adopts new rule §509.6 concerning Rulemaking Procedures without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3325). The text of the rule will not be republished.

New rule §509.6 moves, re-names and re-numbers former rule §519.3.

This new rule is the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, Part 22, Chapter 509 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The new rule will function by being placed in a more logical location.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.1, §518.2

The Texas State Board of Public Accountancy adopts the repeal of §518.1 concerning Cease and Desist Orders and §518.2 concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3327).

The proposed repeal of §518.1 and §518.2 will repeal two rules that are being rewritten and relocated.

The repeals will function by rewriting and relocating these rules.

No comments were received regarding adoption of these repeals.

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: April 2, 2004
For further information, please call: (512) 305-7848

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22 TAC §§518.1 - 518.4

The Texas State Board of Public Accountancy adopts new rules §518.1 concerning Definitions, §518.2 concerning Cease and Desist Orders, §518.3 concerning Violation of a Cease and Desist Order and §518.4 concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3327). The text of the rules will not be republished.

New rules §518.1 through 518.4 will explain that the definitions in chapter 519 are applicable to chapter 518, will describe the cease and desist orders, the procedures and the consequences for not complying with cease and desist orders.

The new rules will function by offering faster hearing dates at SOAH than district courts.

No comments were received regarding adoption of these rules.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 519. PRACTICE AND PROCEDURE

22 TAC §§519.1 - 519.14, 519.16, 519.17

The Texas State Board of Public Accountancy adopts the repeal of Chapter 519, §519.1 concerning Purpose and Scope, §519.2 concerning Computation of Time, §519.3 concerning Rulemaking Proceedings, §519.4 concerning Conduct and Decorum, §519.5 concerning Ex Parte Consultations, §519.6 concerning Informal Conferences and Informal Dispositions, §519.7 concerning Administrative Penalties, §519.8 concerning Subpoenas, §519.9 concerning Procedures after Hearing, §519.10 concerning The Record and Assessment of Cost of Preparation, §519.11 concerning Follow-Up, §519.12 concerning Publication of Disciplinary/Administrative Sanctions, §519.13 concerning Mediation and Alternative Dispute Resolution, §519.14 concerning Emergency Suspension, §519.16 concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board and §519.17 concerning Administrative Penalty Guidelines without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3329).

The proposed repeal of Chapter 519 will remove these rules so they can be replaced by re-written rules.

The repeals will function by replacing this rules with re-written rules that are current and applicable.

These repeals are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

No comments were received regarding adoption of these repeals.

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§519.1 - 519.9

The Texas State Board of Public Accountancy adopts new rules §519.1 concerning Purpose and Scope; §519.2 concerning Definitions; §519.3 Computation of Time; §519.4. concerning Conduct and Decorum; §519.5. concerning Ex Parte Consultations; §519.6 concerning Subpoenas; §519.7 concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board, §519.8 concerning Administrative Penalties and §519.9 concerning Administrative Penalty Guidelines in Subchapter A concerning General Provisions without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3330). The text of the rules will not be republished.

New board rule §519.1 describes the purpose and scope of Chapter 519. New board rule §519.2 contains the definitions needed to understand Chapter 519. New board rule §519.3 describes computation of time. New board rule §519.4 describes conduct and decorum in committee and board proceedings. New board rule §519.5 addresses ex parte consultations. New board rule §519.6 describes the board's new subpoena power. New board rule §519.7 lists the criminal offenses that involve dishonesty, fraud, moral turpitude or alcohol abuse or controlled substances that directly relate to the practice of accounting, including recidivism. New Board Rule §519.8, which is former board rule §519.7, recreates the administrative penalties that may be assessed against licenses. New board rule §519.9 contains guidelines for the assessment of administrative penalties in disciplinary matters.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The new rules will function by making the rules clearer and easier to understand.

One comment was received regarding adoption of these rules. Mr. Ray E. Berend, Managing Partner of Padgett, Stratemann & Company, commented on the proposed rewrite of Chapter 519. He believes proposed rule 519.9 should require complainants to reimburse licensees for the costs that licensees incur and the time they spend responding to frivolous complaints or to complaints that lack substantial merit. Assessing a licensee's costs to respond to the board against complainants would be unfair to complainants and would cause a major decline, if not a cessation, in the receipt of complaints. Individuals are, and should be, encouraged to forward any potential complaints to the Board for examination by board staff. All complaints are screened by board staff to exclude complaints that are not within the board's jurisdiction and complaints that are patently frivolous. However, if the board asks a CPA or CPA firm to respond to an allegation, then this means that board staff has determined that the allegation is within the board's jurisdiction and that it should be the subject of an inquiry at least to the extent of requiring a response or explanation. Lacking substantial merit is a particularly onerous burden because it means the complaint has merit, but not substantial merit.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §§519.20 - 519.25

The Texas State Board of Public Accountancy adopts new rules §519.20 concerning Complaints; §519.21 concerning Investigations; §519.22 concerning Committee Considerations; §519.23 concerning Informal Conferences, §519.24 concerning Committee Recommendations and §519.25 concerning Mediation and Alternative Dispute Resolution in Subchapter B concerning Complaints and Investigations without changes to the proposed text as published in the April 2, 2004 issue of the

Texas Register (29 TexReg 3333). The text of the rules will not be republished.

The new rules §519.20 through §519.25 will describe the Board's enforcement complaint, investigative, informal conference and committee procedures.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The new rules will function by describing the Board's enforcement complaint, investigative, informal conference and committee procedures for anyone to read.

One comment was received regarding adoption of these rules. Mr. Ray E. Berend, Managing Partner of Padgett, Stratemann & Company, commented on the proposed rewrite of Chapter 519. Regarding proposed rule §519.21(d), Mr. Berend wants licensees to be allowed additional time (beyond the thirty days) in which to respond to the Board. It is and has been the practice of board staff to grant requests for additional time when the licensee has a good reason why they need additional time in which to respond. However, unsupported requests for additional time or requests based on being busy are not granted.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §§519.40 - 519.53

The Texas State Board of Public Accountancy adopts new rules §519.40 concerning General Provisions; §519.41 concerning Pleadings in Contested Cases; §519.42 concerning Service in SOAH Proceedings; §519.43 concerning Emergency Suspension; §519.44 concerning Default; §519.45 concerning Discovery; §519.46 concerning Official Notice and Business Records Affidavit; §519.47 concerning Waiver of Privilege/Confidentiality, §519.48 concerning Final Witness List, §519.49 concerning Exhibits, §519.50 concerning Reporter and Transcripts, §519.51 concerning Evidence, §519.52 concerning Motions and §519.53 concerning Dismissal by the Board. Board rules §519.40, §519.44, §519.45, §519.49 and §519.53 are adopted with non-substantive changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3336). The change in §519.40 corrects the name of the document that confers jurisdiction on SOAH. The change in §519.44 deletes a sentence that required an ALJ to grant a board motion to remand. The change in §519.45 inserts "may" to allow an ALJ to issue certain types of orders. The changes to §519.49 allow an ALJ to exclude unnecessary and duplicative exhibits and allow an ALJ to re-consider their initial ruling. The changes to §519.53 recognize that SOAH loses jurisdiction once it issues a proposal for decision and omits a sentence that might be misread as barring re-prosecution. Board rules §519.41, §519.42, §519.43, §519.46, §519.47, §519.48, §519.50, §519.51 and §519.52 are adopted without changes to the proposed text as published in the April 2, 2004 issue of the *Texas Register* (29 TexReg 3336). The text of those rules will not be republished.

New rules §519.40 through §519.53 describe the procedures for proceedings at the State Office of Administrative Hearings ("SOAH"). While all of the rules are new, most of them describe the current actual practice and supplement SOAH's procedural rules and the Texas Rules of Civil Procedure. Rule 519.40 appoints SOAH to hear the Board's cases. Rule 519.41 describes the contents of pleadings in contested cases, procedures, applicable time limits and contains language for default proceedings. Rule 519.42 requires service according to SOAH's rules. Rule 519.43 is former rule 519.14, and it describes emergency suspension procedures and the Executive Committee's role. Rule 519.44 describes default proceedings. Rule 519.45 describes the several available discovery procedures and deadlines. Rule 519.46 describes the official notice and business records affidavit procedures and filing schedules. Rule 519.47 describes waiver of privilege and confidentiality in discovery proceedings. Rule 519.48 describes the procedure and deadline for designation of witnesses and final witness list. Rule 519.49 describes the procedure and deadlines for exhibits. Rule 519.50 addresses court reporters and transcripts of the hearings. Rule 519.51 describes the evidentiary rules that are applicable. Rule 519.52 applies SOAH's rules to Motions. Rule 519.53 allows the Board to dismiss a complaint at anytime.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Title 22, Part 22, Chapter 519 in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The new rules will function by streamlining the proceedings at SOAH.

Two comments were received regarding adoption of these rules. Mr. Ray E. Berend, Managing Partner of Padgett, Stratemann & Company, commented on the proposed rewrite of Chapter 519. Mr. Berend objects to proposed §519.40 because it allows the Board to overrule an ALJ's findings and rulings. Mr. Berend believes this confers arbitrary power on the Board to overrule a

neutral fact finder. If an ALJ has reached an incorrect or unsupportable opinion, decision or recommendation, then it is the board's duty to protect the public by correcting the ALJ's incorrect opinion, recommendation and decision. Mr. Berend mentioned "rulings," but evidentiary admissibility rulings are not corrected by the Board. The ALJ merely makes a recommendation as to the appropriate disposition. ALJ's are not empowered to decide what, if any, disciplinary or corrective action should be imposed because that power is expressly reserved for the Board.

Mr. Berend wants proposed §519.40 to allow licensees to appeal an enforcement committee's recommendation to the full Board prior to proceeding to a hearing before an ALJ. The enforcement committee's finding is merely a preliminary determination as to whether a violation has occurred and a recommendation as to the appropriate disposition of the matter. The administrative hearing is where the facts are conclusively established by the Board's appointed neutral fact finder. The full Board cannot render a decision until the facts are established. Allowing licensees to "appeal" a committee's "findings" to the full board before proceeding to a hearing before an ALJ would require the full Board to make a determination without giving the respondent an opportunity for a hearing as required by statute. The full Board would have participated in the investigation of the matter. This would leave no unexposed board members available to consider the ALJ's proposed recommendations because of the requirement in §901.153(e) of the Public Accountancy Act that board members who participated in the investigation may not vote on the final disposition of the case. The only findings that are made by Enforcement committees are the recommended findings of fact that are contained in consent orders that have been agreed to in writing by the licensees. Enforcement committees make recommendations which include recommending an administrative hearing in contested matters.

Ms. Shelia Bailey Taylor, Chief Administrative Law Judge of the State Office of Administrative Hearings ("SOAH") commented in opposition to the adoption of certain parts of the proposed chapter 519.

Ms. Taylor objected to proposed new §519.40(a) because it appoints SOAH as the Board's fact finder. She states that SOAH is the fact finder for all parties, not just the Board. In response, the Board agrees. However, §901.508 of the Public Accountancy Act requires the Board to offer a person against whom it proposes to take disciplinary action a hearing either before the Board or a hearings officer appointed by the Board. Rather than conduct the required hearings before the Board, the Board elected to appoint SOAH as the Board's hearing officer, which is a reflection of current Board practice. SOAH is a neutral forum and provides a level playing field to both complainants and the general public, whose interests are represented by Board staff because they are not parties to the hearing, and respondents, who represent their own interests.

Ms. Taylor notes that proposed §519.40(b) states that SOAH obtains jurisdiction over a matter referred to it by the Board upon the filing of a complaint with SOAH, but SOAH rule 155.7(b) states that SOAH acquires jurisdiction over a referred matter when an agency files a request to docket case. In response, proposed §519.40(b) was changed to provide that SOAH obtains jurisdiction over a matter referred to it by the Board upon the filing of a request to docket case with SOAH to make the board's rule consistent with SOAH's rule.

Ms. Taylor objected to language in proposed new §519.44(a) that requires an Administrative Law Judge ("ALJ") to grant a motion for remand to the Board upon motion of Board staff in cases where a respondent has failed to file a timely written answer. She states current SOAH rules that allow a continuance are sufficient to address the situation and that the Board's proposed language mandating the granting of a motion to remand constitutes undue influence on the independence of an ALJ. She does not object to the concept of a default for the failure to file a written answer and notes that other agencies employ this device successfully. The Board intends the remand device, which is routinely employed in litigation in the judicial branch, as a mechanism to remove the matter from SOAH's docket while the Board is taking final action on the matter. It is viewed as assisting SOAH with its disposition statistics on case resolution by removing the months it takes to present the default to the Board for final resolution from SOAH's docket. Additionally, remand avoids the unnecessary paperwork of filing a periodic status report, as required by SOAH, for cases that remain pending on its docket. The remand procedure is a measure to conserve scarce resources and enhances judicial economy. To avoid any appearance of undue supervision of ALJs, the Board will delete the second sentence which states "(t)he ALJ shall grant any motion by the board to remand the matter to the board for final disposition" and substitute with "(u)pon failure to timely file a written answer, the board will give notice of its intent to dispose of the matter based upon the allegations contained in the complaint or amended complaint to SOAH and the parties by filing a motion for remand to the board for final disposition." This removes the mandatory language regarding the ALJ's actions, but preserves the remand procedure which eliminates the necessity for the matter to remain on SOAH's docket and the filing of status reports.

Ms. Taylor noted that proposed new §519.45 "could be interpreted as instructions or limitations on the ALJs regarding discovery matters." The proposed rule is intended to supplement gaps in SOAH's rules regarding discovery by placing reasonable limits on discovery. Subsection (a) limits discovery to matters relevant and material to matters within the Board's jurisdiction, or at least designed to lead to such matters. This language tracks both the state and federal rules of civil procedure. Subsection (b) also tracks state and federal rules of civil procedure and requires the disclosure of basic information in a timely manner. Subsection (c) makes widely recognized discovery tools available to the parties in accordance with the Act and the Board's and SOAH's rules. Subsection (d) simply makes the cost allocation principles for making copies already contained in Board rule 501.93 applicable to copies made in response to a request for production made in discovery. Subsections (e) and (f) address the taking and use of depositions and require them to be completed no later than 30 days prior to the final hearing on the merits. This is to require the parties to prepare their cases reasonably well in advance of the scheduled hearing date and prevent "trial by ambush", where one party intentionally fails to disclose relevant information to the other party in order to gain an advantage. Subsection (g) addresses the failure of a party to comply with a discovery request and does mandate, that after notice and hearing, the ALJ make such orders as are just. This is not viewed as infringing upon the independence of ALJs. The provision does go on to provide several remedies from which the ALJ may choose to remedy the discovery abuse. Because the "shall" could be interpreted to require the ALJ to order one or more of the listed remedies, the word "may" was inserted so that the phrase states "...the ALJ shall, after notice and hearing,

make such orders in regard to the failure as are just, and may issue one or more of the following orders..." Subsection (h) allows a party to avoid sanctions for discovery abuse upon a showing of good cause. Subsections (i) and (k) allow the discovery requirements to be modified by agreement of the parties or, if agreement cannot be reached, by motion upon showing good cause and lack of harm to the opposing party. Subsection (j) sets a discovery cutoff of 30 days prior to the final hearing on the merits to encourage the parties to timely prepare for the final hearing. SOAH currently has no such discovery cutoff, thus a motion for scheduling order must be filed in every case. By setting a reasonable cutoff time, the necessity to file a motion for scheduling order in every case is eliminated. A motion is required only if a party seeks to change the discovery cutoff and the parties cannot reach agreement as to the appropriate cutoff. Subsection (l) simply imposes a duty on the parties to supplement discovery responses based on newly discovered information. None of the discovery provisions infringes upon the independence of the ALJs, but rather sets rules for the orderly progress of discovery in all cases, thereby requiring the intervention of an ALJ only in unusual cases instead of in every case.

Ms. Taylor is concerned that §§519.48, 519.49, 519.50 and 519.51 "attempt to dictate the manner in which ALJs conduct contested case hearings." In response to her comments, these rules are designed to provide for the orderly conduct of the hearing and prevent trial by ambush. They are not meant to unduly restrict the evidence available to the ALJ or to put a party at a disadvantage who, for reasons beyond his control, locates newly discovered evidence after the deadlines have passed. As Ms. Taylor noted in her comments, SOAH's continuance procedure is available to anyone finding his evidence excluded due to failure to timely comply with the Board's rules through no fault of his own. The prevention of trial by ambush is worth the occasional continuance necessitated to allow compliance with the Board's rules.

Ms. Taylor is concerned that §§519.48- 519.51 will be disruptive of the mass hearing process. To the contrary, because of the remand to the Board for final disposition after the failure to file a written answer provision, it is anticipated that mass hearings will be virtually eliminated. Mass hearings are used to address those who fail to pay license fee renewals, fail to report the required amount of Continuing Professional Education ("CPE") or fail to complete their license renewal notice. The goal is compliance, thus if at any time prior to the Board order a respondent comes into compliance, he is removed from the mass hearing process. It is extremely rare that a respondent will file a written answer without coming into compliance. It is therefore anticipated that the rules requiring exchange of witness lists and exhibits prior to hearing will have no significant impact on mass hearings.

Rule 519.48 is modeled after federal local rules and allows the parties and the ALJ to accurately assess the amount of time the case will take based on the number of witnesses. Subsection 519.48(a) requires a party to designate his expert witnesses within 20 days of receipt of a written request to do so; however, the ALJ may modify this requirement upon motion showing good cause. All experts must be designated no later than 60 days prior to the final hearing date and made available for deposition before the end of the discovery period. SOAH's rules do not contain a cutoff for the designation of experts. Under SOAH's rules, a motion for a scheduling order that requests a cutoff date for the designation of experts must be filed in every case. The proposed new rule eliminates the necessity for a motion followed by a hearing and order, thus promoting judicial economy and conserving scarce resources. Requiring the parties to disclose witnesses in response to a discovery request in order to make them eligible to testify tracks state and federal civil procedure. Also, requiring a party to designate the portions of a deposition transcript he plans to offer into evidence in lieu of live testimony reduces the size of the record by eliminating unnecessary portions of the transcript.

Rule 519.49 is also modeled after federal rules and is designed to shorten trial time by organizing and marking all exhibits prior to trial and requiring written objections to facilitate the ALJs' decisions regarding admissibility. By making admission of all exhibits the first order of business, all parties can examine any witness regarding any exhibit. This eliminates the necessity of recalling a witness to discuss an exhibit that was not admitted while the witness was on the stand and required the testimony of another witness to make the exhibit admissible. It also eliminates the potential for inadvertent errors by counsel for any party, and particularly the self represented respondent, who may forget to move for admission of an exhibit or obtain a ruling thereon.

Ms. Taylor is concerned that the admonition to admit all exhibits to which there has been no objection could lead to the admission of duplicitous, irrelevant or immaterial exhibits and that this will unnecessarily clutter the record. The Board added language to the rule to limit the admission of exhibits to which there was no objection to those "that are not duplicitous, irrelevant or immaterial." Ms. Taylor notes that proposed new Board rule 519.51(a) already excludes irrelevant, immaterial or unduly repetitious evidence.

Proposed new §519.50 merely makes provision for a transcript of the hearing and allocates the cost for the transcript. SOAH does not provide a traditional court reporter to transcribe hearings, but rather simply records the hearing on a tape that the parties can then have transcribed if needed. Due to equipment failures and human error, the tapes are not always the most accurate and complete record. Therefore the proposed new rule also makes provision for correction of the transcript.

Proposed new §519.51 addresses evidence and adopts the standards set forth in the Administrative Procedure Act ("APA"). The rule goes on to make provision for a proffer of excluded evidence to allow a complete record for the Board's consideration and for any subsequent appeal.

Ms. Taylor is concerned about the dismissal provisions contained in proposed new §519.53. She notes that the rule allows the Board to dismiss even after "issuance of a proposal for decision if the matter is currently pending at SOAH." She states that "...once a proposal for decision is issued, (SOAH) loses jurisdiction in a matter...", although it retains limited jurisdiction to resolve exceptions to a proposal for decision. In response, the phrase "if the matter is currently pending at SOAH" was deleted to eliminate the implication that SOAH retains jurisdiction after a proposal for decision is issued in a matter. She is also concerned that the last sentence of the section that prohibits the Board from imposing a disciplinary sanction on a respondent based on a dismissed matter could be interpreted to mean that the Board cannot re-file the matter and impose a disciplinary sanction based on the re-filed case. In response, the Board agrees and deleted the last sentence of §519.53. The intent was to assure respondents that a sanction will not be imposed based on a dismissed case, but rather the case must be re-filed and prosecuted to completion or resolved by agreement prior to the imposition of a disciplinary sanction.

Ms. Taylor is also concerned that proposed new §519.53 infringes on the independence of the ALJs by requiring them to enter an order of dismissal without prejudice upon the request of the Board. Both federal and state rules allow a plaintiff to dismiss a case without cause, provided there is no counter-claim pending. In state courts, the dismissal is presumed to be without prejudice to the re-filing of the case. Although SOAH's rule 155.56 addresses dismissals, it makes no provision for a traditional dismissal without cause. ALJs can dismiss for want of prosecution, lack of jurisdiction, lack of authorization, mootness, failure to state a claim on which relief can be granted, unnecessary duplication of proceedings or settlement of the claims. Proposed new §519.53 is designed to give the Board the traditional right of dismissal without cause and without prejudice to re-filing.

Ms. Taylor is concerned that Board staff will misuse the dismissal provision to get a preview of a respondent's case, then dismiss after trial, shore-up weaknesses in the Board's case and re-file. She suggests that such a course raises "issues of due process, fairness, and harassment, along with issues of judicial economy and efficiency." In response, Ms. Taylor's mistrust of Board staff is unwarranted. The Legislature has entrusted the Board with enforcement of the Act. To effectively discharge that trust, the Board must be able to develop a record of facts on which to base a determination of a violation. Because the Board is not as well equipped to resolve contested facts as a formal tribunal, the Legislature gave the Board the option of appointing a hearings officer to develop the factual record and assist the Board in applying the law to the facts developed. Matters brought to SOAH for resolution have first been considered by an enforcement committee of the Board. These matters are only brought to SOAH when the respondent and the enforcement committee cannot agree on the correct state of the facts or the correct disposition of the matter. Board staff follows the direction of an enforcement committee and is present at the hearing to assist in making a full and fair record on which the ALJ can base his recommendation and the Board can ultimately base its decision. The abuse of process that Ms. Taylor fears, although possible, is not probable given the expanded chapter 519 which is designed to prohibit trial by ambush, and thus eliminate the need for exploring weaknesses at trial. Re-trying a matter does not raise issues of due process, but rather of double jeopardy, which only apply in criminal cases. Whether a re-trial is unfair or harassing depends upon the reasons for the re-trial. As noted above, staff works at the direction of an enforcement committee. An enforcement committee would not pursue a re-trial if to do so would be unwarranted harassment of the respondent or patently unfair to the respondent. It is more likely that to not pursue a re-trial would be patently unfair to the complainant and the public. It will be up to the enforcement committee to balance these interests in the rare instances in which a dismissal results in the need for a re-trial.

Ms. Taylor notes that section 2003.050 states that an agency's procedural rules govern a proceeding at SOAH only to the extent that SOAH enacts a rule adopting that agency's rules by reference. She states it is unlikely she would enact such a rule to preserve uniformity across all state agencies. In response, Ms. Taylor is correct that she has rarely recognized another agency's rules. She declined to adopt many more agency's rules, including those of the Texas Board of Medical Examiners and the Texas Department of Insurance, the two agencies upon whose rules the Board has modeled the proposed new chapter 519. As noted at the beginning of this response, the Board, as do all state agencies, has a duty to enact rules of practice pursuant to section 2001.004 of the Government Code. The ALJs who conduct hearings for the Board are required to consider the Board's rules and written polices when conducting a hearing on its behalf pursuant to section 2001.058 of the Texas Government. Chapter 519 has been carefully considered and designed to avoid conflicts with SOAH's rules. The Board's rules are intended to fill in gaps in SOAH's rules and procedures to streamline the process for all participants. The necessity for numerous motions to fill in gaps in SOAH's rules is eliminated in most instances. This replaces the uncertainty of a case by case scheduling order with a uniform procedure that ensures fairness to all of the participants. ALJs should have no difficulty in following the Board's rules of practice and procedure.

The Board understands and appreciates the mandate of SOAH to remain independent from the boards it serves and the duty of an ALJ to remain free from supervision, direction and indirect influence of the state agency for whom they are serving as a neutral fact finder. The Board's proposed rules are not intended to exert undue influence on ALJs, but rather are intended to put current Board practice into a written policy to be followed by complainants and respondents alike to assure that all sides receive a fair hearing. In fact, the Board has a legislated command to promulgate such rules. Section 2001.004 of the Government Code provides that "a state agency shall (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures...". Chapter 519 serves that purpose for the Board. Section 2001.039 of the Government Code requires every state agency to conduct a comprehensive review of its rules at least once every four years. The proposed amendments and additions to chapter 519 are a part of that rule review.

Rule review requires the Board to address several questions when it considers its existing rules: Is the rule needed to fairly administer and justly enforce the Act? Does the rule reflect current Board policy and interpretations of the Act? Does the rule reflect current Board procedure?

The Board finds that chapter 519 is in need of substantial revision to ensure the fair administration and just enforcement of the Act. Additionally, the Board finds that numerous Board policies and procedures were not present in the existing chapter 519 and it is necessary to adopt significant changes to Chapter 519 to include the omitted policies and procedures in conformity with Sections 2001.004 and 2001.039 of the Government Code.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act, §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency and §519.43 is also proposed under §901.5045 of the Act regarding Emergency Suspension.

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

§519.40. General Provisions.

(a) The board appoints SOAH to be its finder of fact in contested cases pursuant to section 901.508 of the Act. The board does not delegate to the ALJ and retains for itself the right to make the final decision in any contested case.

(b) SOAH hearings of contested cases shall be conducted in accordance with the APA by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when the board staff files a request to docket case.

§519.44. Default.

(a) The failure of the Respondent to timely file a written response as provided in §519.41(c) of this title (relating to Pleadings in Contested Cases) shall constitute a waiver of the right to a hearing and entitles the board to render a final order disposing of the complaint without further hearing. In such instances, the factual and legal allegations contained in the complaint or amended complaint shall be deemed by the board to be true and the board shall act accordingly.

(b) Failure of the Respondent to appear in person or by legal representative on the day and at the time set for a final hearing on the merits of a contested case, regardless of whether a written response has been filed, shall entitle the board to a default judgment.

(c) After remand to the board upon default or entry of a default judgment by the ALJ, the Respondent may file a motion to set aside the remand or default order and reopen the record. The motion to set aside the remand or default judgment shall be granted if the Respondent establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

§519.45. Discovery.

(a) Matters subject to discovery are limited to those that are relevant and material to, or reasonably calculated to lead to the discovery of matters relevant and material to, issues within the board's jurisdiction as set out in the Act.

(b) Not later than 20 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the following information:

(1) the correct names of the parties to the lawsuit;

(2) the name, address, and telephone number of any potential parties;

(3) the legal theories and, in general, the factual bases of the responding party's claims or defenses;

(4) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(5) for any testifying expert:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information; and

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(ii) the expert's current resume and bibliography;

(6) any witness statements.

(c) The parties may use the following methods of discovery:

(1) requests for admissions and genuineness of documents as permitted by SOAH's rules:

(2) interrogatories as permitted by SOAH's rules, which must be sworn to in accordance with Texas Rule of Civil Procedure 197.2;

(3) requests for production as permitted by SOAH's rules;

(4) deposition on written questions as provided for in the Texas Rules of Civil Procedure;

(5) oral depositions taken in accordance with the Act and the board's rules; and

(6) other forms of discovery as provided for in the APA and SOAH's rules.

(d) The board may request production of documents and tangible items that are identified in a discovery response, but a copy of which was not provided with the response, in accordance with §501.93 of this title (relating to Responses). The board shall make available requested documents and tangible items which it has no objection to providing for inspection and copying at the board's offices. The board, in its sole discretion, may provide a copy of the requested documents and tangible items for a reasonable charge.

(e) The taking and use of depositions shall be governed by the APA or by an agreement between the parties either on the record or in a writing signed by the parties or their representatives. Except by an agreement between the parties either on the record or in a writing signed by the parties or their representatives or by order of the ALJ, depositions shall be conducted and completed no later than 30 days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in a writing signed by the parties or their representatives, may result in the imposition of the sanctions and remedies set forth in paragraph (g) of this section.

(f) In the event that, as provided for in the APA, an original deposition transcript is not returned by a deponent or a deponent's counsel, or is not filed by a deponent, a deponent's counsel, or other individual, officer, or entity in possession of or last known to be in possession of the original transcript, a party to the contested case pending before SOAH shall be entitled to have a certified true copy of the deposition transcript filed under seal at the board by the officer or a court reporter who transcribed the deposition testimony or their designee. Such a copy shall be presumed to be authentic unless an objecting party is able to rebut such a presumption by a preponderance of competent evidence.

(g) In the event of a failure by a party to comply with a discovery request, to the extent required by the board's rules, SOAH's rules, the APA, or as agreed to between the parties in a discovery agreement, the ALJ shall, after notice and hearing, make such orders in regard to the failure as are just, and may issue one or more of the following orders:

(1) an order granting a continuance;

(2) an order limiting or restricting the admissibility and use of evidence, to include exclusion of evidence or testimony;

(3) an order requiring the non-compliant party to pay the requesting party's attorney's fees, hearing and court reporter costs, and actual costs for participation in the discovery process, incurred as a result of a failure of the non-compliant party to abide by the discovery requirements;

(4) an order imposing a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements under the board's rules;

(5) an order for remedies and sanctions agreed to by the parties in writing or on the record;

(6) an order disallowing further discovery of any kind or of a particular kind by the offending party;

(7) an order holding that designated facts be considered admitted for purposes of the proceeding;

(8) an order refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters into evidence;

(9) an order disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; or

(10) an order striking pleadings or testimony, or both, in whole or in part.

(h) A showing of good cause for failure to comply with a discovery request to the extent required by the board's rules, SOAH's rules, the APA, or as agreed to between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:

(1) lack of knowledge of the existence of the information or material;

(2) lack of access to or control of the information or material; and

(3) act of nature.

(i) The discovery requirements governing SOAH proceedings may be modified by agreement of the parties either on the record or in writing signed by the parties or their representatives without approval of an ALJ.

(j) All discovery shall be completed no later than 30 days before the date set for a final hearing on the merits. All discovery requests shall be served in a timely manner to allow for a timely response prior to the end of the discovery period.

(k) The discovery requirements and time limitations set by the board's rules and SOAH's rules may be modified by the ALJ only upon a showing of good cause and lack of harm to the opposing party made pursuant to the motion of the party seeking the modification.

(l) Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable.

§519.49. Exhibits.

(a) All exhibits that a party intends to offer at the final hearing, except those offered solely for impeachment, must be marked with a label that identifies the exhibit by the number under which it will be offered at the final hearing and must be exchanged with the opposing parties not later than the tenth day before the date scheduled for the final hearing. At least ten days before the date scheduled for the final hearing, each party must file with SOAH and deliver to the opposing parties a separate list of the exhibits to be offered at the final hearing, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(b) Objections to the admissibility of exhibits must be made at least five days before the final hearing by filing written objections with SOAH that include copies of the disputed exhibits and authority to support the objection. The opposing parties may file a written response with SOAH that includes authority to support the admission of the disputed exhibits. At the beginning of the final hearing the ALJ shall admit all timely exchanged and listed exhibits of any party to which there has been no objection that are not duplicitous, irrelevant or immaterial and rule on the objections to the admission of exhibits. If at any time during the hearing it becomes apparent that the initial ruling on an objection was incorrect, the ALJ on his own motion, or the motion of any party may re-consider the initial ruling and admit or exclude the disputed exhibit. Failure to timely object to an exhibit in writing under this subsection concedes the authenticity of the exhibit.

§519.53. Dismissal by the Board.

The board may dismiss a complaint at any time, even after hearing or issuance of a proposal for decision. The dismissal is effective immediately upon the board giving notice of the dismissal. If the matter is pending at SOAH at the time of the dismissal, the board shall file the notice of dismissal with SOAH and the ALJ assigned to the matter shall promptly enter an order of dismissal without prejudice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
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SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §§519.70 - 519.72

The Texas State Board of Public Accountancy adopts new §519.70, concerning Proposals for Decision; §519.71, concerning Exceptions and Replies; and §519.72, concerning Final Decisions and Orders in Subchapter D, concerning Procedures after Hearing. Board rules §519.70 and §519.72 are adopted without changes to the proposed text as published in the April 2, 2004, issue of the *Texas Register* (29 TexReg 3340). The text of the rules will not be republished. Board rule §519.71 is adopted with a non-substantive change to the proposed text as published in the April 2, 2004, issue of the *Texas Register* (29 TexReg 3340). The change to §519.71 replaces the board's rule on exceptions and replies with SOAH's rules.

New §§519.70 - 519.72 will rewrite the old rules and describe the procedure and timing for the events that occur after the hearing at SOAH has ended.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, Part 22, Chapter 519 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The new rules will function by being rewritten and easier to understand.

Two comments were received regarding adoption of these rules. Larry A. Turner of Cavett, Turner & Wylie, commented that he opposes the adoption of proposed §519.72(c). Mr. Turner voluntarily disclosed that a complaint was filed against him with this board, that the complaint was investigated by the Behavioral Enforcement Committee ("BEC") of the board, that he entered into an agreed consent order, and that he was disappointed with the experience.

Mr. Turner is concerned that the board wants to adopt proposed §519.72(c) which would allow the board to change a finding of fact or conclusion of law or vacate or modify an ALJ's proposed order under certain conditions. In response, §2001.058(e) of the Government Code already authorizes the board to vacate or modify an ALJ's proposed order if the ALJ did not properly apply or interpret the board's policies. The existing §519.9(h) sets forth circumstances which the Board believes falls within the directive of the Government Code. The proposed §519.72(c) merely moves §519.9(h) to new location and is intended to further flesh out and interpret §2001.058(e) of the Government Code.

Mr. Turner states he was told that if he did not enter into an agreed consent order that investigations would be opened against his partners and his firm even though no complaints had been filed against the partners or the firm. In response, prior to being offered an agreed consent order, Mr. Turner participated in an informal conference with the BEC accompanied by an attorney and other representatives and associates of his choosing. Based on the statements that were made by Mr. Turner and his party to the BEC during the informal conference, the BEC decided there were grounds to open additional investigations against others and if the matter involving Mr. Turner was not promptly resolved, then the BEC would open additional investigative files and the board would file complaints against Mr. Turner and other with the State Office of Administrative Hearings ("SOAH"). Ultimately, Mr. Turner did not have to voluntarily enter into an Agreed Consent Order, yet he did so, and the board required that Mr. Turner acknowledge in writing that he executed the agreed consent order voluntarily and pursuant to the unfettered advice and counsel of his licensed attorney. The BEC decided not to pursue the others based on assurances by all that the practice that formed the basis of the complaint against Mr. Turner had been discontinued by all.

Mr. Turner states he was told that it would be futile to refuse the agreed consent order and to proceed to a hearing before an administrative law judge ("ALJ") at SOAH because the issues were policy issues and only the board may decide policy issues. In response, Mr. Turner was represented by and received the counsel of his attorney throughout the investigatory proceeding, and he does not state who made this statement to him. However, by statute, the board is the ultimate arbiter of board policy.

Mr. Turner wants a task force of licensees and attorneys, possibly including board staff, to review the board's enforcement program and to make recommendations that will insure licensees receive due process. In response, during 2002 and 2003 the board and its entire enforcement program underwent extensive review and examination by the Sunset Commission. The Sunset Commission's report regarding the board's enforcement program was favorable and the Public Accountancy Act was amended during the last legislative session to further enhance the board's enforcement authority. Licensees receive all procedural and substantive due process protection during proceedings at SOAH. The Board's enforcement committees do not issue orders, they only make recommendations and agreed consent orders are recommendations to the full board for its consideration. One independent test as to whether the board denies due process is that there have been no successful lawsuits against the board that alleged violation of due process.

Shelia Bailey Taylor, Chief Administrative Law Judge of the State Office of Administrative Hearings ("SOAH") commented in opposition to the adoption of certain parts of the proposed Chapter 519.

Ms. Taylor states that despite proposed new §519.70 that sets forth the required contents of a proposal for decision, SOAH'S ALJs will abide by the provisions of the APA. In response, §2001.062(c) of the Government Code requires a proposal for decision to "contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision." This section is a mandatory minimum and not a prohibition on additional contents. This fact is already recognized by SOAH's ALJs who routinely include many, if not all, of the additional items specified in the proposed new rule in proposals for decision prepared in Board matters. The Board's proposed new rule does not conflict with the APA and reflects current practice.

Ms. Taylor notes that proposed new §519.71 conflicts with a new SOAH rule governing the time to file exceptions to a proposal for decision and replies. In response, the proposed new rule merely carries forward the provisions of the current §519.9(d) and (e). Subsection (d) sets forth the time for filing exceptions and replies with the Board and subsection (e) makes provision for a request for oral argument before the Board. At the time §519.9(d) was adopted, SOAH had no rule specifying the time within which exceptions and replies must be filed. Effective March 2004, SOAH now has a rule setting a deadline by which exceptions and replies must be filed. The proposed text of §519.71(a) was deleted and replaced with "[E]xceptions to the PFD and replies to exceptions must be filed within the time specified in SOAH's rules."

Ms. Taylor states that proposed new §519.72 appears to grant the Board the authority to change a proposal for decision for reasons that are impermissible under the APA. In response, proposed new §519.72(c) substantially carries forward the existing §519.9(h). This subsection comprises the Board's interpretation of §2001.058 of the Government Code and gives greater definition to the circumstances under which the Board may change a finding of fact or conclusion of law. Resolving matters of contested fact are the province of the ALJ, but resolving matters of policy are the province of the Board. Unfortunately the resolution of some facts has the effect of determining Board policy. The Board is comprised of 15 members, 10 of whom are CPAs. Most ALJs are not CPAs and technical matters presented to an ALJ can be difficult to resolve. The Board reserves the right to make the ultimate determination of matters of policy. This is clearly within the Board's authority under the Act and §2001.058 of the Government Code.

Ms. Taylor notes that §2003.050 states that an agency's procedural rules govern a proceeding at SOAH only to the extent that SOAH enacts a rule adopting that agency's rules by reference. She states it is unlikely she would enact such a rule to preserve uniformity across all state agencies. In response, Ms. Taylor is correct that she has rarely recognized another agency's rules. She declined to adopt many more agency's rules, including those of the Texas Board of Medical Examiners and the Texas Department of Insurance, the two agencies upon whose rules the Board has modeled the proposed new Chapter 519.

As noted at the beginning of this response, the Board, as do all state agencies, has a duty to enact rules of practice pursuant to §2001.004 of the Government Code. The ALJs who conduct hearings for the Board are required to consider the Board's rules and written polices when conducting a hearing on its behalf pursuant to §2001.058 of the Texas Government. Chapter 519 has been carefully considered and designed to avoid conflicts with SOAH's rules. The Board's rules are intended to fill in gaps in SOAH's rules and procedures to streamline the process for all participants. The necessity for numerous motions to fill in gaps in SOAH's rules is eliminated in most instances. This replaces the uncertainty of a case by case scheduling order with a uniform procedure that ensures fairness to all of the participants. ALJs should have no difficulty in following the Board's rules of practice and procedure.

The Board understands and appreciates the mandate of SOAH to remain independent from the boards it serves and the duty of an ALJ to remain free from supervision, direction and indirect influence of the state agency for whom they are serving as a neutral fact finder. The Board's proposed rules are not intended to exert undue influence on ALJs, but rather are intended to put current Board practice into a written policy to be followed by complainants and respondents alike to assure that all sides receive a fair hearing. In fact, the Board has a legislated command to promulgate such rules. Section 2001.004 of the Government Code provides that "a state agency shall (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures...". Chapter 519 serves that purpose for the Board. Section 2001.039 of the Government Code requires every state agency to conduct a comprehensive review of its rules at least once every four years. The proposed amendments and additions to Chapter 519 are a part of that rule review.

Rule review requires the Board to address several questions when it considers its existing rules: Is the rule needed to fairly administer and justly enforce the Act? Does the rule reflect current Board policy and interpretations of the Act? Does the rule reflect current Board procedure?

The Board finds that Chapter 519 is in need of substantial revision to ensure the fair administration and just enforcement of the Act. Additionally, the Board finds that numerous Board policies and procedures were not present in the existing Chapter 519 and it is necessary to adopt significant changes to Chapter 519 to include the omitted policies and procedures in conformity with §2001.004 and §2001.039 of the Government Code.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by the adoption.

§519.71. Exceptions and Replies.

(a) Exceptions to the PFD and any replies to exceptions must be filed within the time specified in SOAH's rules.

(b) The form of exceptions and replies is governed by SOAH's rules.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Any party may request oral argument before the board after service of the PFD and disposition of the exceptions, if any, and before the board's final determination of the matter. The written request for oral argument must be filed with the Board's Executive Director no later than 5:00 p.m. on the twentieth day prior to the board meeting at which the matter is to be considered. Oral argument is allowed only at the discretion of the board. In the event oral argument is granted by the board, each party will be notified of the time and place of the argument and the amount of time allotted for the presentation. Only one spokesman per party and position will be allowed to speak. At the conclusion of the presentation, board members may ask questions of the person who made the presentation. Under no circumstances may any party making oral argument to the board refer to or urge reliance on materials that are not part of the administrative record.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. POST BOARD ORDER PROCEDURES

22 TAC §§519.90 - 519.94

The Texas State Board of Public Accountancy adopts new §519.90, concerning Motions for Rehearing; §519.91, concerning Judicial Review; §519.92, concerning The Record and Assessment of Cost of Preparation; §519.93, concerning Publication of Disciplinary/Administrative Sanctions and §519.94, concerning Compliance with Board Orders in Subchapter E, regarding Post Board Order Procedures without changes to the proposed text as published in the April 2, 2004, issue of the *Texas Register* (29 TexReg 3342). The text of the rules will not be republished.

New §§519.90 - 519.94 renumber and relocate former §519.9(f) which is now §519.90, former §519.10 which is now §519.92, former §519.12 which is now §519.93, and former §519.11 which is now §519.94. New §519.91 states that appeals of board orders are governed by the APA. These rules describe the sequence of events, deadlines and procedure after the Board issues an order.

These new rules are the result of rule review conducted pursuant to §2001.039 of the Government Code. Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board published a Notice of Intention to Review Texas Administrative Code, Title 22, Part 22, Chapter 519 in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1234). No comments were received following publication of the notice.

The new rules will function by addressing post-board order events by being located sequentially and in one location.

No comments were received regarding adoption of these rules.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §2001.039 of the Government Code Chapter 2001 (Administrative Procedure Act) that requires that each state agency review and consider for readoption each rule adopted by that agency.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2004.

TRD-200403425
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: June 9, 2004
Proposal publication date: April 2, 2004
For further information, please call: (512) 305-7848

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER BB. DENTAL CARE BENEFITS

28 TAC §§21.3601 - 21.3606

The Commissioner of Insurance adopts new Subchapter BB, §§21.3601 - 21.3606, concerning dental care benefits in health insurance policies. Sections 21.3604 and 21.3605 are adopted with changes to the proposed text as published in the March 12, 2004 issue of the *Texas Register* (29 TexReg 2548). Sections 21.3601 - 21.3603 and 21.3606 are adopted without change and will not be republished.

The adopted rules are necessary to clarify Insurance Code Article 21.53 and the allowable standards for the payment of benefits or reimbursement for the cost of dental care services provided by contracting and non-contracting dentists. The department is aware that some insurers are contracting with dentists for reduced fees when providing dental care services to insureds. This practice has caused confusion regarding the requirement that health insurance policies pay or reimburse non-contracting dentists using the same standard as contracting dentists. The rules clarify that a payment or reimbursement standard expressed as a percentage of a contracting or non-contracting dentist's charges is acceptable if it is uniformly applied to contracting and non-contracting dentists.

The department changed proposed §§21.3604 and 21.3605 as published; however, the changes do not introduce new subject matters or affect additional persons than those subject to the proposal as originally published. Specifically, in response to a commenter's request, the department added the term "maximums" to §21.3604(a) regarding payment of benefits for dental care services to further clarify that benefits in a dental policy may not differ based upon whether the dental care services were provided by a contracting or non-contracting dentist. Also, the department changed the effective date of the subchapter in §21.3605 to accommodate policy form filings made necessary by the rules.

New §21.3601 outlines the scope of the rules. Section 21.3602 defines terms relating to dental care benefits. Section 21.3603 states that a health insurance policy may not prevent an insured from selecting the dentist of his choice or interfere with the diagnosis or treatment of a dentist practicing within the scope of the dentist's license. Section 21.3604 prohibits a health insurance policy from containing a different level of payment of benefits for covered dental care services based on whether the services were provided by a contracting or non-contracting dentist. The section makes clear that the policy benefits, including the payment or reimbursement percentage, must not vary based on whether the services were performed by a contracting or non-contracting dentist. This results in a single standard for payment to all dentists under the health insurance policy. The section clarifies that the payment or reimbursement standard may be expressed as a percentage of a dentist's charges and that the charges to which the percentage will be applied may be defined as both a contracted rate and a usual and customary rate. This may result in different monetary amounts being paid to dentists depending on whether the dentist contracts with the insurer. The amount paid to a dentist, as well as out-of-pocket expenses for an insured, may ultimately differ based upon whether the dentist is a contracting or non-contracting dentist. However, the differences in amounts are based upon the amount charged by the dentist, which the insurer may cap through the use of contracted rates or a usual and customary amount as determined by the insurer. The section also states that an insurer is not required to make payment to a non-contracting dentist that is greater than the amount charged for the service. Section 21.3605 states that the requirements of the rules are applicable to health insurance polices containing benefits for dental care services issued or renewed on or after July 1, 2004. The adoption does not require insurers to make any changes to existing policies upon renewal if the policies were otherwise in compliance with Article 21.53. Section 21.3606 contains a severability clause indicating that if any provision in the rules is found to be invalid, those provisions that can otherwise be given effect will not be affected.

General

Comment: A commenter expressed support for the rule and commended the department particularly for addressing concerns regarding flexibility in how plans may apply a reimbursement percentage to contract rates for contracting dentists and the same reimbursement percentage to "usual and customary fees" (or whatever the dentist charges, if lower than "usual and customary") to non-contracting dentists.

Agency Response: The department appreciates the comment.

§21.3604(a):

Comment: A commenter suggested that because the term "cost-sharing" is not defined in §21.3602, the term could be subject to varying interpretations by plans and therefore requested removal of the term.

Agency Response: The department declines to make the suggested change. This provision is simply a clarification of the department's consistent interpretation of Article 21.53 in relation to Article 3.70-3C, which does not allow for dental

preferred provider benefit plans. As such, the rule makes clear that deductibles, maximums, co-insurance percentages, and other cost-sharing provisions affecting the benefits paid under the policy may not differ based upon whether the services were provided by a contracting or non-contracting dentist.

Comment: A commenter asked that the department consider allowing some flexibility in plan design relating to deductibles between services provided by contracted versus non-contracted providers.

Agency Response: The department declines to make the suggested change. The rule makes clear that deductibles, maximums, co-insurance percentages, and other cost-sharing provisions affecting the benefits paid under the policy may not differ based upon whether the services were provided by a contracting or non-contracting dentist.

Comment: A commenter requested the addition of the word "maximums" between the words "deductibles" and "or other cost sharing provisions."

Agency Response: The department agrees with this comment and has revised the rule accordingly. The change is consistent with the department's long-standing interpretation of Article 21.53 in relation to Article 3.70-3C, which does not allow for dental preferred provider benefit plans.

§21.3604(c):

Comment: A commenter suggested inserting the phrase "for contracting dentists" after the phrase "to a contracted rate" and before the word "and" and inserting the phrase "for non-contracting dentists" after the phrase "or words of similar import."

Agency Response: The department declines to make the suggested changes. While addition of the commenter's suggested language would not result in an inaccurate statement concerning what the rule allows, the language as proposed allows for more flexibility in an insurer's ability to contract with dentists.

For, with changes: Delta Dental Insurance Company, National Association of Dental Plans.

The new sections are adopted under the Insurance Code Articles 3.70-3C and 21.53 and §36.001. While Article 3.70-3C generally authorizes preferred provider benefit plans, Section 2 specifically states that it does not apply to provisions for dental care benefits in any health insurance policy. Article 21.53 provides requirements for health insurance polices containing benefits for dental care services, including requirements relating to an insured's right to choose a dentist and payment or reimbursement standards as applied to both contracting and non-contracting dentists. 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.

§21.3604. Payment of Benefits for Dental Care Services.

(a) A health insurance policy shall not provide a different level of payment of benefits or reimbursement, including deductibles, maximums or other cost-sharing provisions, for covered dental care services based on whether the services are provided by a contracting or non-contracting dentist.

(b) A health insurance policy shall define and explain the standard of payment or reimbursement for dental care services. In defining the standard, a policy may express the level of payment or reimbursement as a percentage of charges for dental care services, provided the insurer uses the same percentage for both contracting and non-contracting dentists.

(c) A health insurance policy may, in the same policy, apply the percentage specified in subsection (b) of this section to a contracted rate and a fee expressed as "usual and customary" or words of similar import.

(d) Notwithstanding subsection (a) of this section, an insurer is not required to make payment to a non-contracting dentist that is greater than the actual fee charged for the dental care service.

(e) A health insurance policy must disclose, if applicable, that the benefit offered is limited to the least costly treatment.

(f) A health insurance policy must provide that an insured may assign the right to benefits to a dentist who provides dental care services, in which case, the insurer shall pay benefits directly to the designated dentist, and such payment shall discharge the insurer's obligation to pay those benefits.

§21.3605. Applicability.

This subchapter is applicable to health insurance policies issued or renewed on or after July 1, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2004.

TRD-200403494
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 13, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER J. MANDATORY HUNTER EDUCATION PROGRAM

The Texas Parks and Wildlife Commission adopts the repeal of §55.609 and an amendment to §55.607, concerning the department's regulations governing mandatory hunter education, without changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2234).

Under the provisions of Texas Parks and Wildlife Code, §§62.014, and 31 TAC Chapter 55, Subchapter J, a person must complete a mandatory hunter education program by the time they are 17 years of age in order to hunt in this state. The statute and 31 TAC Chapter 55, Subchapter J, further provide that a person 16 years of age or younger who does not possess a certificate of hunter education may hunt if accompanied by a licensed hunter 17 years of age or older. Research indicates that approximately 2% of potential hunters are deterred by

hunter education requirements from trying the hunting experience. The amendment as adopted would allow a person 17 years of age or older who has not completed a hunter education program to defer completion of a hunter education program for up to one year, provided that when the person is hunting, he or she is accompanied by a person 17 years of age or older who has passed a hunter education course or is otherwise exempt (i.e., born prior to September 2, 1971) from the hunter education requirement. The intent of the department is to create a mechanism for adults who have not been exposed to hunting to explore the hunting experience with a licensed hunter who has completed the required hunter education course.

The repeal of §55.609, concerning Hunter Education Fees, is necessary because another rulemaking will transfer the provisions of the section to Chapter 53 (Finance).

The amendment to §55.607, concerning Other Non-certified Persons, would create a one-time mechanism that would allow a person who otherwise would be required to have completed a mandatory hunter education course to go hunting under certain conditions during a specific license year after partially prepaying the fee for taking the course. Persons seeking to defer course attendance would prepay $10 at the time of license purchase and pay $5 at the time of course enrollment. The amendment also stipulates that persons who have been convicted of or have received deferred adjudication for violation of the mandatory hunter education requirement are prohibited from applying for a deferral, which is necessary because the department does not intend to furnish a way for persons who have violated the mandatory hunter education requirement to avoid prosecution.

The department received one comment opposed to the implementation of a fee for the hunter education deferral option. The commenter stated that the department is simply using the hunter education deferral option to raise additional revenue. The department disagrees with the comment and responds that the fee paid for the hunter education deferral option is used to recoup the department's administrative costs to provide the deferral option. The primary cost incurred by the department in implementing the deferred hunter education option is the programming cost of modifying the department's electronic point-of-sale system. The department anticipates that the cost of implementation will be not exceed the revenue generated as a result of the fee. There will also be a recurring annual cost of associated with record maintenance and license system integrity (i.e., keeping people from participating more than once, preventing violators from participation, etc.). The department also notes that the deferral option is not mandatory; if a person would prefer to pay the $10 fee for certification, they can take a hunter education course prior to going hunting. No changes were made as a result of the comment.

The department received one comment suggesting that the department waive all or part of the requirement for the hunter education course for anyone who has completed six months of initial active duty training in the military services, stating that military training involves far more firearm safety training than the Hunter Education course does. The department disagrees with the comment and responds that hunter education covers more than firearms safety and involves subject matter that is not covered in military training, such as hunter ethics and responsibilities, wildlife management, conservation, and the federal funding mechanisms that support wildlife management and conservation. No changes were made as a result of the comment.

One commenter opposed adoption of the rule on the basis that the department has no way to enforce the 'normal voice distance' requirement, which requires hunters who have not completed a hunter education course to stay within 'normal voice distance' of someone who has completed a hunter education course. The department disagrees and responds that the 'normal voice distance" requirement is a current requirement, not a new one, and that the department's Law Enforcement Division believes that it is quite enforceable as written. No changes were made as a result of the comment.

The department received one comment requesting that the rules be applicable only to nonresident hunters, who should also be required to provide proof of licensure in their home state. The department disagrees with the comment and responds that Texas residents were envisioned as the main beneficiaries and most numerous potential users of the hunter education deferral option, and that restricting the availability of the option to nonresidents would be counterproductive because it would offer nonresidents an option not enjoyed by Texas residents. No changes were made as a result of the comment.

One commenter stated that a person who receives a hunter education deferral option and attempts to do so again should be fined. The department disagrees with the comment and responds that the implementation of the hunter education deferral option will include measures to prevent any person from receiving more than one deferral. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that hunter education should be about safety, not money. The department could not agree more that hunter education should be about safety, but disagrees that the rules as adopted are motivated by the prospect of financial gain. The rules are intended to provide a mechanism to recruit new participants to hunting by allowing first-time hunters to enjoy the hunting experience in the immediate company of a licensed hunter, which is already permitted by law for persons under the age of 17. No changes were made as a result of the comment.

One commenter opposed adoption of the rules as proposed and stated that the Hunter Education Program should not be compromised by allowing deferrals. The commenter did not elaborate. The agency disagrees with the comment and responds that rules as adopted are not a compromise; they simply extend a current provision (the conditional and temporary privilege of hunting without having completed a hunter education course) to a greater number of people. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules and stated that all hunters should have the basic knowledge provided in the course before entering the woods with a loaded weapon. The department understands and shares the commenter's concern about proper preparation, but disagrees with the comment and responds that by statute, a person under 17 may hunt without having completed a hunter education course provided that person is accompanied by a person who is licensed to hunt. The rules as adopted simply create another class of user that may hunt without having completed a hunter education course, provided there is an accompanying hunter who has completed the course or is exempt from the hunter education requirement. No changes were made as a result of the comment.

One commenter stated that hunter education should remain mandatory and that the department should expand opportunities for completing the hunter education course. The department

agrees with the comment. No changes were made as a result of the comment.

The department received 36 comments opposing adoption of the proposed rules on the basis of concerns about safety, but the comments did not articulate specific reasons for that concern. The department responds that it is committed to providing hunters in this state with the best and most efficacious hunter education programs possible. The department disagrees with the idea that the rules as adopted in any way compromise the safety of hunters or bystanders. The rules as amended would allow persons who have not completed a hunter education course to hunt, but only when accompanied by a person who has completed a hunter education course (or is exempt), and only if that person is within normal voice range. Since persons under 17 are already permitted to do this, the department does not believe that allowing additional persons over the age of 17 to do it would constitute a risk to public safety. No changes were made as a result of the comments.

The department received 145 comments supporting adoption of the proposed rules.

31 TAC §55.607

The amendment is adopted under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the mandatory hunter education program and to charge a fee not to exceed $15 to defray administrative costs.

This agency 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 May 21, 2004.

TRD-200403478
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: June 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 389-4775

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31 TAC §55.609

The repeal is adopted under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the mandatory hunter education program and to charge a fee not to exceed $15 to defray administrative costs.

This agency 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 May 21, 2004.

TRD-200403477
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: June 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 389-4775

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CHAPTER 58. OYSTERS AND SHRIMP
SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §§58.22, 58.23, 58.40, 58.50, 58.60

The Texas Parks and Wildlife Commission adopts amendments to §58.22, concerning Commercial Fishing; §58.23, concerning Non-Commercial (Recreational) Fishing; §58.40, concerning Oyster Transplant Permits; §58.50, concerning Oyster Harvest Permits; and §58.60, concerning Transplant and Harvest Permit Cancellation. The amendment to §58.40 is adopted with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2235). The amendments to §§58.22, 58.23, 58.50, and 58.60 are adopted without changes and will not be republished. The change to §58.40 alters subsection (b)(8)(A) to replace the word 'transport' with the word 'transplant.' Although the proposed language is enforceable as published (since oysters could not be transplanted without transporting them to the transplant site), the activity to which they are ultimately subjected is, technically, transplantation.

Prior to the adoption of these rules, it was unlawful to transplant oysters from restricted waters to a private lease or subsequently harvest oysters from a private lease unless the appropriate permits had been issued and the boundaries of the lease clearly marked. Difficulties of enforcing the boat allocation and the cost to the department of boundary inspection prior to permit issuance, as well as other administrative issues, were discussed at a recent Oyster Advisory Committee meeting and the rules as adopted reflect that discussion. The rules as adopted affect the private lease component of the oyster fishery by: a) reducing the time for processing of applications, b) clarifying reporting requirements; c) clarifying that the number of vessels are part of a transplant permit, and d) clarifying that permitted vessels must have a permit on board the vessel when operating. The other aspect of the rules as adopted allows for both the recreational and commercial harvest of oysters by hand.

The administrative lead time that historically was needed between application for and issuance of permits has been significantly reduced through the use of word processors. In addition, the elimination of the requirement for monthly inspection of each lease boundary marker allows for more streamlined application processing.

Also, the number of boats allowed in restricted waters for oyster transplanting was determined through an informal consent arrangement. The informality was possible because very few people were in this portion of the fishery. However, equitable access to the resource had become an issue in recent years.

In order to maintain a reasonable and equitable allocation of transplant boats between leases, the amendments function to allow the department to designate the total number of boats that may be used for transplanting and then equitably allocate those boats among leases. However, boat allocations may be voluntarily transferred between leases as long as those transfers are completed before transplanting permits are issued for those leases. In addition to the reduction in the time required to process an application the due date of transplant/harvest reports is clarified. The department's requirement of inspecting lease boundary markers monthly is proposed to be removed because boundary marking is required by statute and as part of the lease

and failing to mark lease boundaries is a violation by rule. Law enforcement personnel would still be free to inspect those markers, but inspecting all lease boundaries prior to issuing harvest and transplant permits will not be required. And finally, enforcement of permit conditions is enhanced by requiring the permit to be available for inspection on a vessel during all permitted activities. The rules adopted also provide for a five calendar-day cancellation of a permit for violating this provision.

Also, it is not clear that fishermen taking oysters for commercial or personal use may do so using non-mechanical means. The rules as adopted make it clear that oysters may be taken by non-mechanical means.

The rules will function by clarifying reporting requirements; clarifying the number of vessels that are part of a transplant permit, clarifying that permitted vessels must have a permit on board the vessel when operating, and by allowing the recreational and commercial harvest of oysters by hand.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, places, and times in which it is lawful to hunt, take or possess aquatic animal life; Chapter 76, Subchapters B and C, which authorize the commission to regulate, permit, and license the operation of private oyster leases; and §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters.

§58.40. Oyster Transplant Permits.

(a) Oysters for transplanting to a private oyster lease may be taken only under a permit issued by the department.

(b) Oyster Transplant Application.

(1) The application for a transplant permit must include the following information:

(A) oyster lease number;

(B) name and address of the lease holder and/or that of his designated agent;

(C) name, if documented, and/or registration number of all boats to be used in transplanting operations;

(D) as prescribed in Parks and Wildlife Code, §76.031, the quantity of unculled oysters requested, and a description of areas from which the oysters are requested to be taken; and

(E) beginning and ending dates of transplant operations.

(2) Written applications for transplant permits must be received by the department two days prior to the beginning of transplanting operations.

(3) Written applications for transplant permit amendments must be received by the department at least two days prior to the desired effective date of the amendment.

(4) No more than four transplant permits for a lease will be issued during a one month period.

(5) No transplant permit will be issued for an oyster lease while a harvest permit for the same lease is in effect.

(6) A valid transplant permit must be on the vessel during any transplanting activities.

(7) A transplant permit will not be issued to any leaseholder who has not paid any rental, transfer, sale, renewal or late penalty fees that are owed to the department.

(8) The number of boats that may be allocated to a lease for transplanting oysters shall be based on:

(A) the total number of boats that the department determines may be used to transplant oysters during that specific season, and

(B) the total number of active leases during that season.

(9) Boat allocations may be transferred between leases so long as those transfers occur before Private Oyster Transplant Permits are issued for those specific leases and must be identified and included on the transplant permit request.

(c) Oyster Transplant Season and Times.

(1) The department shall establish the oyster transplant season giving consideration to information furnished to the department by leaseholders.

(2) All transplanting operations shall begin after sunrise and shall be completed before sunset each day.

(3) No transplanting will be permitted on Saturdays, Sundays, major holidays, or on the same days that harvest operations are permitted.

(d) Transplant Restrictions.

(1) Transplanting of oysters is subject to the conditions and provisions described in the permit issued by the department.

(2) Oysters taken for the purposes of transplanting to a private oyster lease may be taken only from areas designated by the department as prescribed in Parks and Wildlife Code, §76.033.

(3) Oysters may not normally be taken for the purpose of transplanting from the following areas:

(A) public oyster reefs in areas approved for oyster harvest and which have been subjected to any degree of oyster fishing in recent years;

(B) near-shore reefs around public or private fishing piers where a conflict of interest has arisen or might arise;

(C) reefs or areas in which the incidence of diseases, parasites, and/or predators have been judged potentially dangerous to the public reef fishery if the oysters are transplanted to other areas; or

(D) areas declared to be unsuitable for transplanting by the Texas Department of Health because of the presence of persistent chemicals or diseases that might be dangerous to public health.

(4) All oysters obtained under a transplant permit must be deposited upon the lease identified in the permit.

(5) The cargo of oysters transplanted will consist of unculled oysters and shell, unless specified otherwise.

(6) The permit may require oysters to be culled on the reef from which they are taken if the department determines that the reef area may be protected or improved by such action.

(7) The permit holder may cull the cargo of oysters on his oyster lease.

(8) Oysters may be transplanted only to a private oyster lease which is properly marked at all corners.

(9) No oysters may be transplanted to a lease adjacent to or adjoining a lease approved for harvest.

(e) Reporting Requirement. Weekly transplant reports must be prepared by the permittee and submitted to the department each Monday following the week of transplant.

This agency 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 May 21, 2004.

TRD-200403479
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: June 10, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER B. MAXIMUM SYSTEM CAPACITY OF THE CORRECTIONAL INSTITUTIONS DIVISION

37 TAC §152.14

The Texas Board of Criminal Justice adopts new rule §152.14 November 2003 Addition to Capacity without change to the text as proposed in the November 21, 2003 issue of the *Texas Register* (28 TexReg 10426). The purpose of the new section establishes the maximum capacity of the Hamilton Unit at 1,166 beds, and is proposed to comply with the requirement that the Board establish the maximum capacity of units under Texas Government Code §499.102-499.110, known as the "H.B. 124" process. The Hamilton Unit was previously operated by the Texas Youth Commission and has been transferred to the Texas Department of Criminal Justice (TDCJ) and retrofitted to accommodate adult offenders.

Under §499.102(b), the Legislative Budget Board has responded to the request for estimates of fiscal impact, with an estimate of $755,513 in Fiscal Year 2003 for construction and start-up capital costs; and operational costs of $11,674,970 per fiscal year for Fiscal Years 2003 - 2008.

Under §499.106 and §499.107, respectively, the Governor and the Attorney General are required to consider increases to capacity. As of the publication of this preamble, those approvals have been received by the executive director of TDCJ.

No comments were received.

The new rule is adopted under Chapter 499, Subchapter E, Unit and System Capacity, and under Government Code §492.013, which grants general rulemaking authority to the Board of Criminal Justice.

Cross Reference to Statutes: Chapter 499, Subchapter E and Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200403476
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: June 10, 2004
Proposal publication date: November 21, 2003
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 144. CONTRACT ADMINISTRATIVE REQUIREMENTS

The Texas Commission on Alcohol and Drug Abuse (Commission) adopts new Chapter 144, §§144.401, 144.411 - 144.418, and 144.501, concerning Contract Administrative Requirements, with changes to the text that was published in the September 5, 2003, *Texas Register* (28 TexReg 7660).

The new Chapter 144 sections contain certain requirements and provisions for funded organizations that enter into a substance abuse services contract with the Commission. Revisions to Chapter 144 include general clarification of current requirements and review for conformity with State and Federal law; adding the requirement for workers' compensation insurance and the option to use funds to purchase life insurance for key officers and employees; changing the amount of the required fidelity bond; and adding a subsection on compliance with security provisions in the behavioral health integrated provider system (BHIPS).

Changes have been made to Chapter 144 as proposed. The Commission has deleted the requirement for contractors to purchase bonds for the storage and protection of records and data, clarified that the requirement for excess revenue to be refunded to the Commission applies to cost reimbursement programs only, and revised §144.416(d) to prohibit programs from billing for outpatient services in an amount that is greater than the residential/day treatment rate for the equivalent level of services. Language referring to the maximum hours allowed for billing outpatient treatment services was eliminated. In addition to the changes discussed below, the Commission makes other grammatical and non-substantive changes for the purpose of clarifying its intent.

The public comment period began on September 5, 2003, with the publication of the proposed rules in the *Texas Register* and on the Commission's website, and ended October 22, 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 email, fax and U.S. mail. Commission staff summarized the comments received and published draft responses for review on the Commission's website 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 website in advance of the December 9, 2003, open meeting. Chapter 144 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); Association for the Advancement of Mexican-Americans, Inc.; The Association of Substance Abuse Programs (ASAP); Austin Travis County MHMR; Brazos Valley Council on Alcohol and Substance Abuse; Gulf Coast Center; Heart of Texas Council on Alcohol and Drug Abuse; Mid Texas Council on Alcohol and Drug Abuse; Nexus Recovery Center; Rainbow Days, Inc.; Sandstone Health Care, Inc.; Serenity Foundation of Texas; and various individual commenters. The comments received and the Commission's responses appear below in rule number order.

144.401(d)(3). General Contract Provisions. Mid Texas Council on Alcohol and Drug Abuse comments that the requirement for workers compensation insurance should not apply to those who do not provide inpatient treatment services. Organizations that provide prevention, intervention and outpatient treatment services do not put people in harm's way on a daily basis. There have not been any incidents requiring workers compensation for 10 years and the commenter wonders how the organization will pay for the required insurance.

The Commission responds that the purpose of workers compensation is to compensate covered workers for work related injuries or illnesses, even if the injured workers' negligence contributed to the accident. As such, accidents and injuries are not confined to residential treatment facilities. Employee injury cases are more likely to result in lawsuits if an employer does not carry workers compensation insurance. Employers without workers´ compensation face potentially unlimited liability, including possible punitive damages, arising from workplace accidents. Payment of workers compensation insurance is an allowable program expense that serves to reduce risk. As such, requiring workers compensation insurance serves the legitimate Commission goal of having a stable, statewide service delivery system.

§144.401(d)(5). General Contract Provisions. Heart of Texas Council on Alcohol & Drug Abuse, Alcohol and Drug Educational Services in El Paso and the Association for the Advancement of Mexican Americans, Inc. ask whether "key officers" mean "board members" for life insurance purposes. They also inquire whether it is the intention of the rule to make the organization the beneficiary. They question the rationale for the rule considering the additional administrative and direct costs to the program. The commenters acknowledge that it is necessary to include provisions for workers compensation insurance and life insurance on key employees to comply with the labor laws of Texas. They realize program employers need to recognize the professionalism of the field and provide for their employees. They ask if self-insurance is an option when providing workers compensation insurance.

The Commission responds that the term "key officers" does not include board members. The organization cannot be named the beneficiary in the life insurance policy, or costs for such insurance are not allowable. The life insurance represents additional compensation to the key individual and as such is considered a fringe benefit. An organization can establish a self-insurance program for workers compensation provided the plan meets the same requirements as the State's workers compensation plans. The organization must also comply with the self-insurance provisions in the federal circulars.

§144.401(e)(f). General Contract Provisions. Heart of Texas Council on Alcohol & Drug Abuse, Alcohol and Drug Educational Services in El Paso and Montrose Counseling Center question the amount of the fidelity bond or insurance coverage that contractors are required to carry to cover losses due to fraudulent or dishonest acts by the contractor's employees or volunteers with access to funds. For example, what is the minimum and maximum coverage if an organization's contract is $95,000? They suggest that required coverage be a minimum of 15% of the contract amount, up to a maximum of $100,000. Due to the amount of funding received, one of the contractors commenting would be required to obtain a bond in the amount of $500,000 under the proposed rules, but has had difficulty finding coverage for $500,000. The contractor suggests that the maximum be decreased to $200,000.

In response to the example in the comment, pursuant to §144.401(e)(1), the coverage would be equal to the contract amount, $95,000. The Commission has reassessed the proposed rule change and has revised the maximum percentage of coverage to be 35% instead of 50% of the contract amount. The maximum amount of required coverage of $500,000 will not change from the current rule. Note that in the referenced rule, the Commission has clarified expectations for contractors with respect to insurance coverage. Premiums for such coverage are impacted by a number of variables, such as loss histories, deductibles, amount of coverage selected, etc. One such difficulty in obtaining a bond is if an organization "overbuys," i.e., attempts to obtain a bond that provides coverage in excess of the amount of funding received from their various funding sources. In high dollar contracts, $500,000 represents a reasonable assessment of the maximum risk to the Commission.

The Commission has also revised §144.401(f) to delete the requirement that contractors shall purchase a bond sufficient in value to provide for the storage and protection of records and data after the end of the contract or if the contractor closes its business operations. The provision is unnecessarily burdensome for the contractor.

§144.411(a)(1)-(2). Procurement of Goods and Services. Rainbow Days, Inc., ASAP, and Serenity Foundation of Texas support the thresholds set for purchases in §144.411 (a)(1)-(2). The Commission agrees with these comments.

§144.412. Travel. ASAP, Serenity Foundation of Texas, and Rainbow Days, Inc. ask if there is a state or federal requirement/law that disallows gratuities. They believe that tipping wait staff is a standard and legitimate travel expense and would place a hardship on staff required to travel as part of their job if staff are not reimbursed for gratuities. They recommend deletion of gratuities as an unallowable expense unless required by law. The Commission responds that it complies with the State of Texas Travel Allowance Guide, issued by the Texas Comptroller of Public Accounts and has passed down these requirements to subcontractors. In accordance with Chapter 7, Special Provisions, §7.07 Incidental Expenses, B. Non-reimbursable expenses (3), tips or gratuities are unallowable.

§144.413(a)-(g). Financial Eligibility and Third Party Payment. Austin Travis County MHMR suggests exempting OSR programs from §144.413 (a) which states that all programs are subject to financial eligibility requirements, including all treatment programs. The commenter does not feel that the requirement for financial eligibility determination should be stipulated in the contract. The commenter suggests changing the wording to state that programs refer people who are found to be ineligible for financial or clinical reasons to a Commission contracted OSR instead of just providing appropriate referrals.

The Commission responds that there is no reason to exclude OSR programs from rule §144.413(a) based on the fact that they are cost reimbursement programs. The proposed rule states that, if applicable to a prevention or intervention program, the requirement for financial eligibility shall be stipulated in the contract. This addresses whether the program is cost-reimbursement or unit rate. The Commission believes that if a person is not found to be eligible for financial or clinical reasons then the program should provide the most appropriate referrals to the person. This may or may not include the OSR. A person may need services that OSR does not provide and instead need a referral to another agency/organization.

§144.413(b)(2). Financial Eligibility and Third Party Payment. Brazos Valley Council on Alcohol & Substance Abuse suggests deleting duplicative language in the current rules stating that persons with access to other funding sources that pay for an individual's substance abuse services are ineligible for Commission funded services. The Commission responds that §144.105 is in the current rules and will be replaced by §144.413 (b)(2) in the new rules.

§144.413(c). Financial Eligibility and Third Party Payment. Brazos Valley Council on Alcohol & Substance Abuse suggests additional language for §144.413(c) allowing the program to complete and document a financial assessment of each applicant no later than 48 hours after admission to the program instead of prior to admission. If the program sends a client to retrieve documentation, a client may change his mind about getting treatment. The Commission agrees and has revised §144.413(c) to allow the program to admit the client, ensuring that he/she enters treatment. Once the form is completed, then the contractor may bill the Commission for the services if the client meets the financial eligibility criteria.

§144.413(j). Financial Eligibility and Third Party Payment. Brazos Valley Council on Alcohol & Substance Abuse suggests additional language in §144.413(j) whereby insured clients who fall below the federal poverty guidelines and whose deductible and co-pay prevent them from receiving treatment services should be eligible for Commission funding using the sliding fee scale. These insured clients have disaster insurance but have very high-deductibles and co-pays and can "fall through the cracks."

The Commission responds that the contractor is allowed to bill the Commission for the deductible if documentation in the financial assessment verifies that the client does not have the financial resources to cover the deductible amount. Taking financial responsibility is an important step in the recovery process. Persons that are insured generally have greater resources than the uninsured, and it is the Commission's expectation that personal financial management will extend to insurance deductibles.

In response to the Children's Health Insurance Program (CHIP) substance abuse benefit being restored through additional funding, the Commission reinstates §144.413 (i) that requires contractors serving individuals under 18 years of age to take the necessary steps to become an approved CHIP provider.

§144.416(d)(1)-(3). Billing for Treatment Services. Amarillo Council, ASAP, Serenity Foundation of Texas, Gulf Coast Center, and Sandstone Health Care, Inc believe that a reduction in the number of billable hours per week for transitional outpatient, intensive outpatient, and day treatment will have a significant financial and clinical impact on services. The comments suggest that the agency should be more flexible to allow the provision of a range of service intensities based on the client's need. A reduction in billable hours is not in the best interest of quality outpatient services and will create financial and programmatic hardships for those providing outpatient services. There are no corresponding guidelines defining day treatment, intensive and transitional outpatient services in Chapter 148 which make it difficult to interpret and comply with the proposed billing caps. It seems to contradict the Commission's emphasis on providing more outpatient services.

The Commission responds by revising §144.416(d) to prohibit programs from billing for outpatient services in an amount that is greater than the residential/day treatment rate for the equivalent level of services. Language referring to the maximum hours allowed for billing outpatient treatment services is deleted.

Nexus Recovery Center raises a concern that certain treatment programs are serving pregnant women in their programs as they would any non-pregnant client while not providing the required additional services. They suggest that treatment centers that treat pregnant women should be required to submit additional documentation, such as an itemized bill of services offered, in order to substantiate that the additional requirements for specialized female services are being provided. The Commission responds that additional documentation is not necessary. Contractors are required to comply with the rule provisions relating to specialized female services and compliance, including documentation, is routinely monitored by the Commission's Licensing and Enforcement Branch.

SUBCHAPTER D. CONTRACT ADMINISTRATION

40 TAC §§144.401, 144.411 - 144.418

The new rules are adopted under the TEX. HEALTH & SAFETY CODE §461.012(a)(15) which provides the Commission authority to adopt rules governing its functions and §461.0141 which provides the Commission authority to adopt rules regarding purchase of services. The new rules are also adopted under TEX. HEALTH & SAFETY CODE §464.009 which provides the Commission authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of these rules are Chapters 461 and 464 of the Texas Health and Safety Code.

§144.401. General Contract Provisions.

(a) A contract is not fully executed until it has been signed by the Commission and the contractor.

(b) No payment of funds or working capital advance will be made until the contract is fully executed.

(c) Changes in State or Federal laws and regulations may affect contract provisions. Any modifications resulting from such changes are

automatically made part of the contract and go into effect on the date set by the law or regulation.

(d) The contractor shall have insurance or other provisions approved in writing by the Commission to ensure that assets purchased with Commission funds will be replaced. Insurance coverage shall include, but not necessarily be limited to:

(1) property insurance covering loss, destruction, damage or theft;

(2) liability insurance on the contractor's property and vehicles;

(3) workers' compensation insurance for the contractor's employees that is allocated as a general administrative expense to all organizational activities; and

(4) general liability insurance coverage for clients or participants who attend activities or counseling on the contractor's premises.

(5) Commission-funded insurance coverage may include term life insurance on the lives of trustees, officers or other employees holding positions of similar responsibility, only to the extent that the insurance represents additional compensation. The costs of insurance when the organization is named as beneficiary are unallowable. The amount of such insurance shall be limited to the amount of the individual's annual salary.

(e) The contractor shall carry a fidelity bond or insurance coverage. The fidelity bond or insurance must provide for indemnification of losses due to fraudulent or dishonest acts committed by any of the contractor's employees or volunteers who have access to funds, either individually or in concert with others.

(1) If the contractor's contract with the Commission is $100,000 or less, coverage shall be equal to the contract amount.

(2) If the contractor's contract is over $100,000, coverage shall be equal to $100,000 or 35% of the contract amount, whichever is greater, but in no event shall required coverage exceed $500,000.

(f) Contractors shall maintain all records relating to the contract for at least three years from the date the independent financial audit is accepted (when required) or would have been due (when not required) as stated in Office of Management and Budget (OMB) Circular A-133, the requirements of the Single Audit Act Amendments of 1996, and other governance guiding the program. If any litigation, audit, or other action is in process at the end of three years, the records must be kept until the action is resolved. If a contractor closes business operations, it shall ensure that records relating to the contract are securely stored and accessible for at least three years. The contractor shall provide the Commission with the name and address of the party responsible for storage of records.

§144.411. Procurement of Goods and Services.

(a) The contractor may use small purchase procurement procedures to obtain services, supplies, or other property if the total cost of all purchases does not exceed $25,000 for the contract period. These rules do not apply to obtaining the services of a professional as defined in TEX. GOV'T CODE ANN. ch. 2254 (Vernon 2000).

(1) For any purchase under $5,000, price or rate quotations are not required.

(2) The contractor shall obtain three verbal or written price or rate quotations for any purchase between $5,000 and $10,000. Telephone and other verbal quotations must be documented and available for inspection.

(3) The contractor shall obtain three written price or rate quotations for any purchase of over $10,000. Facsimiles or printed copies of electronic transmissions are acceptable.

(b) The contractor shall select the vendor providing the best value as specified in 1 TAC §391.121 (2003) for the goods or services desired and document the rationale for selection.

(c) A single purchase may include more than one item. Large purchases shall not be divided into small lots in order to avoid bid requirements, especially when bought from the same vendor in the same fiscal year.

(d) If purchases for the contract period are expected to exceed $25,000, the contractor shall comply with requirements found in UGMS or the applicable OMB circular.

§144.412. Travel.

(a) Expenses for transportation, lodging, meals, and related items are allowable when they are incurred by an employee or volunteer on official business that is directly attributable to the contract or required for administration of the contractor.

(b) Costs for lodging, meals, and related items may not exceed the State of Texas per diem rates and costs for mileage may not exceed the State of Texas rate for mileage reimbursement. If the contractor's policies and procedures establish a lower per diem rate, the lower rate shall apply.

(c) When applicable, the contractor may use the State's schedule of per diem rates for out-of-state travel. Federal travel regulations contain maximum meal and lodging reimbursement rates for selected municipalities and counties in each state. The Comptroller of Public Accounts' maximum reimbursement rates for those municipalities and counties are the same as the rates contained in the Federal travel regulations.

(d) Gratuities, alcoholic beverages and tobacco products are not allowable costs.

§144.413. Financial Eligibility and Third Party Payment.

(a) The rules in this section apply to all programs subject to financial eligibility requirements, including all treatment programs. If applicable to a prevention or intervention program, the requirement for financial eligibility determination shall be stipulated in the contract.

(b) The Commission is the payor of last resort for substance abuse services. A contractor shall not bill the Commission for services provided to a client if:

(1) the individual does not meet the Commission's eligibility criteria; or

(2) the individual has access to another public or private funding source that pays for substance abuse services addressing the individual's diagnosis or condition.

(c) The program shall complete and document a financial assessment of each applicant before billing the Commission for treatment services provided to the client, as follows:

(1) The program shall use financial eligibility criteria, forms, and assessment procedures established by the Commission.

(2) A person whose adjusted income is at or below 200% of the Federal poverty guidelines is eligible for free services.

(3) A person whose adjusted income is above 200% of the Federal poverty guidelines shall be charged for services according to the Commission's sliding fee scale.

(d) For adolescents, ability to pay shall be determined by parental or family income unless:

(1) the adolescent applies for treatment without parental knowledge; and

(2) the adolescent refuses to consent to parental notification.

(e) If an adolescent program determines that both conditions in subsection (d) are met, the adolescent's income may be used to determine financial eligibility.

(f) If the client is physically unable to respond to the request for financial and other eligibility information due to intoxication or other behavioral health issue, the financial assessment may be delayed, but it must be completed within three days of admission.

(g) The program shall provide appropriate referrals for all persons who are found to be ineligible for financial or clinical reasons. Documentation shall include:

(1) date(s) of application and denial;

(2) identifying information;

(3) the reason the person was denied admission; and

(4) organizations to which the client was referred.

(h) Any contractor offering services eligible for Medicaid reimbursement shall take all necessary steps to obtain a Medicaid provider number and become an approved Medicaid provider. The process must be initiated no later than 30 days after the beginning date of a contract with the Commission.

(1) All programs providing outpatient treatment services to children and adolescents must contact the current designated contractor for Medicaid to initiate enrollment as a Chemical Dependency Treatment Facility (CDTF) in the Texas Medicaid Program.

(2) Any contractor delivering services in the STAR, STAR+, and/or NorthSTAR service areas must enroll with those program health plans to be reimbursed for services delivered to those clients.

(3) The contractor must screen all clients for Medicaid eligibility. If a client appears eligible but has not yet applied, the contractor shall direct the client to apply for Medicaid benefits and provide assistance as needed to facilitate the enrollment process.

(4) The contractor must bill Medicaid for all covered services delivered to eligible clients.

(i) Contractors serving individuals under 18 years of age shall take all necessary steps to become an approved Children's Health Insurance Program (CHIP) provider by contacting the contracted Health Maintenance Organization (HMO), Behavioral Health Organization (BHO), or Exclusive Provider Organization (EPO) in the region. The process must be initiated no later than 30 days after the beginning date of a contract with the Commission.

(1) The contractor must screen all clients under the age of 18 for CHIP eligibility. If a client appears eligible but has not yet applied, the contractor shall direct the client's consenter to apply for CHIP benefits and provide assistance as needed to facilitate the enrollment process.

(2) The contractor must bill CHIP for all covered services delivered to eligible clients.

(j) The Contractor shall not bill the Commission for any part of any unit of service that has been billed to another entity or that is eligible for reimbursement by another entity. If the third party payor denies payment and all appeals have been exhausted, the contractor may bill the Commission for that unit of service.

(k) The contractor shall make a reasonable effort to collect fees generated from clients paying according to a sliding fee scale, but the contractor may waive collection if the administrative cost of collection will exceed the fee to be collected. The contractor shall not bill the Commission for any uncollected client fees.

§144.414. Payment Requirements.

To be eligible for payments, the contractor must comply with provisions of the contract, rules, policies, and procedures of the Commission, and other applicable State and Federal laws and regulations.

§144.415. Cost Reimbursement for Prevention/Intervention Programs.

(a) All contractors must submit requests for payment promptly and regularly.

(1) Payment requests must be submitted monthly.

(2) Failure to submit payment requests in a timely manner may result in nonpayment.

(b) Contractors shall submit all bills and payment requests through the Behavioral Health Integrated Provider System (BHIPS), unless otherwise instructed. Payment requests shall be complete, accurate, and certified by the contractor's authorized representative (specified in the contract).

(c) Contractors shall maintain documentation necessary to support all payment requests.

(d) Contractors paid through cost reimbursement may request a working capital advance.

(1) A working capital advance may be granted if the contractor submits documentation justifying the need for working capital. Working capital advances shall be granted on an exception basis only.

(2) A contractor receiving a working capital advance shall minimize the time between disbursement of funds by the Commission and expenditure of funds by the program.

(3) A working capital advance for a new fiscal year will not be granted until any working capital advance or surplus cash from the prior fiscal year is fully liquidated.

§144.416. Billing for Treatment Services.

(a) Treatment programs funded through the unit rate payment mechanism shall use the client billing forms to request reimbursement. A billing form must be submitted for each client served in the program who is supported with Commission funds.

(b) Treatment programs shall not bill the Commission for services provided:

(1) at an unlicensed site if the site is required to have a license; or

(2) by a staff person who does not meet the Commission's minimum requirements.

(c) Programs may bill for only one intensity of service and service type (outpatient or residential) per client per day, except that contractor may provide and bill the Commission for pharmacotherapy or co-occurring psychiatric and substance use disorder services for a client at the same time the contractor provides and bills the Commission for outpatient or residential services for the same client.

(d) Programs shall not bill the Commission for outpatient services in an amount that is greater than the residential/day treatment rate for the equivalent level of services.

(e) A residential program may hold an empty bed and bill for a client who is on a planned, approved absence for up to two consecutive days. The frequency of approved absences shall be reasonable and appropriate and shall not exceed four days in a 30-day period, except as provided below.

(1) Contractors shall include planned absences for delivery in treatment plans for each pregnant female, and shall ensure that a bed is available for the female upon her return.

(2) Absences for medical treatment (including delivery), court appearances, or other emergencies may exceed 48 hours, but Commission approval is required if the absence exceeds 96 hours.

(f) Contractors shall maintain documentation necessary to support all payment requests.

§144.417. BHIPS Requirements.

(a) Contractors shall ensure that they have appropriate Internet access and an adequate number of computers of sufficient capabilities to support the use of BHIPS for clinical, billing and reporting purposes.

(b) Contractors shall designate a security administrator and a back-up security administrator. The security administrator is required to implement and maintain a system for management of user accounts/user roles to ensure that all BHIPS user accounts are current.

(c) Contractors shall notify the Commission immediately if a security violation is detected or if there is any reason to suspect that the security or integrity of BHIPS data has been or may be compromised in any way.

(d) Contractors shall guarantee that adequate internal controls, security and oversight are established for the approval and electronic transfer of information regarding payments and reporting requirements. Contractor shall guarantee that the electronic payment request and reports that are transmitted shall contain true, accurate, and complete information.

(e) Contractors shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

§144.418. Reporting.

(a) The contractor shall submit all performance reports, financial reports and requests for payment as required by Commission rules and the contract through BHIPS. Reports shall be submitted in the specified form, manner, and timeframe. Unless otherwise specified, reports are due 20 days after the end of the reporting period.

(b) Treatment programs shall report available capacity and waiting list information Monday through Friday through BHIPS and comply with procedures specified by the Commission. A program that treats individuals for intravenous substance abuse shall notify the Commission through BHIPS when the program's capacity for treating intravenous substance abusers reaches 90%.

(c) All treatment programs shall submit Client Data System (CDS) forms on BHIPS for all clients receiving Commission-funded substance abuse treatment services. Programs shall also correct all errors appearing on the CDS Error Report and submit forms or corrections as needed for records appearing on the "Clients Requiring Transfer Admission Reports." The contractor shall refer to the BHIPS Help File, as needed, for detailed information concerning the above forms and reports.

(d) Contractors shall reconcile internal accounting records with documentation submitted to the Commission and maintain supporting documentation on site.

(e) Adjustments to the final Financial Status Report (FSR) will not be made more than 90 days after the end of the contract period unless the contractor's independent audit report demonstrates that the FSR is incorrect. Prior permission must be obtained in writing to adjust FSRs after the 90-day period.

This agency 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 May 24, 2004.

TRD-200403490
Thomas F. Best
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: September 5, 2003
For further information, please call: (512) 349-6668

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SUBCHAPTER E. CONTRACT OVERSIGHT

40 TAC §144.501

The new rules are adopted under the TEX. HEALTH & SAFETY CODE §461.012(a)(15) which provides the Commission authority to adopt rules governing its functions and §461.0141 which provides the Commission authority to adopt rules regarding purchase of services. The new rules are also adopted under TEX. HEALTH & SAFETY CODE §464.009 which provides the Commission authority to adopt rules and standards for the licensure of chemical dependency treatment facilities.

The codes affected by the adoption of these rules are Chapters 461 and 464 of the Texas Health and Safety Code.

§144.501. Commission Oversight.

(a) All contractors, regardless of the level of funding, are subject to periodic reviews by the Commission for adherence with applicable Federal and State statutes and regulations, Commission rules and contract requirements. These include desk reviews, on-site reviews or in response to a complaint.

(b) The contractor shall allow Commission staff access to the contractor's premises and records and to interview members of the governing body, staff, participants, and clients.

(c) The contractor shall allow Commission staff to examine all property and examine or copy all books, recordings, client records, and documents related to or potentially related to the contract or a Commission requirement.

This agency 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 May 24, 2004.

TRD-200403491

Thomas F. Best
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2004
Proposal publication date: September 5, 2003
For further information, please call: (512) 349-6668

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) and the Texas Agricultural Finance Authority propose to review Title 4, Texas Administrative Code, Part 1, Chapter 24, concerning the Farm and Ranch Finance Program, Chapter 26, concerning the Linked Deposit Program, Chapter 28, concerning the Financial Assistance Program, and Chapter 30, concerning the Young Farmer Loan Guarantee Program, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Title 4, Part 1, Chapters 24, 26, 28 and 30 by the department at this time indicates that the reason for readopting without changes all sections in Chapters 24, 26, 28 and 30 continues to exist.

The department is accepting comment on the review of Chapters 24, 26, 28 and 30. Comments on the review may be submitted within 30 days following the publication of this notice in the*Texas Register* to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711.

TRD-200403504
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 24, 2004

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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 pursuant to the Texas Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review and consider for re-adoption, re-adoption with amendments or repeal of Chapter 111, §§111.1-111.7; 111.11-111.28; and 111.61-111.71 concerning Administration, the Historically Underutilized Business (HUB) Program, and the Cost of Copies of Public Information respectively.

TBPC seeks to determine whether the basis for the original adoption of each rule in Chapter 111 continues to exist. The rules remain valid and applicable.

Comments on the proposed review may be submitted in writing to Cynthia de Roch, General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may be sent via email to cynthia.deroch@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within thirty (30) days of the publication date.

TRD-200403398
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: May 19, 2004

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State Board of Dental Examiners

Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC, Chapter 108, Dental Licensure, §§108.1 - 108.11, 108.20 - 108.25, 108.30 - 108.35, 108.40 - 108.43, 108.50 - 108.61, 108.70, and 108.71. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received by 5:00 p.m. on July 5, 2004, and may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 108. Professional Responsibility

Subchapter A. Professional Conduct

§108.1. Professional Responsibility.

§108.2. Fair Dealing.

§108.3. Consumer Information.

§108.4. Names of Dentists.

§108.5. Patient Abandonment.

§108.6. Report of Patient Death or Injury Requiring Hospitalization.

§108.7. Minimum Standard of Care, General.

§108.8. Records of the Dentist.

§108.9. Dishonorable Conduct.

§108.10. Reinstatement of Retired License.

§108.11. Display of Registration.

Subchapter B. Sanitation and Infection Control

§108.20. Purpose.

§108.21. Requirements.

§108.22. Access to Dental Office.

§108.23. Definitions.

§108.24. Required Sterilization and Disinfection.

§108.25. Dental Health Care Workers.

Subchapter C. Anesthesia and Anesthetic Agents

§108.30. Effective Date.

§108.31. Definitions.

§108.32. Minimum Standard of Care Anesthesia.

§108.33. Sedation/Anesthesia Permit.

§108.34. Permit Requirements and Clinical Provisions.

§108.35. Authority to Demonstrate Anesthesia.

Subchapter D. Mobile Dental Facilities

§108.40. Permit Required.

§108.41. Definitions.

§108.42. Obtaining a Permit.

§108.43. Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units.

Subchapter E. Business Promotion

§108.50. Objectives of Rules.

§108.51. Advertisements.

§108.52. False or Misleading Communications.

§108.53. Professional Announcements.

§108.54. Announcement of Services.

§108.55. Announcement of Credentials in Non-Specialty Areas.

§108.56. Specialty Announcement.

§108.57. Specialist Announcement of Credentials in Non-Specialty Areas.

§108.58. Degrees.

§108.59. Testimonials.

§108.60. False, Misleading or Deceptive Referral Schemes.

§108.61. Unlicensed Clinicians.

Subchapter F. Contractual Agreements

§108.70. Improper Influence on Professional Judgment.

§108.71. Providing Copies of Certain Contracts.

TRD-200403455
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Filed: May 20, 2004

♦ ♦ ♦

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC, Chapter 110, Enteral Conscious Sedation, §§110.1 - 110.4. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received by 5:00 p.m. on July 5, 2004, and may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 110. Enteral Conscious Sedation

§110.1. Definitions.

§110.2. Permit.

§110.3. Permit Requirements and Clinical Provisions.

§110.4. Effective Date.

TRD-200403456
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Filed: May 20, 2004

♦ ♦ ♦

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC, Chapter 112, Visual Dental Health Inspections, §112.1 and §112.2. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received by 5:00 p.m. on July 5, 2004, and may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 112. Visual Dental Health Inspections

§112.1. Definitions.

§112.2. Visual Dental Health Inspection.

TRD-200403458
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Filed: May 20, 2004

♦ ♦ ♦

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC, Chapter 113, Requirements for Dental Offices, §113.2. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received by 5:00 p.m. on July

5, 2004, and may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 113. Requirements for Dental Offices

§113.2. X-ray Laboratories.

TRD-200403459
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Filed: May 20, 2004

♦ ♦ ♦

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission proposes to review its rules in 13 TAC Chapter 1 concerning library development pursuant to the requirements of the Government Code, §2001.039.

The rules were adopted pursuant to the Government Code §441.136 that requires the Texas State Library and Archives Commission to adopt rules regarding the administration of the program of state grants, including qualifications for major resource system membership. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission administer grant programs, including the Texas Library Systems.

Written comments on the commission's review of its Chapter 1 rules may be directed to Deborah Littrell, Director, Library Development Division, Box 12927, Austin, Texas 78711-2927. For further information or questions concerning this review, please contact Ms. Littrell at (512) 463-5456 or at deborah.littrell@tsl.state.tx.us.

TRD-200403551
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: May 25, 2004

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 21, Right of Way.

The department will accept comments regarding whether the reasons for adopting the rules in Chapter 21 continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comment or questions regarding this rule review may be submitted in writing to Bob Jackson, Deputy General Counsel, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200403487
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 24, 2004

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §80.209(a)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code

Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

BLOCK 1: Transaction Identification

This application is for:

- ☐ First time issuance of an SOL for a new home (first retail sale)
- ☐ Revised SOL to reflect changes in (check **all** that apply and complete the applicable blocks):
  - ☐ Location (Blocks 2, 3, 4b, 6, 7, and 10)
  - ☐ Ownership (Blocks 2, 3, 4a, 4b, 5, 6, 7, 8, 9, 10a, and 10b)
  - ☐ Personal/real property election (Blocks 2, 3, 4b, 6, 7, and 10b)
  - ☐ Residential/non-residential use (Blocks 2, 3, 4b, and 10b)
  - ☐ Lien information (Blocks 2, 3, 4b, 10b, and if **adding** a lien, Block 8)
- ☐ Correction (Blocks 2 and 10b **and** specify corrections to be made in other Blocks as appropriate)
- ☐ Quick Processing (requires additional fee **and** completed Quick Processing Form)
- ☐ Other _____

For Department Use Only

Codes:

Form T: Y / N

County Code:

Right of Surv.: Y / N

Wind Zone: I / II

Retailer #:

Manufacturer #:

BLOCK 2: Home Information

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Serial Number*	*Weight*	*Size**	** NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	

BLOCK 3: Home Location

Was Home Moved? ☐ Yes ☐ No If yes, attach copy of moving permit.

Was Home Installed? ☐ Yes ☐ No If yes, attach Form T – Notice of Installation and copy of moving permit.

Physical Location:	*Address*	*City*	*State*	*ZIP*	*County*

BLOCK 4: Ownership Information **IF ownership changed, date of transfer:**

(4a) Seller(s) or Transferor(s)		(4b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

- ☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.
- ☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

TDHCA
MHD FORM 1023

Form Page 1 of 2

BLOCK 6: Personal/Real Property Election - to be elected by purchaser(s), transferee(s), or owner(s)

- ☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the department.
- ☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one box must** be checked):
  - ☐ I (we) own the real property that the home is attached to.
  - ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

  I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located.

  Legal description must be provided for real property: _____

  _____

  _____
- ☐ Inventory – Retailer number must be provided in Block 4b. (FOR RETAILER USE ONLY)

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

- ☐ Residential Use (as a dwelling)
- ☐ Non-Residential - Check **one** of the following:
  - ☐ Business Use
  - ☐ Salvage

BLOCK 8: Personal Property Liens - Specify any liens, charges, or other encumbrances to be recorded on the SOL

Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/ZIP:		City/State/ZIP:	
Daytime Phone Number:	( ) -	Daytime Phone Number:	( )

BLOCK 9: Third Party Special Mailing Instructions - for copies requested by persons other than owner or lienholder of record

IF a certified copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here.

Name:	
Company:	
Street Address:	
City, State, Zip:	

BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.

(10a) Each seller/transferor must sign, and notary signature and seal are required.	**(10b) Each purchaser/transferee or owner must sign, and notary signature and seal are required.**
_____ *Signature of seller/transferor* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
_____ *Signature of seller/transferor* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*

TDHCA
MHD FORM 1023

Figure: 22 TAC §1.81(a)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	981	***	**
Registration by Examination - Resident	155	*355	*355
Registration by Examination - Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*310	*310	*310
Active Renewal - Nonresident	*400	*400	*400
Active Renewal 1-90 days late - Resident	*465	*465	*465
Active Renewal 91-365 days late - Resident	*620	*620	*620
Active Renewal 1-90 days late - Nonresident	*600	*600	*600
Active Renewal 91-365 days late - Nonresident	*800	*800	*800
Emeritus Renewal - Resident	50	N/A	N/A
Emeritus Renewal- Nonresident	183	N/A	N/A
Emeritus Renewal 1-90 days late - Resident	75	N/A	N/A
Emeritus Renewal 91-365 days late - Resident	100	N/A	N/A
Emeritus Renewal 1-90 days late - Nonresident	274.50	N/A	N/A
Emeritus Renewal 91-365 days late - Nonresident	366	N/A	N/A
Inactive Renewal - Resident	50	50	50
Inactive Renewal - Nonresident	125	125	125
Inactive Renewal 1-90 days late - Resident	75	75	75
Inactive Renewal 91-365 days late - Resident	100	100	100
Inactive Renewal 1-90 days late - Nonresident	187.50	187.50	187.50
Inactive Renewal 91-365 days late - Nonresident	250	250	250
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	685	685	685
Reinstatement - Nonresident	775	775	775
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	-
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund.
**NCIDQ fee: October 2004 - $675; April 2005 - $695; October 2005 - $695
***LARE fee: June 2004 - $430 (2 sections only); August 2004 - $500 (remaining 3 sections) (Total exam - June/August 2004 - $930); December 2004 - $470 (2 sections only); March 2005 - $525 (estimate for remaining 3 sections) (Total exam - December 2004/March 2005 - $995); June 2005 - $470 (2 sections only); August 2005 - $525 (estimate for remaining 3 sections) (Total exam - June/August 2005 - $995); December 2005 - $490 (2 sections only)

Figure: 22 TAC §3.81(a)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	981	***	**
Registration by Examination - Resident	155	*355	*355
Registration by Examination - Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	*310	*310	*310
Active Renewal - Nonresident	*400	*400	*400
Active Renewal 1-90 days late - Resident	*465	*465	*465
Active Renewal 91-365 days late - Resident	*620	*620	*620
Active Renewal 1-90 days late - Nonresident	*600	*600	*600
Active Renewal 91-365 days late - Nonresident	*800	*800	*800
Emeritus Renewal - Resident	50	N/A	N/A
Emeritus Renewal- Nonresident	183	N/A	N/A
Emeritus Renewal 1-90 days late - Resident	75	N/A	N/A
Emeritus Renewal 91-365 days late - Resident	100	N/A	N/A
Emeritus Renewal 1-90 days late - Nonresident	274.50	N/A	N/A
Emeritus Renewal 91-365 days late - Nonresident	366	N/A	N/A
Inactive Renewal - Resident	50	50	50
Inactive Renewal - Nonresident	125	125	125
Inactive Renewal 1-90 days late - Resident	75	75	75
Inactive Renewal 91-365 days late - Resident	100	100	100
Inactive Renewal 1-90 days late - Nonresident	187.50	187.50	187.50
Inactive Renewal 91-365 days late - Nonresident	250	250	250
Reciprocal Reinstatement	620	620	620
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	685	685	685
Reinstatement - Nonresident	775	775	775
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	25	25	25
Examination - Administrative Fee	-	40	-
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund.
**NCIDQ fee: October 2004 - $675; April 2005 - $695; October 2005 - $695
***LARE fee: June 2004 - $430 (2 sections only); August 2004 - $500 (remaining 3 sections) (Total exam - June/August 2004 - $930); December 2004 - $470 (2 sections only); March 2005 - $525 (estimate for remaining 3 sections) (Total exam - December 2004/March 2005 - $995); June 2005 - $470 (2 sections only); August 2005 - $525 (estimate for remaining 3 sections) (Total exam - June/August 2005 - $995); December 2005 - $490 (2 sections only)

Figure: 22 TAC §5.91(a)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	981	***	**
Registration by Examination - Resident	155	*355	*355
Registration by Examination - Nonresident	180	*380	*380
Reciprocal Application	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal - Resident	***310**	***310**	***310**
Active Renewal - Nonresident	***400**	***400**	***400**
Active Renewal 1-90 days late - Resident	***465**	***465**	***465**
Active Renewal 91-365 days late - Resident	***620**	***620**	***620**
Active Renewal 1-90 days late - Nonresident	***600**	***600**	***600**
Active Renewal 91-365 days late - Nonresident	***800**	***800**	***800**
Emeritus Renewal - Resident	**50**	**N/A**	**N/A**
Emeritus Renewal- Nonresident	**183**	**N/A**	**N/A**
Emeritus Renewal 1-90 days late - Resident	**75**	**N/A**	**N/A**
Emeritus Renewal 91-365 days late - Resident	**100**	**N/A**	**N/A**
Emeritus Renewal 1-90 days late - Nonresident	**274.50**	**N/A**	**N/A**
Emeritus Renewal 91-365 days late - Nonresident	**366**	**N/A**	**N/A**
Inactive Renewal - Resident	**50**	**50**	**50**
Inactive Renewal - Nonresident	**125**	**125**	**125**
Inactive Renewal 1-90 days late - Resident	**75**	**75**	**75**
Inactive Renewal 91-365 days late - Resident	**100**	**100**	**100**
Inactive Renewal 1-90 days late - Nonresident	**187.50**	**187.50**	**187.50**
Inactive Renewal 91-365 days late - Nonresident	**250**	**250**	**250**
Reciprocal Reinstatement	**620**	**620**	**620**
Change in Status - Resident	65	65	65
Change in Status - Nonresident	95	95	95
Reinstatement - Resident	**685**	**685**	**685**
Reinstatement - Nonresident	**775**	**775**	**775**
Certificate of Standing - Resident	30	30	30
Certificate of Standing - Nonresident	40	40	40
Replacement or Duplicate Wall Certificate - Resident	80	80	80
Replacement of Duplicate Wall Certificate - Nonresident	90	90	90
Duplicate Pocket Card	15	15	15
Reopen Fee for closed candidate files	**25**	**25**	**25**
Examination - Administrative Fee	-	40	-
Examination - Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100
Administrative Fee for 1.5 Hour LARE Review	-	22	-
Administrative Fee for 1 Hour LARE Review	-	17	-

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund.
**NCIDQ fee: October 2004 - $675; April 2005 - $695; October 2005 - $695
***LARE fee: June 2004 - $430 (2 sections only); August 2004 - $500 (remaining 3 sections) (Total exam - June/August 2004 - $930); December 2004 - $470 (2 sections only); March 2005 - $525 (estimate for remaining 3 sections) (Total exam - December 2004/March 2005 - $995); June 2005 - $470 (2 sections only); August 2005 - $525 (estimate for remaining 3 sections) (Total exam - June/August 2005 - $995); December 2005 - $490 (2 sections only)

Figure: 22 TAC §523.130(h)

Birth Month	Last Reported Course	First Reported 4-hour Course
January	2-hour course in 2002	May report a 2-hour course taken prior to January 1, 2005 in January 2005 renewal but will need to take the 4-hour course for reporting in January 2007 or may take the 4-hour course in January 2005 to report in January 2005 and repeat the 4-hour course for reporting in January 2007
January	2-hour course in 2003	Will need to take a 4-hour course after January 1, 2005 to report in January 2006 and repeat the 4-hour course for reporting in January 2008
January	2-hour course in 2004	Will need to take a 4-hour course after January 1, 2006 to report in January 2007 and repeat the 4-hour course for reporting in January 2009

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 Clean Air Act and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and 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, by and through the Texas Commission on Environmental Quality v. Angel Brothers Enterprises, a Texas Limited Partnership and Angel Brothers Management, Inc., its General Partner*, Cause No. 2003-66847; in the 113th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendants are engaged in the business of land clearing throughout Harris County. Defendants were cited numerous times for nuisance violations due to improper use of a trench burner.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction is seeking to permanently enjoin Defendants to comply with all of the provisions of the environmental rules and regulations of the Texas Commission on Environmental Quality. Defendants have agreed to pay Plaintiffs $35,000.00, consisting of $32,500.00 in civil penalties and $2,500 in attorney's fees of which both amounts will be split equally between Harris County and State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction 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-200403550
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 25, 2004

♦ ♦ ♦

Central Texas Regional Mobility Authority

Notice of Availability of Request for Qualifications ("RFQ") for Auditing Services

The Central Texas Regional Mobility Authority ("CTRMA") has issued an RFQ for auditing services. Copies may be obtained from the CTRMA website (www.ctrma.org) or from the CTRMA at the offices of its legal counsel, Locke Liddell & Sapp LLP, 100 Congress Avenue, Suite 300, Austin, Texas 78701. Responses to the RFQ will be due on June 14, 2004.

TRD-200403564
Mike Heiligenstein
Executive Director
Central Texas Regional Mobility Authority
Filed: May 26, 2004

♦ ♦ ♦

Notice of Availability of Request for Proposals ("RFP") for Trustee Services

The Central Texas Regional Mobility Authority ("CTRMA") has issued an RFP for trustee services related to an anticipated CTRMA revenue bond issuance. Copies may be obtained from the CTRMA website (www.ctrma.org) or from the CTRMA at the offices of its legal counsel, Locke Liddell & Sapp LLP, 100 Congress Avenue, Suite 300, Austin, Texas 78701. Responses to the RFP will be due on June 14, 2004.

TRD-200403563
Mike Heiligenstein
Executive Director
Central Texas Regional Mobility Authority
Filed: May 26, 2004

♦ ♦ ♦

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 May 13, 2004, through May 20, 2004. The public comment period for these projects will close at 5:00 p.m. on June 25, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Sundbeck, Inc.; Location: The project is located along Brays Bayou at 409 South 80th Street, between Capitol Avenue and Elwood Avenue, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Park Place, Texas.

Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 279223; Northing: 3290740. Project Description: The applicant proposes to construct a 500-linear-foot bulkhead along the existing shoreline and mechanically excavate 5,500 cubic yards of material to -12 mean low tide for barge access. All excavated material will be placed on an upland location. The existing shoreline is at a 1:1 to 2:1 slope and has concrete riprap along the shoreline. No wetlands are present along the existing shoreline. The purpose of the project is to provide barge access to load and unload bulk materials. CCC Project No.: 04-0171-F3; Type of Application: U.S.A.C.E. permit application #23413 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Davis Petroleum Corporation; Location: The project is located in State Track 30, within Sabine Lake, in Jefferson and Orange Counties, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barge and keyway, shell and gravel pad, production structure with attendant facilities, and flowline. The applicant is also proposing to install a 6-inch pipeline from the proposed well through an existing well to end at an existing well site. The proposed pipeline will be 39,228 feet long. CCC Project No.: 04-0174-F1; Type of Application: U.S.A.C.E. permit application #23402 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Tarpon Offshore; Location: The project is located in Federal Waters of the Gulf of Mexico, within the Aransas Pass Anchorage Area, in Mustang Island Block 726. The well site is located at X=2,555,773.24, Y=782,632.28 ([NAD83] Lat. 27 degree 48’34.862" N, Long. 96 degree 46’51.721"). The project can be located on the U.S.G.S. quadrangle map entitled: Allyns Bight, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 718618; Northing: 3077891. Project Description: The applicant proposes to install a drilling platform to complete Wells # 1 and 2, and to drill additional wells to explore for hydrocarbons. Wells 1 and 2 were drilled, temporarily abandoned and suspended at the mudline by the previous operator. The water depth is approximately -84 feet mean low tide at the project site. CCC Project No.: 04-0175-F1; Type of Application: U.S.A.C.E. permit application #23410 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Cabot Oil and Gas Corporation; Location: The project is located in a shallow-draft channel in the South Bay portion of Redfish Bay, southeast of Hog Island in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Estes, Texas. Approximate UTM Zone 14 Coordinates in NAD 27 (meters): Pipeline Origin: Easting: 688272; Northing: 3087638; Pipeline mid-point: Easting: 687344; Northing: 3087285; Pipeline terminus: Easting: 686502; Northing: 3086765. Project Description: The applicant proposes to install, operate, and maintain a 4-inch diameter pipeline necessary for oil and gas transportation activities. The applicant proposes to install a pipeline from a previously permitted well with a surface hole in State Tract 286 to an existing metering manifold platform in State Tract 284 for the purpose of transporting petroleum resources. The pipeline would traverse portions of State Tracts 286, 285, and 284. The proposed work would avoid impacts to sea grasses, wetlands, and oysters. Deep-water access is available for pipeline construction equipment from the Aransas Channel to the well-site in State Tract 286. CCC Project No.: 04-0176-F1; Type of Application: U.S.A.C.E. permit application #22347(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.

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-200403566

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: May 26, 2004

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Comptroller of Public Accounts

Notice of Partial Award

Notice of Awards: Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller’s Request for Qualifications 167h (RFQ) related to these contract awards was published in the February 6, 2004, *Texas Register* (29 TexReg 1238-1242).

The contractors will provide Professional Contract Examination Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller’s RFQ.

The Comptroller announces that twenty-four (24) contracts were awarded as of May 20, 2004, as follows:

A contract is awarded to Baker, White & Co., LLP. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Dorothea Brooks, CPA. Examinations will be assigned in $22,500, $60,000 $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Renee Perez White. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Archie Bailey d/b/a Bailey Management Services. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state

fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Noel L. Carino. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Stephanie Clark. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to H & J Consulting. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Vincent D. Harris & Associates, Inc. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Hidalgo, Banfill, Zlotnik & Kermali, P.C. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to D. Smith Consulting. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Yvonne Goss, CPA. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Marsha Johnson, Inc. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Dennis Krug. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Lam, Po, & Xu, CPA's. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to F. Libunao Consulting. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Celina Lilly. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Delores A. Nornberg. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Vernice Seriale, Jr. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Stacie Sims, CPA. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Tax Advisors Group. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Anthony D. Turner. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Felicia Ward d/b/a Morgan Spencer & Company. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to AJM State Tax Consulting. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

A contract is awarded to Ruby Veronica Barnes. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no

contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is May 20, 2004 through August 31, 2005.

TRD-200403539
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 25, 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, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 05/31/04 - 06/06/04 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 05/31/04 - 06/06/04 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 06/01/04 - 06/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 06/01/04 - 06/30/04 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/04 - 09/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/04 - 09/30/04 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 07/01/04 - 09/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 07/01/04 - 09/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 [4] for the period of 07/01/04 - 09/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/04 - 09/30/04 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 07/01/04 - 09/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/04 - 06/30/04 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 06/01/04 - 06/30/04 s 5% 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.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.

TRD-200403568
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 26, 2004

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Credit Union Department

Application for Foreign Credit Union to Operate a Branch Office

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Wescom Credit Union, Pasadena, California to operate a Foreign (out-of-state) Branch Office at 14141 S. W. Freeway, Sugar Land, Texas. This application is contingent upon approval of the merger of Unocal Federal Credit Union with Wescom Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200403541
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 25, 2004

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Employees Retirement System of Texas

Request for Qualifications

The Employees Retirement System of Texas (ERS) is soliciting responses from qualified firms to conduct an independent actuarial audit to determine the reasonableness, consistency and accuracy of ERS' current pension actuarial services. ERS consists of four retirement plans: three that are funded (Employees Retirement System of Texas, Judicial Retirement System of Texas - Plan Two, and Law Enforcement and Custodial Officer Supplemental Retirement Fund of the Employees Retirement System of Texas) and one pay-as-you-go plan (Judicial Retirement System of Texas - Plan One).

Firms wishing to respond to the Request for Qualifications (RFQ) must be professional actuarial services firms that provide actuarial valuation, experience investigations, actuarial audits, and pension consulting services. The firm must have been in existence as a business entity performing such services for a minimum of five (5) years. The firm must have all necessary permits, licenses, and professional credentials. Appropriate levels and types of fidelity, directors' and officers' or other applicable liability insurance must be in full force at the time the proposal is submitted and throughout the term of the contract. The principal actuary performing the audit must be a Fellow of the Society of Actuaries and an enrolled actuary. The principal actuary performing the audit must have a minimum of ten (10) years of experience as an

actuary on pension consulting services, experience analysis, and valuation assignments for public retirement systems of at least 100,000 members and annuitants. Any supporting actuary must be either a Fellow; enrolled; or have ten (10) years of pension consulting experience. Any supporting actuary shall have five (5) years of experience as an actuary on pension consulting services, experience analysis, and valuation assignments for public retirement systems with memberships of at least 10,000 members and annuitants. The firm must provide its own work facilities, equipment, supplies and support staff to perform the required services.

ERS will base its evaluation and selection of the firm for the audit on the factors and criteria outlined in this notice and in the RFQ, including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFQ; qualifications of the proposed actuarial staff; technical experience, including experience with actuarial audits of other large public pension systems and experience in providing actuarial services to other large public pension systems; the quality of the responses, including the demonstration of a clear understanding of the scope of work as well as the appropriateness and adequacy of proposed procedures; the cost of the audit; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which does not meet the criteria specified in this notice and in the RFQ. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFQ or in connection with the preparation thereof.

A copy of the complete RFQ can be obtained from ERS on or after June 4, 2004. To request a copy of the RFQ or for additional information, please contact Marci Sundbeck at ERS at (512) 867-7302, or email her at msundbeck@ers.state.tx.us. The deadline for receipt of responses by ERS is 3:00 p.m. CDT on July 9, 2004.

TRD-200403571
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: May 26, 2004

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Texas Commission on Environmental Quality

Notice of Opportunity for Comments Concerning a Proposed Amendment to the List of De Minimis Facilities of Sources

The Texas Commission on Environmental Quality (TCEQ), in accordance with 30 TAC Chapter 116, is providing an opportunity for public comment in order to receive comments concerning a proposed amendment to the List of De Minimis Facilities or Sources authorized by §116.119.

The TCEQ received a request to amend the List of De Minimis Facilities or Sources by changing an existing listed source. The existing source is "Modular, Self-contained Sand Blasting Cabinets (Parts Cleaning)." The proposed amendment is to change the wording for this particular source so that it applies to other types of abrasive material and not just implicitly to sand. Section 116.119(c)(1) allows for amendments to the List of De Minimis Facilities or Sources by the executive director for facilities or sources considered to be de minimis. If added to the List of De Minimis Facilities or Sources, the specified facilities or sources no longer are required to obtain authorization prior to construction from the TCEQ. Therefore, modular, self-contained abrasive blasting cabinets are proposed to be de minimis facilities or sources.

The addition or deletion of a category of facilities, sources, or groups of facilities or sources to the List of De Minimis Facilities or Sources is subject to the procedural requirements of §116.119, which include a 30-day public comment period. The List of De Minimis Facilities and Sources is located on the TCEQ Web site at: *http://www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/demlist.pdf.* Any interested or affected person has the opportunity to provide written comments pertaining to the addition or deletion of a category of facilities, sources, or groups of facilities or sources to the List of De Minimis Facilities or Sources.

Comments may be mailed to Steven Hagood, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments must be received by 5:00 p.m., July 5, 2004. To inquire about the technical review of the de minimis request, contact Louise Ngo at (512) 239-1267.

TRD-200403531
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 25, 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 Order (AO) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **July 5, 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 July 5, 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: Texas Transeastern, Inc.; DOCKET NUMBER: 2001-0849-PST-E; TCEQ ID NUMBER: RN100928571; LOCATION: 3112 Pansy, Pasadena, Harris County, Texas; TYPE OF FACILITY: petroleum common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owners or operators of the underground storage tank (UST) systems at the facilities had current TCEQ delivery certificates prior to depositing a regulated substance into the UST systems; 30 TAC §334.21, by failing to pay the aboveground storage

tank fees and associated late fees; and 30 TAC §115.221(2), and Texas Health and Safety Code, §382.085(b), by failing to connect a Stage I vapor line when transferring gasoline from a tank truck into a stationary storage container; PENALTY: $60,050; STAFF ATTORNEY: Richard S. O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

TRD-200403542
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 25, 2004

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 28, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 28, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 7-Eleven, Inc.; DOCKET NUMBER: 2004-0274-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 07386, Regulated Entity Reference Number (RN) 102266327; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the Stage II system test; PENALTY: $525; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Alexander Oil Company; DOCKET NUMBER: 2004-0102-PST-E; IDENTIFIER: PST Facility Identification Number 8880, RN101670800; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Christopher Miller, (915) 698-9674; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: ANA, Inc.; DOCKET NUMBER: 2003-0611-PST-E; IDENTIFIER: PST Facility Identification Number 0057399, RN102717733; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Brandenberg Products, Inc.; DOCKET NUMBER: 2004-0254-PST-E; IDENTIFIER: Customer Identification Number CN600804264, RN103777538; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $360; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Buena Vista-Bethel SUD; DOCKET NUMBER: 2004-0187-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0700037, RN101440139; LOCATION: Waxahachie, Ellis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification; PENALTY: $204; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Campbell; DOCKET NUMBER: 2003-1128-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13791-001; LOCATION: Campbell, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1) and (5), 317.4(a)(8) and (b)(1), and 317.7(i), TPDES Permit Number 13791- 001, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the collection system and failing to at all times properly operate and maintain all facilities and systems of treatment and control; and 30 TAC §305.125(11)(C), by failing to maintain sludge disposal records; PENALTY: $12,360; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(7) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2004-0032- AIR-E; IDENTIFIER: Air Account Number HG-0566-H; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: plastics and resins manufacturing; RULE VIOLATED: 30 TAC §116.715(c)(6), Air Permit Numbers 4437A, PSD-TX-808, and N014M1, and THSC, §382.085(b), by failing to maintain records with complete data demonstrating compliance with the proper monitoring of valves; and 30 TAC §§115.352(4), 116.715(a), and 101.20(1), Air Permit Numbers 4437A, PSD-TX-808, and N014M1, 40 Code of Federal Regulations (CFR) §60.482- 6(1), and THSC, §382.085(b), by failing to equip an open-ended line with a cap, blind flange, or plug; PENALTY: $1,710; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Devon Gas Services, L.P.; DOCKET NUMBER: 2003-1405-AIR-E; IDENTIFIER: Air Account Number WN-0021-G; LOCATION: Bridgeport, Wise County, Texas; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: 30 TAC §116.615(2) and

(9), Standard Permit Number 48868, and THSC, §382.085(b), by failing to operate abatement equipment during facility operations; 30 TAC §101.201(a)(1) and (2), Standard Permit Number 48868, and THSC, §382.085(b), by failing to report an emissions event; 30 TAC §122.145(2)(A) - (C), Federal Operating Permit Number O-00910, and THSC, §382.085(b), by failing to report deviations; 30 TAC §116.115(c)(1), Air Permit Number 16926, and THSC, §382.085(b), by exceeding the permit limit for the glycol still condenser outlet temperature; 30 TAC §§101.20(1), 116.615(5)(A), and 122.143(4), Standard Permit Number 48868, and THSC, §382.085(b), by failing to provide startup notifications; and 30 TAC §§101.20(1), 122.121, 122.132(e)(2)(A), and 122.217, 40 CFR §60.48c, Federal Operating Permit Number O-00910, and THSC, §382.085(b), by failing to submit four semi-annual fuel reports; PENALTY: $29,400; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of El Paso; DOCKET NUMBER: 2003-0573-AIR-E; IDENTIFIER: Air Account Number EE-1118-M; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fire station; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allowing the transfer of gasoline from a storage vessel with a Reid vapor pressure greater than seven pounds per square inch absolute; PENALTY: $2,540; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901- 1206, (915) 834-4949.

(10) COMPANY: Garrett Creek Ranch, Inc.; DOCKET NUMBER: 2003-0566-PWS-E; IDENTIFIER: PWS Number 2490055; LOCATION: Paradise, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F) and (3)(A) and THSC, §341.033(d), by failing to take bacteriological samples, by failing to take five additional routine bacteriological samples, and by failing to take repeat bacteriological samples; 30 TAC §290.110(b)(4) and (c)(5)(A), by failing to maintain the disinfectant residual concentration and by failing to perform and record chlorine residual tests at least once every seven days; 30 TAC §290.41(c)(1)(D) and (F) and (3)(M) and (N), by failing to ensure livestock in pastures are not allowed within 50 feet of water supply wells, by failing to provide a sanitary control easement, by failing to provide a suitable sampling tap, and by failing to provide an accessible flow meter; 30 TAC §290.46(f), (m)(4), and (u), by failing to properly compile the monthly operating report, by failing to perform annual tank inspections, by failing to maintain salt tank in a water tight condition, and by failing to plug an abandoned PWS well; 30 TAC §290.42(k), by failing to compile a plant operations manual; 30 TAC §290.43(c)(2) and (3), by failing to maintain a roof hatch on the ground storage tank (GST) and by failing to provide the GST with a properly designed overflow pipe; 30 TAC §290.44(h)(4)(C), by failing to prohibit water connection to a residence or establishment where an actual or potential contamination or system hazard exists; and 30 TAC §30.382 and §290.46(e), by failing to prohibit uncertified individuals from performing regulated activities; PENALTY: $4,619; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Gulfterra Texas Pipeline, L.P.; DOCKET NUMBER: 2004-0161-AIR-E; IDENTIFIER: Air Account Number KJ-0019-V; LOCATION: Ricardo, Kleburg County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §§101.20(1), 106.512(3)(B), 122.514(c)(1), 40 CFR 60.334(b)(2), and THSC, §382.085(b), by failing to determine and record the nitrogen and sulfur content in the fuel and use an approved method to demonstrate compliance with the applicable sulfur standard, and by failing to conduct performance testing; 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §122.146(5)(D), by failing to submit a compliance certification; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Ed Moderow, (512) 239-2680; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christ, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Harris Methodist Hospital; DOCKET NUMBER: 2003-1536-PST-E; IDENTIFIER: PST Facility Identification Number 34067; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the underground storage tank (UST) registration and self-certification form is fully and accurately completed and by failing to make available a valid, current delivery certificate; PENALTY: $1,080; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Hausman 18 Joint Venture, Ltd.; DOCKET NUMBER: 2004-0362-EAQ-E; IDENTIFIER: Edwards Aquifer Site Registration Number 13-03012702, RN102997145; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: land development property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval for placement of soil on the site; PENALTY: $720; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: IMOT, Inc.; DOCKET NUMBER: 2004-0099-AIR-E; IDENTIFIER: Air Account Number JH-0458-A; LOCATION: Burleson, Johnson County, Texas; TYPE OF FACILITY: thermoset resin plant; RULE VIOLATED: 30 TAC §106.392(1)(A), §116.110(a), and THSC, §382.085(b), by failing to satisfy the conditions of a permit exemption prior to operating; PENALTY: $3,255; ENFORCEMENT COORDINATOR: Kelli Bruce, (512) 339-2929; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: City of Lakeport; DOCKET NUMBER: 2002-1007-MWD-E; IDENTIFIER: TPDES Permit Number 10939-001; LOCATION: Lakeport, Gregg County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), TPDES Permit Number 10939-001, and the Code, §26.121(a), by failing to prevent unauthorized discharges of sewage, by failing to maintain the collection system, and by failing to meet permitted effluent limits; and 30 TAC §317.7(e), by failing to provide and/or maintain an all-weather access road; PENALTY: $20,900; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: City of Laredo; DOCKET NUMBER: 2003-1285-MWD-E; IDENTIFIER: TPDES Permit Number 10681-002; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10681-002, and the Code, §26.121(a), by allowing the exceedances for five-day biochemical oxygen demand and total suspended solids (TSS); PENALTY: $5,840; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Leon Springs Utility Company; DOCKET NUMBER: 2004 0166-MWD-E; IDENTIFIER: Expired TPDES Permit Number 12557, RN103145603; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2), Expired TPDES Permit Number 12557, and the Code, §26.121(a), by failing to apply for permit

renewal and continuing to discharge after expiration; PENALTY: $11,544; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Moscow Water Supply Corporation; DOCKET NUMBER: 2004 0329-PWS- E; IDENTIFIER: PWS Number 1870125, RN101652642; LOCATION: Moscow, Polk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice; and 30 TAC §290.47(h), by failing to immediately collect bacteriological samples; PENALTY: $210; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898- 3838.

(19) COMPANY: John Myers dba Myers Wrecking Yard; DOCKET NUMBER: 2003 1322- MLM-E; IDENTIFIER: RN102755030; LOCATION: Llano, Llano County, Texas; TYPE OF FACILITY: automotive salvage and refinishing; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.21(a)(1), and the Code, §26.121, by failing to obtain authorization prior to discharging storm water; and 30 TAC §§106.435(5), 106436(1), 116.110(a), and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or a permit by rule; PENALTY: $600; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(20) COMPANY: Oxy Vinyls, L.P.; DOCKET NUMBER: 2003 0441-AIR-E; IDENTIFIER: Air Account Number HG-0193-B; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(2) and (3), §116.115(c), Permit Number 3855B/PSD-TX-876, 40 CFR §63.182(d)(1), and THSC, §382.085(b), by failing to submit 40 CFR Subpart H semi-annual reports, by failing to maintain fugitive monitoring records for accessible valves and connectors, and failing to provide a written plan for the monitoring of difficult to monitor components; PENALTY: $16,440; ENFORCEMENT COORDINATOR: Christina McLaughlin, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Rankin Road West Municipal Utility District; DOCKET NUMBER: 2003 1557-MWD-E; IDENTIFIER: TPDES Permit Number 12934-001, RN102341070; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12934-001, and the Code, §26.121(a), by failing to meet ammonia nitrogen, TSS, and dissolved oxygen limits; PENALTY: $3,520; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Robroy Industries - Texas, L.P. dba Robroy Industries - Texas Conduit Division; DOCKET NUMBER: 2003 1565-IWD-E; IDENTIFIER: TPDES Permit Number 01052- 000; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: plastic coated electric conduit manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 01052-000, and the Code, §26.121(a), by failing to comply with the permitted limits for pH, total zinc, and flow; PENALTY: $11,220; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(23) COMPANY: Shell Chemical, LP; DOCKET NUMBER: 2004 0101-AIR-E; IDENTIFIER: Air Account Number HG-0659-W, RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §113.100, §113.120, 40 CFR §63.7(a)(2) and §63.116(a), and THSC, §382.085(b), by failing to conduct performance tests; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(24) COMPANY: City of Sonora; DOCKET NUMBER: 2003 1246-PWS-E; IDENTIFIER: PWS Number 2180001; LOCATION: Sonora, Sutton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(O) and §290.43(e), by failing to secure a sanitary control easement and by failing to ensure that all well units and pressure maintenance facilities are enclosed by an intruder-resistant fence; 30 TAC §290.46(m)(1), (n)(1), (r), and (v), by failing to have the system's ground, storage, elevated, and pressure tanks inspected annually, by failing to maintain accurate, up-to-date, detailed, and as-built plans or record drawings, by failing to maintain a minimum pressure in the distribution system, and by failing to ensure that all water system electrical wiring is installed in a securely mounted conduit; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration; 30 TAC §290.43(c) and (d)(2), by failing to provide a proper roof on the GST and by failing to ensure that the pressure tanks are equipped with pressure release devices; 30 TAC §290.39(j), by failing to provide notice prior to making significant changes and additions to the existing system; and 30 TAC §290.109(f)(3) and (g)(3), and THSC, §341.0315(c), by exceeding the maximum contaminant level for total coliform bacteria; PENALTY: $8,636; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(25) COMPANY: Baslan S. Omar dba Step N Go 101; DOCKET NUMBER: 2004 0277-PST- E; IDENTIFIER: PST Facility Identification Number 46261; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(ii) and (B)(ii), and the Code, §26.346(a) and §26.3467(a), by failing to renew a previously issued UST delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(26) COMPANY: Farida-Aziz Enterprises, Incorporated dba Sugar Creek Exxon; DOCKET NUMBER: 2003 0967-PST-E; IDENTIFIER: PST Facility Identification Number 26782; LOCATION: Stafford, Fort Bend County, Texas; TYPE OF FACILITY: retail gasoline station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,800; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Texas Gulf Coast Enterprise Inc. Dba Kemah Texaco; DOCKET NUMBER: 2003 1460-PST-E; IDENTIFIER: PST Facility Identification Number 73015; LOCATION: Kemah, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and (ii), and (d)(4)(A)(i) and (ii)(II), and the Code, §26.3475(a), by failing to have line leak detectors tested, by failing to conduct inventory control on the UST system, and by failing to put the automatic tank gauge system into test mode; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.48(c), by failing to conduct inventory control; PENALTY: $9,360; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: TravelCenters Properties LP dba TravelCenters; DOCKET NUMBER: 2004 0136-PST-E; IDENTIFIER: PST Facility Identification Number 41891, RN102469350; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct a Stage II system test; PENALTY: $475; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(29) COMPANY: Union Pacific Railroad Company; DOCKET NUMBER: 2003 0149-AIR-E; IDENTIFIER: Air Account Number EE-0388-L, RN102065752; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: railroad terminal and track switching; RULE VIOLATED: 30 TAC §111.147(1) and THSC, §382.085(b), by failing to pave in-plant road to control dust; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Steve Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(30) COMPANY: Unocal Pipeline Company dba Unocal Pipeline Bullard Station; DOCKET NUMBER: 2004 0197-AIR-E; IDENTIFIER: Air Account Number CJ-0051-K, RN101655165; LOCATION: Bullard, Cherokee County, Texas; TYPE OF FACILITY: pipeline breakout station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the Title V compliance certifications; and 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit deviation reports; PENALTY: $7,200; ENFORCEMENT COORDINATOR: Christopher Miller, (915) 698-9674; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701- 3756, (903) 535-5100.

(31) COMPANY: Weatherford Aerospace, Inc.; DOCKET NUMBER: 2004 0100-AIR-E; IDENTIFIER: Air Account Number PC-0077-R; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: chemical milling operation; RULE VIOLATED: 30 TAC §122.145(2)(A) and (B), Federal Operating Permit Number O-01266, and THSC, §382.085(b), by failing to include all instances of deviations and by failing to submit a deviation report; and 30 TAC §113.380, 40 CFR Part 63, Subpart §§63.750(g), 63.747(d), and 63.753(e)(3)(ii)(A), Federal Operating Permit Number O-01266, and THSC, §382.085(b), by failing to submit semiannual reports and failing to demonstrate compliance with 40 CFR Part 63; PENALTY: $8,245; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Weekley Homes, L.P. dba Weekley 281 Venture; DOCKET NUMBER: 2004 0501-EAQ-E; IDENTIFIER: Edwards Aquifer Site Registration Number 13-03052901, RN103156220; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: model home sales; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan; PENALTY: $600; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200403529
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 25, 2004

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The Executive Director's Action on Texas Pollutant Discharge Elimination System General Permit Number TXG530000

On April 28, 2004, at a regularly scheduled public meeting, the Texas Commission on Environmental Quality approved Texas Pollutant Discharge Elimination System General Permit Number TXG530000. The general permit authorizes discharges from on-site treatment systems from single-family residences located within the San Jacinto River Basin in Harris County. The commission did not receive any public comment. The commission, by resolution, issued the general permit as recommended by the executive director. This notice is issued in accordance with 30 TAC §205.3(e)(4).

TRD-200403538
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 25, 2004

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Texas Department of Health

2005 Revision--Changes to the Texas Certificate of Birth

Tx - Item #	Description of Item in Texas Birth Certificate	US Standard #	US Standard Change	Delete	Accept/ Modify	New Entry
1	Name of Child	1	US Standard adds suffix		X	Add "Suffix" to the label
2	Date of Birth	4	US Standard specifies mm/day/yr		X	Add "(mm/dd/yyyy)" to label
7a	Place of Birth - Clinic/Doctor's Office, Licensed Birthing Ctr, Hospital, Residence or Other/Specify	26	Instead of "residence" option, US Standard lists "Home Birth". Also asks "Planned to deliver at home? Yes/no"		X	Use the following labels: "Hospital, Licensed Birthing Center, Home Birth (Planned to deliver at home? Yes/No), Clinic/Doctor's Office, Other (Specify)"
8a	Attendant's Name & Mailing Address	27	US Standard does not capture mailing address, does capture NPI (National Provider Identifier)		X	Keep mailing address, add NPI
10	Mother's Name (First, Middle, Maiden)	8c	Similar - US Standard asks "Mother's Name Prior to First Marriage (First, Middle, Last, Suffix)" Note - Mothers do not normally have a suffix, i.e., Jr., III, II, Sr.		X	Adopt modified version of US Standard. Change label to "Mother's Name Prior to First Marriage (First, Middle, Last)
11	Mother's Date of Birth	8b	No Change		X	Add "(mm/dd/yyyy)" to label
12	Mother's Birthplace	8d	No Change		X	Modify label to read "State, Territory, or Foreign Country". Add Mexico states and Canadian provinces to table.
13c	Mother's Residence - City or Town	9c	No Change		X	Modify label to read "City, Town or Location"
14	Mother's Mailing Address	14	US Standard uses a checkbox to indicate "Same as Residence"		X	Modify label - Remove "If same as residence, enter zip code only." Add checkbox for "Same as Residence"
17	Father's Birthplace	10c	Similar - US Standard asks for "State, Territory or Foreign Country"		X	Modify label to read "State, Territory, or Foreign Country". Add Mexico states and Canadian provinces to table.
22a	Race of Mother	22	Changed to checkboxes listing races and instructions to check all that apply		X	Adopt US Standard checkbox format. Add additional question "If more than one race is selected, which of the above does the mother consider her primary race?"
22b	Race of Father	25	Same as above, Race of Father		X	Adopt US Standard checkbox format. Add additional question "If more than one race is selected, which of the above does the father consider his primary race?"
23a	Hispanic Origin of Mother	21	Changed to checkboxes listing hispanic origins with an "Other" option, and a "No" option		X	Adopt US Standard checkbox format.
23b	Hispanic Origin of Father	24	Same as above, Hispanic Origin of Mother		X	Adopt US Standard checkbox format.
24a	Education of Mother	20	Changed to checkboxes listing education levels: 8th grade or less; 9th-12th grade, no diploma; High school graduate or GED completed; Some college credit but no degree; Associate degree; Bachelor's degree; Master's degree, Doctorate or Professional degree		X	Adopt US Standard checkbox format.
24b	Education of Father	23	Same as above, Education of Mother		X	Adopt US Standard checkbox format.
26c	Date of Last Live Birth	35c	US Standard only asks for mm/yyyy		X	Change label to "mm/yyyy"
32	Clinical Estimate of Gestation	50	US Standard asks for "Obstetric Estimate of Gestation"		X	Change label to "Obstetric Estimate of Gestation"
33	Prenatal Care Began During ....month	29a	Asked in a different way, listed below in the "New Items" section on Row #172	X		Replace with two new prenatal care questions listed on US Standard - "Date of First Prenatal Care Visit (mm/dd/yyyy)", with checkbox for No Prenatal Care, and "Date of Last Prenatal Care Visit (mm/dd/yyyy)" <in 'New Items' section below>
36	Serologic Test Done at Delivery	X	Not included on US Standard	X		
37b	Infant Transferred After Delivery	56	US Standard asks if transferred within 24 hours of delivery		X	Change label to read "Was Infant Transferred Within 24 Hours of Delivery?"
37c	Hospital Use	X	Not included on US Standard	X		
38a	Medical Risk Factors:	41			X	Change category label to read "Risk factors in this pregnancy"
38a1	Anemia (Hct.< 30/Hgb.< 10)	X	Not included on US Standard	X		
38a2	Cardiac disease	X	Not included on US Standard	X		
38a3	Acute or chronic lung disease	X	Not included on US Standard	X		

38a4	Diabetes	41	Two questions on US Standard: Diabetes Prepregnancy and Diabetes Gestational		X	Adopt US Standard - Two checkboxes: "Diabetes - Prepregnancy (Diagnosed prior to this pregnancy)" and "Diabetes - Gestational (Diagnosed in this pregnancy)"
38a5	Hydramnios/Oligohydramnios	X	Not included on US Standard	X		
38a6	Hemoglobinopathy	X	Not included on US Standard	X		
38a7	Hypertension, chronic	41	No Change		X	Change label to read "Hypertension - Prepregnancy (Chronic)"
38a8	Hypertension, pregnancy-associated	41	US Standard asks: Hypertension, Gestational (PIH, preeclampsia, eclampsia)		X	Change label to read "Hypertension - Gestational (PIH, preeclamsia, eclampsia)"
38a9	Eclampsia	41	US Standard includes in the Hypertension, Gestational question above	X		
38a10	Incompetent cervix	X	Not included on US Standard	X		
38a11	Previous infant 4000+ grams	X	Not included on US Standard	X		
38a12	Previous preterm or small-for-gestational-age infant	41	Separated into 2 items on US Standard: "Previous preterm birth" and "Other previous poor pregnancy outcome"		X	Adopt US Standard - Two checkboxes: "Previous preterm birth" and "Other previous poor pregnancy outcome (Includes perinatal death, small-for-gestational-age/intrauterine growth restricted birth"
38a13	Preterm labor	X	Not included on US Standard	X		
38a14	Renal disease	X	Not included on US Standard	X		
38a15	Blood group isoimmunization	X	Not included on US Standard	X		
38a16	Preterm rupture of membranes (< 37 wks)	X	Not included on US Standard	X		
38a17	STD	42	Changed to checkboxes and instructions to check all that apply, listed below in "New Items" section		X	Adopt US Standard checkbox format.
38a18	Zidovudine administered during pregnancy	X	Not included on US Standard		X	Change label to read "Antiretrovirals administered during pregnancy or at delivery"
38a19	None	41	Included on US Standard as "None of the above"		X	Change label to read "None of the above"
38a20	Other (specify)	41	No Change	X		
38a21	Unknown	X	Not included on US Standard	X		
38b	Other Risk Factors For This Pregnancy			X		Delete as a category - move tobacco and mother's weight questions to non-checkbox area of medical and health section
38b	Tobacco use during pregnancy	37	US Standard breaks down the question in time increments: Three Months Before Pregnancy, First Three Months of Pregnancy, Second Three Months of Pregnancy, Last Three Months of Pregnancy - Also, asks for number of cigarettes per day or number of packs of cigarettes per day in each time period		X	Adopt US Standard checkbox format.
38b	Alcohol use during pregnancy	X	Not included on US Standard	X		
38b	Weight gained during pregnancy	32 & 33	Not included on US Standard	X		Replace with two questions from US Standard: "Mother's Prepregnancy Weight (pounds)" and "Mother's Weight at Delivery (pounds)" <In 'New Items' section below>
38c	Obstetric Procedures					
38c1	Amniocentesis	X	Not included on US Standard	X		
38c2	Electronic fetal monitoring	X	Not included on US Standard	X		
38c6	Ultrasound	X	Not included on US Standard	X		
38c7	None	43	Included on US Standard as "None of the above"		X	Change label to read "None of the above"
38c8	Other (specify)	X	Not included on US Standard	X		
38d	Complications of Labor And/Or Delivery	45	US Standard: Characteristics of Labor & Delivery		X	Change Category Lable to "Characteristics of Labor & Delivery"
38d1	Febrile (>100 degrees F or 38 degrees C)	45	US Standard: Clinical chorioamnionitis diagnosed during labor or maternal temp greater than or equal to 38 degrees C (100.04 degrees F)		X	Change label to read "Chorioamnionitis or maternal temperature ≥ 38 degrees C or 100.4 degrees F"
38d2	Meconium, moderate/heavy	45	US Standard: Moderate/heavy meconium staining of the amniotic fluid		X	Adopt US Standard
38d4	Abruptio placenta	X	Not included on US Standard	X		
38d5	Placenta previa	X	Not included on US Standard	X		
38d6	Other excessive bleeding	X	Not included on US Standard	X		

38d7	Seizures during labor	X	Not included on US Standard	X		
38d9	Prolonged labor (>20 hours)	44	US Standard specifies greater than or equal to 20 hours		X	Change label to read "Prolonged Labor (≥ 20 hrs)
38d10	Dysfunctional labor	X	Not included on US Standard	X		
38d11	Breech/Malpresentation	46c	Changed to checkboxes on US Standard: Cephalic, Breech, Other		X	Will be captured in New Item listed below "Fetal presentation at birth"
38d12	Cephalopelvic disproportion	X	Not included on US Standard	X		
38d13	Cord prolapse	X	Not included on US Standard	X		
38d14	None	45	Included on US Standard as "None of the above"		X	Change label to read "None of the above"
38d15	Other (specify)	X	Not included on US Standard	X		
38e	Method of Delivery:	46				
38e 1	Vaginal	46d	US Standard uses checkboxes: Vaginal/Spontaneous, Vaginal Forceps, Vaginal/Vacuum & Cesarean - If cesarean, was a trial of labor attempted? Y/N		X	Adopt US Standard checkbox format: "Vaginal/Spontaneous", "Vaginal Forceps", "Vaginal/Vacuum" & "Cesarean - If cesarean, was a trial of labor attempted? Y/N"
38e 2	Vaginal birth after previous C-section	41	Separated into 2 items on US Standard: "Mother had previous cesarean delivery. If yes, how many" and checkboxes described in the item above for vaginal deliveries.	X		Previous C-Section information will be collected with New Item to be added to Risk Factors - "Mother had a previous cesarean delivery. If yes, how many?"
38e 3	Primary C-section	46d	US Standard does not differentiate between primary and repeat C-section. Also, includes additional question: "If cesarean, was a trial of labor attempted?"	X		Primary C-Section information will be collected with New Items in Method of Delivery (see above) and Risk Factors - "Mother had a previous cesarean delivery. If yes, how many?"
38e 4	Repeat C-section	41 & 46d	US Standard does not differentiate between primary and repeat C-section. Adds: "If cesarean, was a trial of labor attempted?" Repeat C-section would be answered by the US Standard question: "Mother had previous cesarean delivery. If yes, how many"	X		Repeat C-Section information will be collected with New Items in Method of Delivery (see above) and Risk Factors - "Mother had a previous cesarean delivery. If yes, how many?"
38e 5	Forceps	46a & 46d	Separated into 2 items on US Standard: "Was delivery with forceps attempted but unsuccessful?" and "Vaginal/Forceps"		X	Adopt US Standard - "Was delivery with forceps attempted but unsuccessful? Yes/No" and "Final route and method of delivery (check one) Vaginal/Spontaneous, Vaginal/Forceps, Vaginal/Vacuum"
38e 6	Vacuum	46b & 46d	Separated into 2 items on US Standard: "Was delivery with vacuum extraction attempted but unsuccessful?" and "Vaginal/Vacuum"		X	Adopt US Standard - "Was delivery with vacuum extraction attempted but unsuccessful? Yes/No" and "Final route and method of delivery (check one) Vaginal/Spontaneous, Vaginal/Forceps, Vaginal/Vacuum"
38f	**Abnormal Conditions of the Newborn**					
38f1	Anemia (Hct.< 39/Hgb.< 13)	X	Not included on US Standard	X		
38f2	Fetal alcohol syndrome	X	Not included on US Standard	X		
38f3	Hyaline membrane disease/RDS	X	Not included on US Standard	X		Information is being collected with the new question 'Newborn given surfactant replacement therapy'
38f4	Meconium aspiration syndrome	X	Not included on US Standard	X		
38f5	Assisted ventilation < 30 min	54	US Standard: "Assisted ventilation required immediately following delivery."	X		Will be replaced by two new questions regarding assisted ventilation listed in 'New Items' below.
38f6	Assisted ventilation ≥ 30 min	54	US Standard: "Assisted ventilation required for more than six hours."	X		Will be replaced by two new questions regarding assisted ventilation listed in 'New Items' below.
38f7	Seizures	54	US Standard: "Seizure or serious neurologic dysfunction"		X	Change label to read "Seizure or serious neurologic dysfunction"
38f8	Sepsis	X	Not included on US Standard		X	Change label to read "Antibiotics received by the newborn for suspected neonatal sepsis"
38f9	UABG pH < 7.2	X	Not included on US Standard	X		
38f10	None	54	US Standard: "None of the above"		X	Change label to read "None of the above"
38f11	Other (specify)	X	Not included on US Standard	X		
38g	**Congenital Anomalies of Child**					
38g1	Anencephalus	55	US Standard: "Anencephaly"		X	Change label to read "Anencephaly"
38g2	Spina bifida/Meningocele	55	US Standard "Meningomyelocele/Spina Bifida"		X	Change label to read "Meningomyelocele/Spina Bifida"
38g3	Hydrocephalus	X	Not included on US Standard	X		
38g4	Microcephalus	X	Not included on US Standard	X		

38g5	Other central nervous system anomalies (specify)	X	Not included on US Standard	X		
38g6	Heart malformations	X	Not included on US Standard	X		
38g7	Other circulatory/respiratory anomalies (specify)	X	Not included on US Standard	X		
38g8	Rectal atresia/stenosis	X	Not included on US Standard	X		
38g9	Tracheo-esophageal fistula/Esophageal atresia	X	Not included on US Standard	X		
38g10	Omphalocele/Gastroschisis	55	US Standard separates and lists as 2 items rather than one item		X	Adopt US Standard - Two checkboxes: "Omphalocele" and "Gastroschisis"
38g11	Other gastrointestinal anomalies (specify)	X	Not included on US Standard	X		
38g12	Malformed genitalia	X	Not included on US Standard	X		
38g13	Renal agenesis	X	Not included on US Standard	X		
38g14	Other urogenital anomalies (specify)	X	Not included on US Standard	X		
38g15	Cleft lip/palate	55	US Standard separates into two items: "Cleft Lip with or without Cleft Palate" and "Cleft Palate alone"		X	Adopt US Standard - Two checkboxes: "Cleft Lip with or without Cleft Palate" and "Cleft Palate alone"
3816	Polydactyly/Syndactyly	X	Not included on US Standard	X		
38g17	Limb reduction(s)	55	US Standard: "Limb reduction defect (excluding congenital amputation and dwarfing syndromes)"		X	Change label to read "Limb reduction defect (excluding congenital amputation and dwarfing syndromes)"
38g18	Club foot	X	Not included on US Standard	X		
38g19	Diaphragmatic hernia	X	US Standard: "Congenital diaphragmatic hernia"		X	Change label to read "Congenital diaphragmatic hernia"
38g20	Other musculoskeletal/integumental anomalies (specify)	X	Not included on US Standard	X		
38g21	Down's syndrome		US Standard asks additional question: "Karotype confirmed" or "Karotype pending"		X	Adopt US Standard - Add two checkboxes: "Karyotype confirmed" and "Karyotype pending"
38g22	Other chromosomal anomalies (specify)	55	US Standard: Suspected chromosomal disorder - Karotype confirmed or Karotype pending"		X	Replace with new US Standard question: "Suspected chromosomal disorder - Karotype confirmed or Karotype pending"
38g23	None	55	US Standard: "None of the above"		X	Change label to read "None of the above"
38g24	Other (specify)	X	Not included on US Standard	X		

NEW ITEMS NOT ON TX CERT

US Standard #		
8a	Mother's Current Legal Name (First, Middle, Last)	Add as shown on US Standard
9f	Mother's Residence Zip Code	Add as separate field to current 'Mother's Residence Address' information
15	If Mother Married No, Has Paternity Acknowledgment been signed in the hospital? Yes/No	Retain current label "Mother Married". Expanded questions related to marital status will be asked via Texas Electronic Registrar and in birth certificate instructions. AOP status will be determined.
17	Facility ID (NPI)	Add to "Name of Hospital or Birthing Center"
29a	Date of First Prenatal Care Visit (mm/dd/yyyy), with checkbox for "No Prenatal Care"	
29b	Date of Last Prenatal Care Visit (mm/dd/yyyy)	
31	Mother's Height (feet/inches)	
32	Mother's Prepregnancy Weight (pounds)	
33	Mother's Weight at Delivery (pounds)	
34	Did Mother Get WIC Food For Herself During This Pregnancy? Yes/No	
38	Principal Source of Payment for This Delivery: Private Insurance, Medicaid, Self-Pay, Other (specify)	
40	Mother's Medical Record Number	Collected through Texas Electronic Registrar - not included on paper certificate because most are non-facility births
41	Risk Factors in This Pregnancy:	

41	Vaginal bleeding during this pregnancy prior to the onset of labor	
41	Pregnancy resulted from infertility treatment	
41	Mother had a previous cesarean delivery - If yes, how many	
42	Infections Present And/Or Treated During This Pregnancy:	
42	Gonorrhea	
42	Syphilis	
42	Herpes Simplex Virus (HSV)	
42	Chlamydia	
42	Hepatitis B	
42	Hepatitis C	
42	None of the above	
43	Obstetric Procedures:	
43	Cervical cerclage	
43	External cephalic version: Successful, Failed	
45	Characteristics of Labor and Delivery:	
45	Non-vertex presentation	
45	Steroids (glucocorticoids) for fetal lung maturation received by the mother prior to delivery	
45	Antibiotics received by the mother during labor	
45	Fetal intolerance of labor such that one or more of the following actions was taken: in-utero resuscitative measures, further fetal assessment, or operative delivery	
45	Epidural or spinal anesthesia during labor	
46	Method of Delivery	
46	Fetal presentation at birth: Cephalic, Breech, Other	
47	Maternal Morbidity:	
47	Maternal transfusion	
47	Third or fourth degree perineal laceration	
47	Ruptured uterus	
47	Unplanned hysterectomy	
47	Admission to intensive care unit	
47	Unplanned operating room procedure following delivery	
48	Newborn Medical Record Number	Collected through Texas Electronic Registrar - not included on paper certificate because most are non-facility births
51	Apgar Score: Score at 5 minutes; If 5 minute score is less than , score at 10 minutes	
54	Abnormal Conditions of the Newborn:	
54	Assisted ventilation required immediately following delivery	
54	Assisted ventilation required for more than six hours	
54	NICU admission	
54	Newborn given surfactant replacement therapy	
54	Antibiotics received by the newborn for suspected neonatal sepsis	
54	Significant birth injury (skeletal fracture(s), peripheral nerve injury, and/or soft tissue/solid organ hemorrhage which requires intervention)	
55	Congenital Anomalies of the Newborn:	
55	Cyanotic congenital heart disease	
55	Hypospadias	
57	Is Infant Living at Time of This Report?: Yes, No, or Infant transferred, status unknown	
58	Is Infant Being Breastfed? Y/N	

TRD-200403572
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 26, 2004

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Texas Health and Human Services Commission

Notice of Public Hearing

A rate hearing on Reimbursement for Medicaid Mental Health Case Management (TCM) and Rehabilitative Services for the Texas Mental Health and Mental Retardation Resiliency and Disease Management Model will be held on June 15, 2004 at 1:00 p.m. in the Lone Star Conference Room of the Texas Health and Human Services Commission Braker Center located at 11209 Metric Blvd, Austin, Texas 78758.

Written comments may be submitted to the Texas Health and Human Services Commission Medicaid Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756 or faxed to (512) 491-1998. Hand deliveries will be accepted at Braker Center, Mail Code H-400, 11209 Metric Blvd, Austin, Texas 78758. Comments must be received by 5:00 p.m. June 15, 2004. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Rate Analysis Section at (512) 491-1358.

Persons requiring ADA accommodation should contact Tony Arreola by calling (512) 491-1358, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tony Arreola through the Texas Relay Operator by calling 1-800-735-2988.

The proposed rates were determined in compliance with 1 Texas Administrative Code (TAC), Chapter 355, Subchapter F, §355.706.

TRD-200403534
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: May 25, 2004

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Houston-Galveston Area Council

Call for Projects

FOR THE 2006 - 2008 TRANSPORTATION IMPROVEMENT PROGRAM

Houston-Galveston Area Council in its role as the Metropolitan Planning Organization (MPO) for the eight-county Transportation Management Area will be soliciting submittals for roadway, transit and other transportation programs and projects scheduled for implementation between September 1, 2005 and August 31, 2008.

H-GAC is soliciting project nominations from local area transportation and transit agency sponsors May 26 - August 18, 2004. Added capacity projects must be included in the 2025 Regional Transportation Plan to be considered. Upon submittal, projects will be evaluated for their benefit, readiness and eligibility to receive federal assistance.

For more information, please visit **www.h-gac.com/HGAC/Departments/Transportation/TIP/default.htm** or call Lynn Spencer, Senior TIP Planner, at 713-627-3200 for more details.

Houston-Galveston Area Council

3555 Timmons Lane

Houston, Texas 77027

713-627-3200

TRD-200403567
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: May 26, 2004

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Texas Department of Insurance

Company Licensing

Application for a new organization applying for a certificate of authority in the State of Texas by AMERICAN INTERSTATE INSURANCE COMPANY OF TEXAS, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200403570
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 26, 2004

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for incorporation in Texas of ASSOCIATION HEALTH CARE MANAGEMENT, INC., a domestic third party administrator. The home office is Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200403495
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 24, 2004

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Texas Lottery Commission

Instant Game Number 467 "Texas Stars & Guitars"

1.0. Name and Style of Game.

A. The name of Instant Game Number 467 is "TEXAS STARS & GUITARS." The play style is "key number match."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 467 shall be $1.00 per ticket.

1.2. Definitions in Instant Game Number 467.

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 except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 and $1,000.

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. 467 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

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. 467 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. 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 $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize--A prize of $40.00 or $100.

I. High-Tier Prize--A prize of $1,000.

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 (467), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 467-0000001-000.

L. Pack--A pack of "TEXAS STARS & GUITARS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fan-folded in pages of five. Tickets 000 to 004 will be on top page; tickets 005 to 009 on the next page; etc.; and tickets 245 to 249 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "TEXAS STARS & GUITARS" Instant Game Number 467 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 "TEXAS STARS & GUITARS" Instant Game is determined once the latex on the ticket is scratched off to expose 11 Play Symbols. If a player matches the LUCKY NUMBER play symbols to any of YOUR NUMBERS play symbols the player will win prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and $5).

2.3. Procedure for Claiming Prizes.

A. To claim a "TEXAS STARS & GUITARS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 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 $40.00 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 Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS STARS & GUITARS" Instant Game prize of $1,000, 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 "TEXAS STARS & GUITARS" 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 Resources 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 "TEXAS STARS & GUITARS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS STARS & GUITARS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game 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.

2.8. 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, 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 12,000,000 tickets in the Instant Game Number 467. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 467 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,392,000	8.62
$2	528,000	22.73
$4	336,000	35.71
$5	96,000	125.00
$10	72,000	166.67
$20	48,000	250.00
$40	22,500	533.33
$100	1,450	8,275.86
$1,000	200	60,000.00

*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 4.81. 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 Number 467 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 467, 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-200403410
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 20, 2004

♦ ♦ ♦

Manufactured Housing Division

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 1:00 p.m. on Tuesday, July 6, 2004 at 507 Sabine Street, 4th Floor Boardroom, Austin, Texas 78701. The public hearing is to accept comments on proposed amendments to §80.201 and §80.209 to Title 10 Texas Administrative Code, Chapter 80 (West) ("Rules"), concerning provisions for correcting Statements of Ownership and Location and revising the Application for Statement of Ownership and Location form to allow retailers to report homes that are in their inventory. The proposed amendments are published in this issue of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or e-mail at sharon.choate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or e-mailed to sharon.choate@tdhca.state.tx.us.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201 and Title 10 Texas Administrative Code (West).

Individuals who require auxiliary aids for this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200403473
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: May 21, 2004

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Panhandle Regional Planning Commission

Invitation for Bids Legal Notice

The Panhandle Regional Planning Commission (PRPC) is soliciting bids for a contract to purchase ten (10) personal computers (PCs) and related equipment.

To comply with our funding agency's requirements, PRPC will only accept bids for PCs produced by a Tier1/Tier2 manufacturer as designated by the Gartner Group. Tier 1/Tier 2 manufacturers include: Acer,

AST, Compaq, Digital, Dell, Gateway, HP, IBM, Micron, NEC, Unisys and Zenith Data Systems.

Bid specifications may be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101. For further information, please contact Leslie Hardin, Facilities Coordinator at (806) 372-3381 or lhardin@prpc.cog.tx.us or Mark Dubina, IT Manager at (806) 372-3381 or mdubina@prpc.cog.tx.us.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., June 16, 2004. Bids received after the indicated date and time will not be accepted or considered for award. PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

TRD-200403569
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: May 26, 2004

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Public Utility Commission of Texas

Application for Reciprocity Suspension of Deadline for Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on May 21, 2004, for reciprocity suspension of the Federal Communications Commission (FCC) requirement to implement wireless local number portability (LNP).

Docket Style and Number: Application of ENMR Telephone Cooperative, Incorporated for Reciprocity Suspension of Federal Communications Commission Requirement to Implement Wireless Number Portability. Docket Number 29779.

The Petition: ENMR Telephone Cooperative, Incorporated (ENMR or the company) seeks reciprocity suspension of the Federal Communications Commission (FCC) deadline to implement local number portability by May 24, 2004, in the company's Texas exchanges, pending action by the New Mexico Public Regulation Commission (NMPRC). The company requested that the Public Utility Commission of Texas give reciprocity to an order of the NMPRC pursuant to P.U.C. Procedural Rule §22.263(d). ENMR provides service to 931 customers in Texas out of a total of 12,671 customers. All of the company's Texas customers are served by central offices located within New Mexico. Currently, ENMR's obligation to implement LNP in its New Mexico switches is suspended by the NMPRC Order dated March 16, 2004.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29779.

TRD-200403548
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 30, 2004 for declaratory relief or, in the alternative, request for waiver.

Docket Title and Number: Application of CenterPoint Energy Houston Electric, LLC for Declaratory Relief or, in the Alternative, Request for Waiver. Docket Number 29648.

The Application: CenterPoint Energy Houston Electric, LLC (CenterPoint Energy) filed a request for declaratory relief as to the application of Texas Utilities Code §39.904, and the renewable energy credit (REC) requirements and penalty provisions of P.U.C. Substantive Rule §25.173 to Reliant Energy HL&P, the predecessor in interest to CenterPoint Energy. Further, CenterPoint Energy request declaratory relief of Reliant Energy HL&P's REC obligation for 2002 or 2003, either as a Load Serving entity (LSE) or a Transmission and Distribution Service Provider (TDSP). In the alternative, if the commission finds that CenterPoint Energy is subject to the REC program obligations, then CenterPoint Energy request that the commission grant a good cause waiver of the 2002 and 2003 REC obligations and any associated penalties for insufficient RECs, pursuant to P.U.C. Substantive Rule §25.173(o)(4).

On or before June 11, 2004, persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 29648.

TRD-200403549
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 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 Victory Communications, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 29761 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone 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 June 9, 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 29761.

TRD-200403525
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 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 May 20, 2004, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of AT&T Communications of Texas, L.P. and TCG Dallas' request for additional telephone numbers in the Euless rate center.

Docket Title and Number: Application of AT&T Communications of Texas, L.P. and TCG Dallas (collectively AT&T) for Waiver of Neustar Denial of Code Request. Docket Number 29763.

The Application: AT&T requested the Commission waive Neustar's denial of its request for a single 1,000-block to be used to accommodate a single customer request in the Euless 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 June 18, 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 29763.

TRD-200403526
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2004

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 21, 2004, for an amendment to certificated service area boundaries within Hidalgo County, Texas.

Docket Style and Number: Joint Application of Magic Valley Electric Cooperative, Incorporated and AEP Texas for an Amendment to a Certificate of Convenience and Necessity for Service Area Boundaries within Hidalgo County, Texas. Docket Number 29776.

The Application: Magic Valley Electric Cooperative, Incorporated (MVEC) has received a request to serve a parcel of land upon which Ross Gin will construct a cotton gin. The joint applicants are the only electric utilities that are affected by the proposed boundary change. Both MVEC and AEP Texas support the proposed boundary change. A total of 32.37 acres currently singly certificated to AEP Texas will become singly certificate to MVEC if this application is granted.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than June 11, 2004, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 29776.

TRD-200403547
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Application to Discontinue Certain Services Associated with a Service Provider Certificate of Operating Authority

On May 18, 2004, WinStar Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60027. Applicant intends to discontinue certain services provided to non-federal governmental customers primarily in the Dallas-Fort Worth and Houston metropolitan areas.

The Application: Application of WinStar Communications, LLC to Discontinue Certain Services Associated with its Service Provider Certificate of Operating Authority, Docket Number 29747.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 9, 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 29747.

TRD-200403480
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2004

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on May 21, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long fun incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around June 2, 2004.

Docket Title and Number: United Telephone Company of Texas, Incorporated, doing business as Sprint, Application for Approval of LRIC Study Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 29765.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29765. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 29765.

TRD-200403545
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on May 21, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long fun incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around June 2, 2004.

Docket Title and Number: Central Telephone Company of Texas, Incorporated, doing business as Sprint, Application for Approval of LRIC Study Pursuant to P.U.C. Substantive Rule §26.214, Docket No. 29766.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29766. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 29766.

TRD-200403546
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on May 6, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long fun incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or around May 17, 2004.

Docket Title and Number: GTE Southwest, Incorporated, doing business as Verizon Southwest, Application for Approval of LRIC Study Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 29678.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29678. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 29678.

TRD-200403544
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.225

Notice is given to the public of the filing on May 17, 2004, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long fun incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.225. The Applicant will file the LRIC study on or around May 27, 2004.

Docket Title and Number: Verizon Southwest Application for Approval of LRIC Study Pursuant to P.U.C. Substantive Rule §26.225, Docket Number 29742.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29742. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 29742.

TRD-200403543
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Central Telephone Cooperative Incorporated's application filed with the Public Utility Commission of Texas (commission) on May 3, 2004 to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Central Texas Telephone Cooperative, Incorporated to Withdraw Pick 3 and Pick 5 Feature Packages from the General Exchange Tariff Pursuant to P.U.C Substantive Rule §26.208(h), Docket Number 29659.

The Application: Central Texas Telephone Cooperative, Incorporated filed an application to withdraw the optional Pick 3 and Pick 5 feature packages from its General Exchange Tariff. Central Texas Telephone stated it has no subscribers for these packages and requests to withdraw these services due to administrative problems associated with the ordering and provisioning of these packages. Central Texas Telephone stated it has not sold any Pick 3 or Pick 5 packages to date, therefore, provisions for grandfathering current subscribers are not necessary and it has no annual revenues to report.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by June 24, 2004, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 29659.

TRD-200403536
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Alenco Communication Incorporated's application filed with the Public Utility Commission of Texas (commission) on May 4, 2004 to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Alenco Communications, Incorporated, doing business as ACI, to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208, Docket Number 29664.

The Application: Alenco Communications, Incorporated, doing business as ACI, filed an application to withdraw the following services: Call Forwarding - Variable Multi-Path; Cancel Call Waiting; Central Office Services; Intel Call Packages; Intercom: Optional Network Access Line Services; Public Pay Telephone Service - Semi-Public Telephone Service; Remote Access to Call Forwarding; Simplified Message Desk Interface; Smart Ring; Special Call Waiting; VIP Alert; Wake Up Service; Customer Calling Packaged Services for the exchanges of Donie, Maryneal, McCaulley and Sylvester: Residence/Business-Any Two Features, Residence/Business - Any Three Features, Residence/Business - Any Four Features. Many of the services ACI proposes to withdraw have never been offered because ACI is not technically capable of providing these services or they have become obsolete. These services were erroneously tariffed, except Public Telephone Service and Semi-Public Telephone Service, because ACI acquired several GTE exchanges. (Public Telephone Service and Semi-Public Telephone Service are obsolete and were replaced by Pay Telephone, already offered in another subsection of Section 5 of ACI's tariff.) Those exchanges offered the proposed withdrawn services at that time. Since the transfer of the exchanges to ACI, the services have never been offered.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by July 7, 2004, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 29664.

TRD-200403537
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2004

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Texas Department of Transportation

Notice of Correction

Notice of Correction: The Texas Department of Transportation published a request for competing proposals and qualifications pursuant to Transportation Code, §360.3022 in the *Texas Register* dated May 21, 2004 (29 TexReg 5145). This Notice of Correction corrects the due date of the competitive proposals and qualifications submittals (PQS). The PQS are due August 19, 2004.

TRD-200403533
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 25, 2004

♦ ♦ ♦

Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission adopted 28 TAC §134.402, concerning the Ambulatory Surgical Center Fee Guideline. Notice of the adoption was published in the April 30, 2004 issue of the *Texas Register* (29 TexReg 4191).

The preamble for §134.402 contained errors as indicated below:

Page 4192, left column, 2nd full paragraph, 5th sentence Change "address" to "addresses". The sentence should read as follows: "The statutory requirement that workers' compensation not pay more than payers on behalf of patients from populations with equivalent standards of living addresses a cap on workers' compensation fees, except to the extent that special features of workers' compensation require higher fees."

Page 4195, right column, 1st full paragraph Delete duplicate word. The sentence should read as follows: Recognizing the statutory mandate that the commission establish guidelines that provide the assurance of quality medical care together with achieving effective medical cost control, Ingenix observed that "reimbursement levels must therefore be sufficiently high to ensure access to quality care, sufficiently low to achieve medical cost control, and not in excess of fees paid by or on behalf of individuals with an equivalent standard of living."

Page 4196, right column, 2nd full paragraph, 3rd sentence Delete duplicate period. The sentence should read as follows: "However, Ingenix's recommended reimbursement range did not contain an explicit reduction for security of payment or for extraordinary encouragement of medical cost control related to reimbursement rates."

Page 4197, left column, 9th paragraph, 1st sentence Delete "and" and insert commas and "concerns" at end of sentence. The sentence should read as follows: "The commission considered all information presented, subsequent discussion of the FFG workgroup, and the MAC's concerns."

Page 4198, left column, 5th paragraph, 4th sentence Delete last 2 words in sentence. The sentence should read as follows: "Subsection (a) requires use of the most recent payment policies adopted by the Medicare program for compliance with commission rules, decisions, and orders."

Page 4198, left column, 5th paragraph, 7th sentence Insert "to". The sentence should read as follows: "Pursuant to §408.021 of the Texas Labor Code, injured employees are entitled to all health care reasonably required by the nature of the injury as and when needed, to cure or relieve the effect naturally resulting from the compensable injury, to promote recovery or enhance the ability of the employer to return to or retain employment."

Page 4198, left column, 5th paragraph, 8th sentence Insert commas. The sentence should read as follows: "To the extent that this entitlement may differ from the entitlement of the Medicare recipients, the decision of the commission, through its dispute resolution process, must take precedence over the provisions adopted or utilized by CMS in administering the Medicare program."

Page 4199, right column, 2nd full paragraph, 1st sentence Delete hyphen in "mis-applied". The sentence should read as follows: "Commenters stated that it was unclear from the proposed rule how or if the LOS would relate to this portion of proposed "lesser of" clause, and further suggested that LOS would be misapplied and the MAR would ultimately be a single surgical per diem capitation of $1,118, regardless of the commission's intent."

Page 4201, right column, 4th paragraph, 5th sentence Insert "and". The sentence should read as follows: "In Texas, alone of the 50 states, lower medical costs are more necessary to hold and restrain premium increases and ensure greater worker access to medical care for workplace injuries."

Page 4202, right column, 1st paragraph, 2nd sentence Delete "of". The sentence should read as follows: "Commenters observed that access to quality, cost-effective care may be jeopardized if providers are required to perform these services at the proposed reimbursement rate, rather than at a rate that commenters would find acceptable and purportedly in the best interest of the patient."

Page 4207, left column, 4th paragraph, 1st sentence Replace semicolons with commas and insert parenthesis. The sentence should read as follows: "COMMENT: Commenters expressed concern and questioned the proposed rule's provisions for the reimbursement of prosthetics, orthotics, durable medical equipment and supplies (specifically implants, screws, external fixators, lenses, bone cements, bone substitutes, and donor tissues), overnight stays, the number of procedures considered, and grouped and non-grouped procedures."

Page 4208, right column, 3rd full paragraph, 3rd sentence Insert period at end of sentence. The sentence should read as follows: "TMIC asserts that those CPT codes should be performed in a physician setting, and in fact are rarely done in ASCs."

Page 4208, right column, 5th paragraph Delete "on". The sentence should read as follows: "Because the commission has deleted (c)(2) of the proposed rule, for reasons discussed elsewhere in this preamble, there will not be any health care provided in an ASC that is not on the ASC List of Medicare Approved Procedures, and there is no need to establish specific reimbursement rates for those procedures that are not on the ASC List of Medicare Approved Procedures."

Page 4211, left column, 1st full paragraph Delete "[a]". The sentence should read as follows: "Commenter recommended that the commission establish categories other than those established for the Medicare system, arranged so that they are comparable in complexity and costs, with fixed fees that reflect the true cost of providing each procedure rather than based on a Medicare multiplier."

TRD-200403527
Kaylene Ray
Assistant General Counsel
Texas Workers' Compensation Commission
Filed: May 24, 2004

♦ ♦ ♦

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist,

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An

insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200403532
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 25, 2004

How to Use the Texas Register

Information Available: The 14 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 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.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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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