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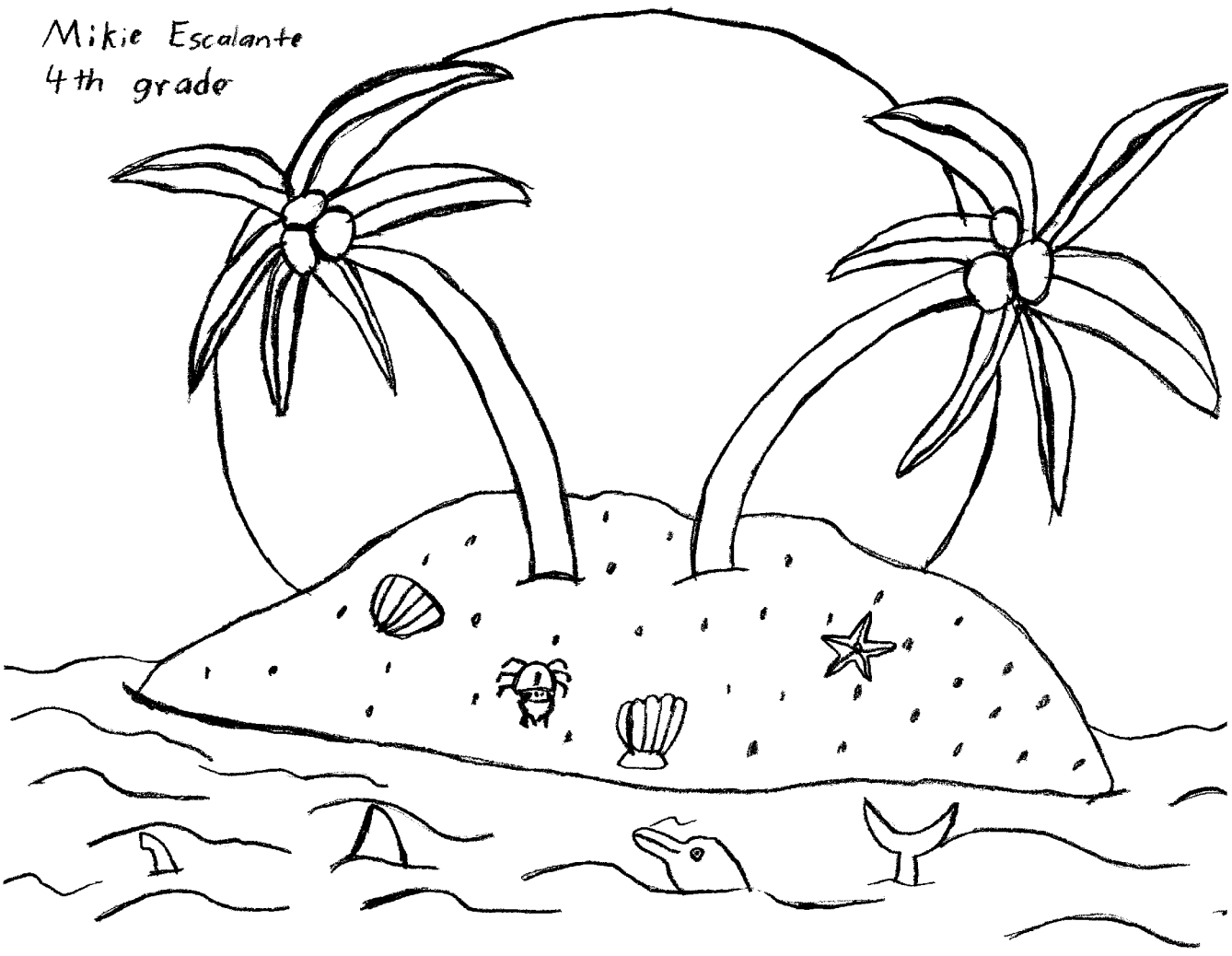

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

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-0231-GA

Requestor:

Mr. Geoffrey S. Connor

Texas Secretary of State

Post Office Box 12697

Austin, Texas 78711-2697

Re: Applicability of the Open Meetings Act, Chapter 551, Government Code, to examinations conducted by voting machine examiners (Request No. 0231-GA)

Briefs requested by July 16, 2004

RQ-0232-GA

Requestor:

Mr. Thomas A. Davis Jr., Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0252

Re: Applicability of §1702.323(e) of the Occupations Code to paralegals and others who perform work under the direct supervision of an attorney (Request No. 0232-GA)

Briefs requested by July 17, 2004

RQ-0233-GA

Requestor:

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

The Honorable Robert Duncan

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Licensing requirements under the Texas Electrical Safety and Licensing Act (Request No. 0233-GA)

Briefs requested by July 17, 2004

RQ-0234-GA

Requestor:

The Honorable Donna R. Bennett

173rd Judicial District Attorney

109 West Corsicana, Suite 103

Athens, Texas 75751

Re: Whether a district attorney may simultaneously hold a part-time teaching position at a community college (Request No. 0234-GA)

Briefs requested by July 21, 2004

RQ-0235-GA

Requestor:

Mr. Paul D. Cook

Acting Executive Director

Texas Board of Professional Engineers

1917 IH-35 South

Austin, Texas 78741

Re: Validity of documents prepared by a licensed engineer who is employed by a company that is not itself registered with the Board of Professional Engineers (Request No. 0235-GA)

Briefs requested by July 21, 2004

RQ-0236-GA

Requestor:

The Honorable Fred Hill

Chair, Committee on Local Government Ways and Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the placement of a one-party foreclosable contractual lien on real property supersedes the homestead rights created by Article 16, §50 of the Texas Constitution (Request No. 0236-GA)

Briefs requested by July 22, 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-200404167
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 22, 2004

♦ ♦ ♦

Opinions

Opinion No. GA-0204

Ms. Shirley Neeley, Ed.D.

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701

Re: Whether a public school teacher may be awarded compensation under the statutory Advanced Placement Incentive Program (RQ-0151-GA)

SUMMARY

An Advanced Placement Incentive Program payment to a public school teacher under §521.126 of the Education Code serves a public purpose. A public school teacher under an existing contract may not be awarded such a payment unless (1) the teacher provides additional consideration in return, or (2) the teacher's contract expressly provides for the possibility of such additional compensation. A teacher may receive such a payment as part of compensation in contracts executed after June 20, 2003, the effective date of the statute.

Opinion No. GA-0205

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002-1700

Re: Whether a juvenile board may designate a juvenile probation department as the office authorized to determine whether to defer prosecution of a child referred to juvenile court for certain nonviolent misdemeanor offenses (RQ-0152-GA)

SUMMARY

A juvenile board may, without contravening Article V, Section 21 or Article II, Section 1 of the Texas Constitution, designate a juvenile probation department as the office with the authority to defer prosecution of a child referred to juvenile court for certain nonviolent misdemeanor offenses.

Opinion No. GA-0206

The Honorable Bill R. Turner

Brazos County District Attorney

300 East 26th Street, Suite 310

Bryan, Texas 77803

Re: Whether the Bryan Business Council, Inc. is subject to the Open Meetings Act, Chapter 551 of the Government Code (RQ-0155-GA)

SUMMARY

The Bryan Business Council, Inc. is not a "governmental body" within the terms of the Open Meetings Act, Chapter 551 of the Government Code.

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

TRD-200404168
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 22, 2004

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER F. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §1.601

The Finance Commission of Texas (commission) proposes an amendment to §1.601, concerning authorized charges. The purpose of the amendment is to correct citation references that have changed as a result of legislative action.

Leslie L. Pettijohn, Consumer Credit Commissioner 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 administering the rule.

Commissioner Pettijohn 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 the proposed amendment will be ensuring that existing rules conform to legislative changes and accurate citations to prevent confusion among individuals who use the rules. There is no anticipated cost to persons who are required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the section as proposed.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to leslie.pettijohn@occc.state.tx.us. To be considered, a comment must be received on or before the 30th day after the date the proposed sections are published in the *Texas Register*.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provision (as currently in effect) affected by the proposed amendments is Texas Finance Code §342.302.

§1.601. Authorized Charges.

(a) An authorized lender may contract for, charge, or collect on a loan made pursuant to Subchapter F:

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

(5) a processing fee for the return of a dishonored check pursuant to Texas Business and Commerce Code, Section 3.506 [~~Article 9022, Tex. Rev. Civ. Stat.~~]; and

(6) (No change.)

(b) (No change.)

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

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

TRD-200404030
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §1.706

The Finance Commission of Texas (commission) proposes an amendment to §1.706, concerning amounts authorized to be collected on or before closing. The purpose of the amendment is to correct citation references that have changed as a result of legislative action.

Leslie L. Pettijohn, Consumer Credit Commissioner 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 administering the rule.

Commissioner Pettijohn 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 the proposed amendment will be ensuring that existing rules conform to legislative changes and accurate citations to prevent confusion among individuals who use the rules. There is no anticipated cost to persons who are required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the section as proposed.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar

Boulevard, Austin, Texas 78705-4207 or by email to leslie.pettijohn@occc.state.tx.us. To be considered, a comment must be received on or before the 30th day after the date the proposed sections are published in the *Texas Register*.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provision (as currently in effect) affected by the proposed amendment is Texas Finance Code §342.302.

§1.706. Amounts Authorized to be Collected on or Before Closing.

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

(c) Appraisal fees. An appraisal fee may be charged when an appraisal has been performed by an appraiser, certified or licensed by the Texas Appraiser Licensing and Certification Board pursuant to Texas Occupations Code, Chapter 1103 [~~Tex. Rev. Civ. Stat., Art. 6573a.2.~~], and who is not a salaried employee of the lender.

(d) (No change.)

(e) Survey fees. A survey fee may be charged when a survey has been performed by a surveyor, registered or licensed by the Texas Board of Professional Land Surveying pursuant to Texas Occupations Code, Chapter 1071 [~~Tex. Rev. Civ. Stat., Art. 5282c.~~], and who is not a salaried employee of the lender.

(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 June 18, 2004.

TRD-200404031
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER I. INSURANCE

7 TAC §1.805, §1.808

The Finance Commission of Texas (commission) proposes amendments to §1.805 and §1.808, concerning authorized credit insurance and termination and refund. The purpose of the amendments is to correct citation references that have changed as a result of legislative action.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed amendments will be ensuring that existing rules conform to legislative changes and accurate citations to prevent confusion among individuals who use the rules. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to leslie.pettijohn@occc.state.tx.us. To be considered, a comment must be received on or before the 30th day after the date the proposed sections are published in the *Texas Register*.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provision (as currently in effect) affected by the proposed amendments is Texas Finance Code §342.302.

§1.805. Authorized Credit Insurance.

(a) (No change.)

(b) Credit life insurance and credit accident and health insurance shall be written in compliance with Texas Insurance Code Article 3.42, Chapter 1131, [~~3.50~~], Article 3.51-6, and Chapter 1153 [~~3.53~~] and any regulations issued by the Texas Department of Insurance under the authority of that provision.

(c) (No change.)

§1.808. Termination and Refund.

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

(d) Upon termination of a credit life or credit accident and health insurance policy prior to the scheduled maturity of a loan, the lender shall provide the borrower a refund or credit calculated in compliance with Texas Insurance Code, Chapter 1153 [~~Article 3.53~~] and regulations issued by the Texas Department of Insurance under the authority of that provision.

(e) (No change.)

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

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

TRD-200404032
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER T. MOTOR VEHICLES SALES FINANCE OPERATIONS

7 TAC §1.1501, §1.1502

The Finance Commission of Texas (the commission) proposes new 7 TAC §1.1501 and §1.1502, relating to prepaid maintenance agreements of a motor vehicle. The purpose of the proposed new 7 TAC §1.1501 and §1.1502 is to define prepaid maintenance agreements and contracts and outline the usage and disclosure of the agreements as sold in connection with motor vehicles.

Section 1.1501 defines a prepaid maintenance agreement and service contract.

Section 1.1502 outlines the methods of disclosure on a retail installment sales contract for prepaid maintenance agreements sold in connection with motor vehicles. Prepaid maintenance agreements that are required or otherwise included with the sale of all motor vehicles must be disclosed as a component of the cash price. Those agreements sold on a voluntary basis may be disclosed under two methods specified in the rule.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed rules will be the establishment of clear guidelines concerning the proper disclosure of these types of agreements. Consistent and proper disclosures aid consumers in making well-informed financial and credit decisions.

The licensees will have the option of not providing prepaid maintenance agreements, in which case, there will be no fiscal implications for the licensee. If a licensee opts to provide prepaid maintenance agreements the fees charged in conjunction with the agreement should cover the costs associated with the agreement. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed rules may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to sealy.hutchings@occc.state.tx.us. To be considered, a comment must be received on or before the 30th day after the date the proposed sections are published in the *Texas Register*.

The new rules are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The statutory provision (as currently in effect) affected by the proposed rules is Texas Finance Code §348.

§1.1501. Definitions.

(a) Prepaid Maintenance Agreement--a maintenance agreement as defined in Section 1304.004, Texas Occupations Code. The cost of the agreement must be reasonable and the services covered by the prepaid maintenance agreement should be reasonably expected to be delivered during the term of the agreement.

(b) Service Contract--has the meaning assigned in Section 1304.003, Texas Occupations Code. Pursuant to Section 1304.004, Texas Occupations Code, a prepaid maintenance agreement is a type of service contract.

§1.1502. Prepaid Maintenance Agreements.

(a) If the prepaid maintenance agreement is sold in connection with all motor vehicle sales, regardless of whether the sale is a cash sale or a credit sale, the charge for the prepaid maintenance agreement should be disclosed or otherwise included as a component of the cash price.

(b) If the prepaid maintenance agreement is offered as a voluntary purchase in connection with the credit sale of a motor vehicle, the prepaid maintenance agreement may be disclosed:

(1) as a component of the cash price; or

(2) as an itemized charge on the retail installment sales contract.

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

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

TRD-200404033
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 936-7640

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.23

The Finance Commission of Texas (commission) proposes to amend §25.23, concerning application and renewal fees. The proposed amendment to §25.23 will implement Finance Code, §154.051, which authorizes the commission to adopt reasonable rules concerning fees to defray the cost of administering Finance Code, Chapter 154.

The proposed amendment to §25.23 decreases the new prepaid funeral contract permit application fee from $2,500 to $500.

The fee decrease is established by the commission and not mandated by the Legislature. The commission proposes the fee decrease because technological and procedural improvements have enabled the Texas Department of Banking (department) to increase its administrative efficiency and, as a result, the department's operational costs in processing new permit applications have decreased significantly. The commission has determined that the department can provide the same level of regulation at a lower cost to its license holders, permit holders and registrants.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five year period the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment. The proposed fee decrease might suggest a fiscal implication, but the department is a self-leveling agency. The department's operating funds come exclusively from fees and assessments paid by persons who must be licensed by or registered with the department. If the funds collected by the department are not sufficient to pay its operational expenses, the commission raises the discretionary fees and assessments. If the department collects funds in excess of what is necessary to pay its operational expenses, the commission decreases the discretionary fees and assessments so that only the required amount is collected. Excess funds are not deposited into the State's general revenue fund. Because the cost

savings the department has realized as a result of technological and administrative improvements in processing new permit applications must be passed on to the department's license holders, permit holders, and registrants, the proposed fee decrease has no fiscal implication for state government.

The decreased fees from new applicants will not prevent this regulatory program to fully fund the costs of administering Finance Code, Chapter 154.

Ms. Newberg also determined that, for each of the first five years the section as proposed will be in effect, the anticipated public benefit will be relieving the financial burden on new prepaid funeral contract permit applicants. For each of the first five years the section as proposed will be in effect, the economic costs to persons required to comply with the rule will be significantly decreased new fees for new permit applicants. No economic cost will be incurred by a person required to comply with the proposed amendment, and there will be no adverse effect on small businesses or microbusinesses.

Comments concerning the proposed amendment must be submitted within 30 days of publication to Shannon Phillips Jr., Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or to: shannon.phillips@banking.state.tx.us.

The amendment is proposed under the authority of Finance Code, §154.051, which authorizes the commission to adopt reasonable rules concerning fees to defray the cost of administering Finance Code, Chapter 154.

Finance Code, §154.051 is affected by this proposed amendment.

§25.23. Application and Renewal Fees.

(a) (No change.)

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) New permit application fee. If you apply for a new prepaid funeral benefits permit, you must pay a $500 [~~$2,500~~] fee. In addition to the application fee, you must pay any extraordinary costs incurred by the department pursuant to any out of state investigation of you as required by the Finance Code, §154.102(3). You must pay any extraordinary costs within 20 days after written request by the department.

(2) - (4) (No change.)

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

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

TRD-200404020
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 20, 2004
For further information, please call: (512) 475-1300

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CHAPTER 29. SALE OF CHECKS ACT

7 TAC §§29.1, 29.2, 29.4, 29.11, 29.21

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

The Finance Commission of Texas (commission) proposes the repeal of Chapter 29, §§29.1, 29.2, 29.4, 29.11, and 29.21, concerning the Sale of Checks Act.

In February, 2004, the commission completed its review of Chapter 29 as required by Government Code, §2001.039. As a result of the rule review, the commission repealed former §29.3, concerning an exemption for commercial transactions, because the section was no longer necessary, and readopted the remaining sections of Chapter 29. At the time of the readoption, the commission noted that certain clarifying and updating revisions to the chapter had been identified, including changes to conform the sections' terminology and statutory references to current law and eliminate redundancies, and that several new sections needed to be added. The commission indicated that a comprehensive drafting project was underway to revise and update Chapter 29 and that revisions would be proposed later in 2004.

The Chapter 29 drafting project is now complete and the chapter has been rewritten to incorporate necessary and appropriate revisions. With few exceptions, the revisions to existing sections are nonsubstantive, and the new sections simply reflect requirements the Texas Department of Banking (department) currently applies in connection with its administration and enforcement of Finance Code, Chapter 152. However, several of the existing sections have been extensively reorganized and rewritten in accordance with plain language writing principles. Because the Texas Register requires rules that are substantially revised or rewritten to be repealed and proposed as new rules, the commission proposes to repeal existing Chapter 29 in its entirety. The commission is simultaneously proposing a new Chapter 29 in this issue of the *Texas Register*.

Ms. Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Ms. Newberg has also determined that, for each of the first five years the repeal as proposed will be in effect, the anticipated public benefit will be the replacement of existing Chapter 29 with new, updated regulations that conform to current law and are clearer and easier to understand. No economic cost will be incurred by a person required to comply with the repeal, and there will be no adverse effect on small businesses.

To be considered, written comments concerning the proposed repeal should be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to sarah.shirley@banking.state.tx.us.

The repeal is proposed under Finance Code, §152.102, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 152.

Finance Code, Chapter 152 is affected by the proposed repeal.

§29.1. Permissible Investments.

§29.2. Fees and Assessments.

§29.4. Sale of Checks License Applications; Notices to Applicants; Application Processing Times; Abandoned Filings; Appeals.

§29.11. Effect of Criminal Conviction on Licenses.

§29.21. How Do I Provide Information to Consumers on How to File a Complaint?

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

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

TRD-200404021
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 20, 2004
For further information, please call: (512) 475-1300

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7 TAC §§29.1 - 29.12

The Finance Commission of Texas (commission) proposes to adopt a new chapter relating to Finance Code, Chapter 152, the Sale of Checks Act. Proposed new Chapter 29 consists of §29.1, concerning permissible investments; §29.2, concerning fees, assessments, and reimbursements; §29.3, concerning application for a new sale of checks license; §29.4, concerning violation of application processing times; §29.5, concerning conduct of business through agent; §29.6, concerning net worth and bonding requirements for a license holder that conducts currency exchange, transportation or transmission transactions; §29.7, concerning exemption from licensing; §29.8, concerning license renewal; §29.9, concerning extension of time to file annual financial statement; §29.10, concerning correction of violations and imposition of administrative penalty; §29.11, concerning reporting and recordkeeping; and §29.12, concerning notice to customers regarding complaints.

For the reasons explained in this preamble, the commission is simultaneously proposing to repeal existing Chapter 29 in this issue of the *Texas Register*.

The proposed new sections reflect and incorporate revisions that the commission has determined are necessary and appropriate, in part as a result of its review of existing Chapter 29 earlier this year. In February, 2004, the commission completed its Chapter 29 rule review as required by Government Code, 2001.039. As a result of the rule review, the commissioner repealed former §29.3, concerning an exemption for commercial transactions, because the section was no longer necessary, and readopted the remaining sections of Chapter 29. At the time of the readoption, the commission noted that certain clarifying and updating revisions to the chapter had been identified, including changes to conform the sections' terminology and statutory references to current law and eliminate redundancies, and, further, that several new sections needed to be added. The commission noted that a comprehensive drafting project was underway to revise and update Chapter 29 and that revisions would be proposed later in 2004.

The Chapter 29 drafting project is complete, and the commission is proposing to adopt a new Chapter 29 that reflects necessary and appropriate revisions to the existing chapter. With few exceptions, the proposed revisions to the existing sections are nonsubstantive, and the proposed new sections simply reflect requirements the Texas Department of Banking (department) currently applies in connection with its administration and enforcement of Finance Code, Chapter 152, (Act or Chapter 152). However, several of the existing sections have been extensively reorganized or divided into two sections and rewritten in accordance with plain language writing principles. Because the Texas Register requires rules that are substantially revised or rewritten to be repealed and proposed as new rules, the commission proposes the revisions as sections in a new Chapter 29. Accordingly, the commission is simultaneously proposing to repeal existing Chapter 29 in this issue of the *Texas Register*.

The proposed new sections implement Chapter 152. Finance Code, §152.102, authorizes the commission to adopt rules necessary to enforce and administer the Act, including rules to implement and clarify the Act, establish fees to defray administration costs, create exemptions in appropriate circumstances and subject to appropriate conditions, identify additional permissible investments, and protect the interests of check purchasers.

This preamble first summarizes and explains the primary differences between the proposed new sections and the existing sections the proposed sections are intended to replace. The preamble then summarizes the proposed new sections for which there are no equivalent provisions in existing Chapter 29.

Proposed new §29.1 identifies the types of investments, in addition to the securities and assets defined in Finance Code, §152.001(10), that are considered to be a "permissible investment" for purposes of satisfying the Act's minimum security requirements, and establishes related conditions. The proposed new section is substantively similar to existing §29.1. Proposed new §29.1 uses more direct language and eliminates unnecessary definitions and verbiage, and the section's terminology and statutory references conform to current law. Additionally, proposed new §29.1 deletes several provisions of the existing section. The proposed new section does not include certificates of deposit or certain other debt instruments in the list of additional permissible investments because certificates of deposit are now specifically included in the Finance Code, §152.001(10), definition. Additionally, proposed new §29.1 does not include existing subsection (d), which permits a fee simple investment in real estate to satisfy a portion of the permissible investment requirement, because the authorization has never been used and is therefore considered unnecessary.

Proposed new §29.2 establishes the fees, assessments and reimbursements that an applicant for a license under Chapter 152 or a license holder must pay and sets the dates the respective payments are due. These charges are authorized in and set in accordance with the Act to reasonably approximate the department's costs in administering the Act generally or with respect to a particular filing. Proposed new §29.2 does not increase the amount of any fee, assessment or reimbursement established in or required by existing §29.2.

Proposed new §29.2 is substantively similar to existing §29.2, but uses more direct language, eliminates unnecessary verbiage, and is reorganized to clarify meaning and facilitate understanding. For example, proposed new §29.2 substitutes the term "annual assessment" for "financial audit fee" to more clearly describe the charge. The primary difference between proposed new §29.2 and existing §29.2 is that the proposed new section requires a license holder to pay its annual assessment and annual license renewal fee by ACH debit or another method if directed to do so by the department.

Proposed new §29.3 establishes the requirements an applicant for a new Chapter 152 license must satisfy and departmental procedures for accepting, evaluating and granting or denying an application that are efficient, fair and predictable. The proposed new section is substantively similar to existing §29.4, which the proposed new section will replace, but uses more direct language, eliminates unnecessary verbiage, clarifies procedures, and is reorganized to clarify meaning and facilitate understanding. The application processing times provided for in proposed new §29.3 are the same as those established in existing §29.4(b) and (f).

In addition, proposed new §29.3 formalizes by rule the department's current procedures regarding the return of an application that, at the time of its initial submission, fails to satisfy certain basic requirements. Paragraph (2) of subsection (a) of this section provides that the department may return to the applicant an application that does not include or is not accompanied by, for example, the applicant's notarized, sworn signature, the application fee, or an audited financial statement that demonstrates that the applicant satisfies the statutory minimum net worth requirement.

Finally, proposed new §29.3 does not include the provisions in existing §29.4 relating to the department's violation of application processing times. These provisions, which were initially adopted in 2001 pursuant to Government Code, §2005.003, are now located for clarification purposes in proposed new §29.4, concerning violation of application processing times. Proposed new §29.4 is substantively similar to existing §29.4(g). However, the proposed new section uses more direct and descriptive language. For example, proposed new §29.4 uses the term "complaint," rather than "appeal," to describe the process by which an applicant complains of an alleged departmental violation of an applicable processing time. The term "complaint" better describes the nature of the procedure and distinguishes it from the appeal of license denial. Proposed new §29.4 also eliminates unnecessary verbiage and clarifies procedures.

Proposed new §29.12 specifies the manner in which a Chapter 152 license holder provides consumers with information about how to file complaints with the department. The proposed new section, which implements Finance Code, §11.307, is substantively similar to existing §29.21, but uses more direct language, eliminates unnecessary verbiage, and includes clarifying definitions. For example, the text of proposed new section uses the term "customer" instead of "consumer," because the term more accurately describes the person with whom or on whose behalf the license holder conducts business. Additionally, the proposed new section allows a license holder to use either the specific notice set out in the section or a notice that substantially conforms to the specified language and form. Proposed new §29.12 also describes alternative means of giving notice that are tailored to the different methods by which a license holder conducts business and interacts with customers. Finally, as does existing §29.21, proposed new §29.12 provides that a license holder that conducts business through an agent is subject to enforcement sanctions if the agent does not post the notice required by the section.

Proposed new §§29.5 - 29.11 are new sections for which there are no equivalent provisions in existing Chapter 29. For the most part, however, these proposed new sections reflect and formalize into rule the department's current procedures and requirements.

Proposed new §29.5 establishes certain requirements that apply to a Chapter 152 license holder that conducts business through an agent. The proposed new section, which clarifies the department's existing practices toward and review of such a license holder, requires the license holder to adopt certain minimum written policies and practices relating to the agency relationship. Proposed new §29.6 also requires the license holder to enter into a written agreement with each agent, which agreement must be retained and made available for inspection by the department. The agreement must appoint the agent, be signed by the parties and set out their respective rights and responsibilities, including the applicable requirements of Finance Code, §152.403 and §152.404, and the requirement that a complaint notice be posted in accordance with proposed new §29.12.

Proposed new §29.6 relates to the net worth and bonding requirements that apply to a Chapter 152 license holder that conducts currency exchange, transportation or transmission transactions as defined in Finance Code, Chapter 153. The proposed new section reflects the department's practice and its interpretation of Chapter 152 and Finance Code, Chapter 153 and 7 TAC §4.7 of this title (relating to Bond Requirements and Deposits in Lieu of Bond). The proposed new section requires a Chapter 152 license holder who engages in the currency exchange, transportation or transmission business to satisfy either the net worth and bonding requirements of Chapter 152 or Finance Code, Chapter 153, whichever is greater.

Proposed new §29.7 establishes specific exemptions from the Act's licensing requirements for the authorized federal or state branch or agency of a foreign bank and the agent of such an entity, and the agent of a federally insured financial institution. The foreign bank branch or agency exemption is similar to that recognized in Finance Code, §153.117(2), regarding persons who conduct currency exchange, transportation and transmission transactions. The agent exemption is consistent with informal and formal department practice and legal opinions that have extended the exemption for a federally insured financial institution established in Finance Code, §152.202(1), to an agent of such an institution. Proposed new §29.7 requires a federally insured financial institution, foreign bank branch, or foreign bank agency that conducts business through an agent exempt from licensing to enter into an agency agreement with the agent that complies with proposed new §29.5(b).

Proposed new §29.8 reflects the department's existing procedures and requirements and explains the actions a Chapter 152 license holder must take to renew its license. The proposed new section requires a license holder to be current on its payment of fees, assessments and reimbursement due the department as of the date the department receives the renewal application.

Proposed new §29.9 establishes the procedure a Chapter 152 license holder must follow to secure an extension for submitting its annual audited financial statement. Finance Code, §152.305(b), requires a license holder to file its annual audited financial statement with the department no later than June 30th of each year, but authorizes the commissioner to extend the statutory due date for good cause. Proposed new §29.9 requires a license holder seeking an extension to submit a written request to the commissioner, which the department must receive no later than June 30th, explaining in detail the reasons the extension is necessary and specifying the period for which the extension is sought.

Proposed new §29.10 establishes the department's procedures to secure appropriate corrective and preventive action for a violation of Chapter 152, or a rule or order adopted or issued under Chapter 152. Proposed new §29.10 also establishes procedures for dealing with continuing and repeat violations. The proposed

new section is similar to 7 TAC §4.9 of this title (regarding Misrepresentation of Correction and Enforcement Actions for Continuing and Repeat Violations), which applies to persons licensed under Finance Code, Chapter 153, to conduct the currency exchange, transportation and transmission business.

Proposed new §29.10 requires a Chapter 152 license holder or exempt person to correct a violation or take appropriate preventive action, and, if required by the department, to notify the department of the specific action taken, within 30 days of receiving the department's written notice of violation. The proposed new section further provides that, except in limited circumstances, the misrepresentation of the corrective or preventive action taken constitutes a violation of the section. Proposed new §29.10 also authorizes the commissioner to impose an administrative penalty under Finance Code, §152.502, for failure to comply with the section's requirements, and sets out the notice and administrative hearing procedures applicable to the imposition of such a penalty.

Proposed new §29.11 establishes reporting and recordkeeping requirements that apply to a Chapter 152 license holder that engages or has engaged in the business of currency exchange, transportation or transmission within the meaning of Finance Code, Chapter 153. The specific reporting and recordkeeping requirements apply only to such a license holder's exchange, transportation and transmission activities, and the proposed new section simply formalizes by rule the requirements the license holder must currently satisfy. Proposed new §29.11 imposes no new reporting or recordkeeping obligations. The requirements are similar to those imposed by 7 TAC §4.3 of this title (regarding Reporting and Recordkeeping) upon persons licensed or exempt from licensure under Chapter 153.

Proposed new §29.11 specifically requires a Chapter 152 license holder to comply with federal laws and regulations relating to such activities. Additionally, the proposed new section specifies the records a Chapter 152 license holder must keep relating to its currency exchange, transportation or transmission business and the location at which these records must be maintained.

The fees and assessments established in the proposed new sections are established by the commission and are not mandated by the Legislature.

Ms. Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five year period the proposed new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new sections.

Ms. Newberg has also determined that, for each of the first five years the new sections as proposed will be in effect, the anticipated public benefit will be the replacement of existing Chapter 29 with new, updated regulations that conform to current law and are clearer and easier to understand. No economic cost will be incurred by a person required to comply with the proposed new sections, and there will be no adverse effect on small businesses or microbusinesses.

To be considered, comments on the proposed new sections must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to sarah.shirley@banking.state.tx.us.

The new sections are proposed under Finance Code, §152.102, which authorizes the commission to adopt rules necessary to enforce and administer the Act, including rules to implement and clarify the Act, establish fees to defray administration costs, create exemptions in appropriate circumstances and subject to appropriate conditions, identify additional permissible investments, and protect the interests of check purchasers. The new sections are also proposed under Finance Code, §152.002(10)(C), which authorizes additional permissible investments as permitted by rule, §152.202(7), which authorizes persons to be exempted by rule from the licensing requirements of Chapter 152, and §152.205(1) and §152.304(a), which provide for the establishment by rule of the amount of license application and annual license renewal fees.

Finance Code, Chapter 152 is affected by the proposed new sections.

§29.1. Permissible Investments.

(a) Permissible investments. In addition to the securities and assets defined in Finance Code, §152.001(10), to be a "permissible investment," a "permissible investment" for purposes of Finance Code, §152.301(a)(3), includes:

(1) 40% of all cash due a license holder from its agents resulting from the sale of checks under Finance Code, Chapter 152 that is not past due or doubtful of collection;

(2) commercial paper within the top two rating categories of a nationally recognized United States rating service;

(3) interest bearing bills, notes, or bonds that:

(A) are publicly traded on a national securities exchange or through a national automated quotation system; or

(B) bear a rating of the highest grade as rated by a nationally recognized United States rating service; and

(4) shares in a money market mutual fund if the mutual fund, under the terms of its governing documents, may only invest in securities of the type described in paragraphs (2) and (3) of this subsection or described in Finance Code, §152.002(10)(B).

(b) Limitations applicable to certain permissible investments. No more than 50% of permissible investments may be comprised of investments described in subsection (a)(2), (3), and (4) of this section; provided, however, that this limitation does not apply to an investment in a mutual fund if the mutual fund, under the terms of its governing documents, may invest only in securities of the type described in Finance Code, §152.002(10)(B).

(c) Cash due from agent. For purposes of subsection (a)(1) of this section, cash due a license holder from an agent is considered past due or doubtful of collection if not remitted to the license holder on or before the 10th day after the date of the sale of the check by the agent.

(d) Credit for surety bond. That portion of a surety bond maintained for the benefit of check purchasers in another state that is not in excess of the amount of outstanding checks sold in that state may be used to satisfy a portion of the requirements of Finance Code, §152.301(a)(3), provided:

(1) the license holder maintains a surety bond or has on hand other permissible investments (or a combination of a surety bond and permissible investments) in an amount sufficient to satisfy the requirements of Finance Code, §152.301(a)(3), with respect to the outstanding checks sold by the license holder in Texas; and

(2) the surety bond is approved by the commissioner and is issued by a bonding or insurance company authorized to do business

in Texas and rated within the top two rating categories of a nationally recognized United States rating service.

(e) Commissioner discretion to disallow. Notwithstanding the provisions of subsections (a), (b), and (d) of this section, if the commissioner at any time determines that an investment permitted by this section and held in the license holder's portfolio is unsatisfactory for investment purposes or poses a significant supervisory concern, the commissioner may disallow the investment for purposes of determining the license holder's compliance with Finance Code, §152.301.

§29.2. Fees, Assessments and Reimbursements.

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

(1) Annual assessment--The fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 152.

(2) Examination--The process, by on-site examination or off-site review, by which the department reviews and evaluates the books and records of a license holder that relate to its sale of checks activities.

(3) Fiscal year--The 12-month period from September 1st of one year to August 31st of the following year.

(b) Authority for and purpose of fees, assessments and reimbursements. The fees, assessments and reimbursements established in or required by this section are either specifically set out in Finance Code, Chapter 152, or set in accordance with the Finance Code, Chapter 152, to reasonably approximate the department's costs in administering the chapter generally or with respect to a specific filing.

(c) Application and renewal fees and payment due dates. Application and renewal fees and the dates and method by which they must be paid are established as follows:

(1) Application fee for new license. An applicant must pay an application fee of $2,500 for a new license under Finance Code, Chapter 152, at the time the application is submitted to the department.

(2) Annual license renewal fee. A license holder must pay a license renewal fee of $1,500. The renewal fee must be paid by ACH debit, or by another method if directed to do so by the department, that is effective on or before June 30th of each year after the first year of licensure.

(3) Exemption application fee. A person requesting an exemption under Finance Code, §152.202(a)(6), must pay an exemption application fee of $100 at the time the request is submitted to the department.

(d) Annual assessments, fees and reimbursements. Annual assessments, fees for additional examinations and reimbursements for travel expenses are established and required to be paid as follows:

(1) Annual assessment. The department will assess a license holder an annual assessment.

(A) The assessment will not exceed $8,000 in a fiscal year, and will be calculated at a rate of not more than $.02 per $1,000 of the amount of checks sold by the license holder within the State of Texas. The department will measure the amount of checks sold within the State of Texas according to the total dollar amount of transactions reflected in the license holder's most recent annual renewal filing. If the assessment calculated by the department is less than $2,500, the department will collect a minimum assessment of $2,500.

(B) The license holder must pay the annual assessment by ACH debit, or by another method if directed to do so by the department, that is effective 15 days after the date of the department's notice that the payment is due.

(2) Installment assessments. The department may collect the annual assessment in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to pay for the costs of a license holder's examination and to administer Finance Code, Chapter 152.

(3) Fee for additional examinations. If the department must examine a license holder more than once during a fiscal year as a result of the license holder's failure to comply with Finance Code, Chapter 152, or this chapter, or as a result of the license holder's failure to comply with the department's requests made in the discharge of its regulatory duties under Finance Code, Chapter 152, or this chapter, the department will assess the license holder a fee of $600 per day for each examiner required to conduct the additional examination. The license holder must pay the additional fee on or before the 30th day after the date of the department's billing.

(4) Reimbursement for department travel expenses. A license holder must reimburse the department for all travel costs related to the department's examination of the license holder on or before the 30th day after the date of the department's billing.

(5) Assessment adjustments. The commissioner may decrease the annual assessment if he determines that a lesser amount than would otherwise be collected is required to administer Finance Code, Chapter 152.

(e) Refunds not paid. The fees, assessments and reimbursements required to be paid under this section are nonrefundable.

(f) When fee, assessment or reimbursement is considered paid. A fee, assessment or reimbursement is considered paid as of the date the department receives the payment.

(g) Failure to pay when due. The department may take enforcement action against a license holder that fails to pay a fee, assessment or reimbursement in accordance with this section.

(h) Severability. If a fee, assessment or reimbursement imposed or required by this section or the manner of its calculation is determined to be unlawful or to exceed the department's authority to adopt and impose, the remainder of the section is unaffected.

§29.3. Application for New Sale of Checks License.

(a) Application. An applicant for a new license under Finance Code, Chapter 152, must submit an application on the form prescribed by the department.

(1) The application must be fully completed, signed and verified and include as attachments the documentation specified in the application and the department's instructions.

(2) The department may refuse to process and return to the applicant an application that does not include or is not accompanied by:

(A) the applicant's signature, sworn to before a notary;

(B) the application fee of $2,500 in the form of a check payable to the Texas Department of Banking;

(C) a surety bond or deposit in lieu of bond in at least the following amount:

(i) $100,000, if the applicant proposes to conduct the business of selling checks only; or

(ii) $300,000, if the applicant proposes to conduct the currency exchange, transportation or transmission business as defined in Finance Code, §153.001(5);

(D) an undertaking to increase the amount of the bond or deposit if the commissioner determines the increase is necessary; and

(E) an audited financial statement that demonstrates the applicant satisfies the net worth requirement established by Finance Code, §152.203(a)(1).

(3) If an application fee has been submitted in connection with an application that is returned under paragraph (2) of this subsection, the department will return or refund the application fee to the applicant or, if the applicant promptly submits an application that includes or is accompanied by the items identified in paragraph (2), apply the fee to the subsequent application.

(b) Investigation of application. The commissioner will review the application and may investigate the applicant, the principals of the applicant, and related facts to determine whether the applicant satisfies the licensure requirements of Finance Code, Chapter 152.

(1) The commissioner may at any time during the application review and investigation process require such additional information of the applicant, a principal of the applicant, or any other person as the commissioner reasonably deems necessary to evaluate the application, including an opinion of counsel or an opinion, review or compilation prepared by a certified public accountant.

(2) It is the applicant's responsibility to provide or cause to be provided all information the commissioner requires to make an informed decision regarding the application.

(c) Notice to applicant. On or before the 15th day after the date the department receives an application that is not returned as provided for in subsection (a)(2) of this section, the department will notify the applicant in writing that:

(1) the application is incomplete and the additional information specified in the notice is required before the department will accept the application for filing; or

(2) the application is complete and is accepted for filing;

(d) Application requiring additional information. Subject to paragraphs (1), (2) and (3) of this subsection, the department must receive all information the department requires to consider the application complete and to accept it for filing before the 61st day after the date the department receives the initial application.

(1) The commissioner will grant a 30-day extension for submission of the required information if the department receives a written request from the applicant before the expiration of the initial 60-day period.

(2) Upon a finding of good cause, the commissioner may grant an additional extension if the department receives a written request from the applicant before the expiration of the 30-day extension authorized by paragraph (1) of this subsection. The applicant's written request must explain in detail the reasons the additional extension is necessary. The commissioner will notify the applicant of the decision regarding the extension request by letter mailed to the applicant on or before the 10th day after the date the department receives the request.

(3) After reviewing the information provided in response to its initial request for additional information, the department may determine that still more information is required to consider the application complete and to accept it for filing. The department will notify the applicant in writing if further information is required and specify the date by which the department must receive the information.

(e) Abandoned application. The commissioner may determine that an application is abandoned, without prejudice to the applicant's right to resubmit the application, if the department does not receive the information required by applicable law or additional information required by the department within the time period specified by subsection (d) of this section or as otherwise requested by the commissioner in writing to the applicant. The commissioner will notify the applicant in writing of the determination that an application is considered abandoned. The commissioner's determination is effective the date the department mails the notice to the applicant and may not be appealed. The fee paid in connection with an abandoned application will not be refunded.

(f) Action on application accepted for filing. On or before the 45th day after the date the department accepts an application for filing, the commissioner will approve or deny the application and advise the applicant in writing of the decision.

(g) Appeal of denied application. If the commissioner denies the application, the applicant may appeal the denial as provided by Finance Code, §152.209, in accordance with the applicable provisions of Chapter 9 of this title relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking.

§29.4. Violation of Application Processing Times.

(a) Complaint regarding violation of application processing times. An applicant for a new sale of checks license under Finance Code, Chapter 152, may complain directly to the commissioner if the department does not process the applicant's application within a time period established in subsections (c) or (f) of §29.3 of this title (relating to Application for New Sale of Checks License).

(b) Complaint requirements. The applicant must file a written complaint with the department that sets out the facts regarding the delay and states the specific relief sought. The department must receive the complaint on or before the 30th day after the date the commissioner approves or denies the applicant's application for a sale of checks license.

(c) Division response. The department division responsible for complying with the applicable time period must submit a written response to the commissioner regarding the complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(d) Commissioner review and decision. The commissioner will review the applicant's written complaint and the division's response. If the commissioner deems necessary, a hearing may be held to take evidence on the matter. The commissioner will determine whether the department exceeded a time period established in subsections (c) or (f) of §29.3 and, if so, whether the division established good cause for exceeding the established period. The commissioner will notify the applicant of the decision by letter mailed to the applicant on or before the 60th day after the date the commissioner receives the applicant's written complaint. The commissioner's decision is final and may not be appealed.

(e) Reimbursement of fees. If the commissioner decides that the department exceeded an applicable time period without good cause, the department will reimburse the applicant all of its application fees.

(f) Decision on application unaffected. A decision in favor of the applicant under this section does not affect any decision to grant or deny an application for a sale of checks license. The decision to grant or

deny an application will be based on applicable substantive law without regard to whether the department timely processed the application.

§29.5. Conduct of Business Through Agent.

(a) Written policies and practices. A license holder that conducts business through an agent must adopt written policies and practices relating to its agent relationships. At a minimum, the policies and practices must address:

(1) agent selection criteria;

(2) loss prevention;

(3) regulatory compliance training; and

(4) agent monitoring.

(b) Written agreement. Before a license holder may conduct business through an agent, the license holder and agent must enter into a written agreement appointing the agent and setting out the respective rights, responsibilities, duties and liabilities of the parties. The agreement must be signed by the license holder and agent or their duly authorized representatives. At a minimum, the agreement must include terms that reflect or incorporate the applicable requirements of Finance Code, §152.403 and §152.404, and specifically require the agent to comply with the notice posting requirements of §29.12 of this tile (relating to Notice to Customers Regarding Complaints).

(c) Retention of agent agreements. A license holder must retain the original or a true and correct copy of each agent agreement and make each agreement available for examination by the department.

§29.6. Net Worth and Bonding Requirements for a License Holder that Conducts Currency Exchange, Transportation or Transmission Transactions.

(a) Net Worth. A license holder that engages in currency exchange, transportation or transmission transactions as defined in Finance Code, §153.001, must comply with the net worth requirements of Finance Code, §152.203(a)(1), or Finance Code, §153.102(d)(5), whichever is greater.

(b) Bond. A license holder that engages in currency exchange, transportation or transmission transactions as defined in Finance Code, §153.001, must post a bond, letter of credit, or deposit in lieu of bond in accordance with Finance Code, §152.206, or Finance Code, §153.109, §153.110 and §4.7 of this title (relating to Bond Requirements and Deposits in Lieu of Bond), whichever is greater.

§29.7. Exemption from Licensing.

(a) Persons exempted. The following persons are not required to be licensed under Finance Code, §152.201:

(1) a foreign bank branch or agency in the United States established under the federal International Banking Act of 1978 (12 U.S.C. Section 3101et seq.) as amended or a foreign bank Texas state branch or agency authorized under Finance Code, Chapter 204, Subchapter B.

(2) the agent of a foreign bank branch or agency exempt under subsection (a)(1) of this section.

(3) the agent of a federally insured financial institution exempt under Finance Code, §152.202.

(b) Agreement required. A federally insured financial institution, foreign bank branch, or foreign bank agency that conducts the business of selling checks through an agent exempt from licensing under paragraphs (2) and (3), respectively, of subsection (a) of this section must enter into an agreement with the agent that meets the requirements of §29.5(b) of this title, (relating to Conduct of Business Through Agent).

(c) Exemptions self-executing. The exemptions to licensing established under subsection (a) of this section are self-executing and require no action by the commissioner or the department.

§29.8. License Renewal.

(a) Application required. In addition to satisfying any other requirement imposed by Finance Code, Chapter 152, to renew or maintain a license under that chapter, a license holder must submit a license renewal application on the form prescribed by the department.

(1) The application must be fully completed and signed, and include as attachments the documentation specified in the application and the department's instructions.

(2) The department must receive the application on or before the 30th day of June of each year following initial licensing.

(b) Payment of outstanding fees, assessments and reimbursements. A license holder must be current on all payments for fees, assessments and reimbursements due under §29.2 of this title (relating to Fees, Assessments and Reimbursements) as of the date the department receives the renewal application.

§29.9. Extension of Time to File Annual Financial Statement.

(a) Extension authorized. Upon a finding of good cause, the commissioner may authorize a Chapter 152 license holder to submit the annual audited unconsolidated financial statement required under Finance Code, §152.305(b), at a date later than June 30th, provided that:

(1) the department receives a written request for an extension on or before the June 30th deadline; and

(2) the request explains in detail the reasons the extension is necessary and specifies the period of time for which the extension is sought.

(b) Decision of commissioner. The commissioner will notify the license holder of the decision regarding the extension request by letter mailed to the license holder on or before the 10th day after the date the department receives the request. The commissioner's decision is final and may not be appealed.

§29.10. Correction of Violations and Imposition of Administrative Penalty.

(a) Definitions. The following words or terms, when used in this section, have the following meanings unless the text clearly indicates otherwise:

(1) Exempt person--A person exempt from licensing under Finance Code, §152.202(a)(5).

(2) Preventive action--Action reasonably required to prevent a violation of the cited provision of Finance Code, Chapter 152, or rule or order adopted or issued under Finance Code, Chapter 152, from recurring.

(b) Correction required. On or before the 30th day after the date a license holder or exempt person receives written notice from the department of a violation of Finance Code, Chapter 152, or a rule or order adopted or issued under Finance Code, Chapter 152, the license holder or exempt person must:

(1) correct the violation and, if applicable, take appropriate preventive action;

(2) if directed by the department, provide a written response stating that the violation has been corrected and, if applicable, that preventive action has been taken, the date the violation was corrected and/or preventive action taken, and the specific corrective and/or preventive action taken.

(c) Misrepresentation of correction. Except as provided in subsection (d) of this section, a license holder or exempt person violates this section if the license holder or exempt person has not corrected a violation or taken preventive action as represented in the response to the department required under subsection (b)(2).

(d) Good faith action and reasonable belief. Subsection (c) of this section does not apply if the department determines that a license holder or exempt person made a diligent, good faith effort to correct and/or prevent the recurrence of a violation and reasonably believed that corrective or preventive action was taken as reported to the department.

(e) Administrative penalty. The commissioner may impose an administrative penalty under Finance Code, §152.502, upon a license holder or exempt person who receives the violation notice provided for in subsection (b) of this section and fails to comply with subsection (b)(1) and, if applicable, (b)(2). The commissioner may impose an administrative penalty for each day that the violation occurs or remains uncorrected after the date the license holder or exempt person receives written notice of the violation.

(f) Notice and hearing on administrative penalty. The license holder or exempt person will be notified in writing by certified mail, return receipt requested, of the commissioner's intent to impose an administrative penalty and that a hearing to determine the amount of the penalty will be held in accordance with the provisions of Government Code, Chapter 2001, the Texas Administrative Procedures Act and Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).

(g) Correction period inapplicable to certain repeat violations. The 30-day correction period established under subsection (b) of this section does not apply to a license holder or exempt person that violates the same provision of Finance Code, Chapter 152, or of a rule or order adopted or issued under Finance Code, Chapter 152, more than one time within a 24 consecutive month period. In these circumstances, the written notice of intent to impose administrative penalties and setting the administrative hearing required under subsection (f) of this section may be mailed to the license holder or exempt person at any time after the department has reason to believe that a repeat violation has occurred. The commissioner may impose an administrative penalty for each day that the violation continues uncorrected after the date the repeat violation first occurs.

(h) Determination of notice receipt date. For purposes of subsections (b) and (e) of this section, receipt by a license holder or exempt person of written notice from the commissioner or department is deemed to occur on or before the 3rd day after the date the notice is postmarked. The burden is on the license holder or exempt person to provide proof that the notice was not received within such three-day period.

(i) Remedy not exclusive. Nothing in this section diminishes the regulatory or enforcement powers of the commissioner or in any way precludes the commissioner from taking any enforcement action authorized under Finance Code, Chapter 152, this chapter or any other applicable law at any time the commissioner deems necessary.

§29.11. Reporting and Recordkeeping.

(a) General definitions. Words used in this section that are defined in Finance Code, §153.001, have the same meaning as defined in the Finance Code.

(b) Scope. This section applies to a license holder under Finance Code, Chapter 152, that engages or has engaged in the currency exchange, transportation, or transmission business. The specific reporting and recordkeeping requirements established in this section apply only to the license holder's currency exchange, transportation and/or transmission activities.

(c) Location of records. A license holder must maintain separate accounting books and records for its Texas currency exchange, transportation and/or transmission business. The records must be maintained at a location readily accessible to the department. If the records are maintained outside of Texas, the commissioner may require the license holder to make the records available at the department's office on or before the 20th day after the date of the department's written request for the records.

(d) Compliance with federal law. A license holder must comply with all applicable federal laws and regulations relating to its currency exchange, transportation, and/or transmission business and maintain records of all filings and documentation required by law, including 31 United States Code, §5313 and 31 Code of Federal Regulations (CFR), Part 103.

(e) Records required. A license holder must keep the following records related to its currency exchange, transportation and/or transmission business:

(1) Currency exchange. No license holder may engage in a currency exchange transaction in an amount in excess of $1,000, unless the license holder issues a receipt bearing a unique identification or transaction number for each such transaction. The receipt must include the date of the transaction, the amount and type of currency received and given in exchange, the rate of exchange, and the applicable commission for the transaction. Additionally, the license holder must be able to associate or link each such transaction to a record that includes the following information:

(A) the name, address, and date of birth of the individual conducting the transaction;

(B) the social security number of the individual, or if the individual is an alien and does not have a social security number, then the passport number, alien identification card number, or other official document of the individual evidencing foreign nationality or residence;

(C) the name and address of the person or business on whose behalf the transaction is conducted if the individual is conducting the transaction on behalf of another person or business, together with the appropriate identification for such other person or business (e.g., passport number, taxpayer identification number, alien registration number);

(D) the location of the office where the transaction was conducted;

(E) the employee or representative of the license holder executing the transaction; and

(F) the specific identifying information (number, type, and issuer) of a document that contains the name and a photograph of the individual and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors.

(2) Currency transmission and transportation. No license holder may enter into a currency transmission or transportation transaction of $3,000 or more in amount unless the license holder issues a receipt, electronic record, or other written confirmation bearing a unique identification or transaction number for each such transaction. The receipt, electronic record, or other written confirmation must bear the date and time of day of the transaction, the amount of the transmission in United States dollars, the rate of exchange (if applicable), and the

applicable fee or commission for the transaction. Additionally, the license holder must be able to associate or link each such transaction to a record that includes the following information:

(A) the name, address, date of birth, and telephone number of the individual conducting the transaction, whether sender or recipient, or if the individual has no telephone, a notation in the record of that fact;

(B) the social security number of the individual, or if the individual is an alien and does not have a social security number, then the passport number, alien identification card number, or other official document of the customer evidencing foreign nationality or residence;

(C) the name and address of the person or business on whose behalf the transaction is conducted, if the individual is conducting the transaction on behalf of another person or business, together with the appropriate identification for such other person or business (e.g., passport number, taxpayer identification number, alien registration number);

(D) the location of the office where the transaction was conducted;

(E) if the customer is the sender, the designated recipient's name and either:

(i) the recipient's address and telephone number, or if the inquiry of the license holder reveals that the recipient has no telephone, a notation in the record of that fact; or

(ii) the identity of the recipient's bank and the recipient's bank account number, if the funds are being deposited in the recipient's bank account;

(F) if the customer is the recipient, the sender's name, address, and telephone number, to the extent such information is available to the license holder after reasonable inquiry, with a notation in the record of the type of information that is not available;

(G) the method of payment (e.g., cash, check, credit card, etc.);

(H) the employee or representative of the currency business executing the transaction; and

(I) the specific identifying information of a document that contains the name and photograph of the individual and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors.

(3) Transaction log. A license holder must maintain a log or logs of its currency exchange, transportation, and/or transmission activities, containing the following information for each transaction:

(A) the date of the transaction;

(B) the location of the office where the transaction was conducted;

(C) the amount and type of currency received and given in exchange, or the amount of the transmission or transportation;

(D) the rate of exchange, if applicable;

(E) the amount of service charges or fees assessed in connection with the transaction;

(F) the number of the receipt issued in connection with the transaction, if any;

(G) if transportation, whether currency or monetary instrument; and

(H) if transmission, the names of the sender and the recipient.

(f) Format and retention of records. A license holder must maintain the logs, records, and receipt information required under this section for a period of at least five years in a readily accessible and retrievable form. An actual duplicate copy of receipts issued by a license holder need not be retained if the information required on the receipt is maintained in hard copy form, on microfiche, or in an electronic database from which information may be reasonably retrieved in hard copy form.

(g) Waiver of requirements. The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner is of the opinion that:

(1) the license holder maintains records sufficient for the department to examine its currency exchange, transportation and/or transmission business; or

(2) the imposition of the requirement would cause an undue burden on the license holder and conformity with the requirement would not significantly advance the state's interests under Finance Code, Chapters 152 or 153.

§29.12. Notice to Customers Regarding Complaints.

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

(1) "Conspicuously posted"--Displayed so that a customer with 20/20 vision can read it from the place where he or she would typically conduct business or, alternatively, on a bulletin board, in plain view, on which all notices to the general public are posted (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.).

(2) "Customer"--An individual who obtains or has obtained a product or service that is to be used primarily for personal, family, or household purposes. The term includes a consumer required to be given a privacy notice under state or federal law.

(3) "Privacy notice"--Any notice regarding a customer's right to privacy required to be given under a specific state or federal law.

(4) "Required notice"--A notice in the form set forth or provided for in subsection (b)(1) of this section.

(b) Required notice. A license holder must tell each of its customers how to file a complaint concerning the license holder's conduct of its business under Finance Code, Chapter 152, in accordance with this subsection.

(1) A license holder must use the following notice, or a notice that substantially conforms to the language and form of the following notice, to tell customers how to file complaints: Complaints concerning (insert name or filed assumed name of license holder) sale of checks activities should be directed to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, 1-877/276-5554 (toll free), www.banking.state.tx.us.

(2) A license holder must provide the required notice in the language in which a transaction is conducted.

(3) If a state or federal law requires a license holder to send a privacy notice to its customers, the license holder must include the required notice with each privacy notice.

(4) If a license holder maintains a website by which a customer can remit funds for transmission or obtain information about the

license holder or the customer's transaction or existing account, the license holder must include the required notice on the website. The notice must be prominently displayed on the initial page the customer uses to initiate the remittance or access the information, or on a page available no more than one link from the initial page. The link must clearly describe the information available by clicking the link, e.g., "Texas customers click here for information about filing complaints about our service."

(5) In addition to including the required notice in a privacy notice in accordance with subsection (b)(3) of this section and on its website in accordance with subsection (b)(4) of this section, as applicable, a license holder must tell customers how to file complaints by one or more of the following methods:

(A) The license holder may include the required notice, in at least 8 point type, on each check, instrument, or other access device, or receipt, used in the license holder's service, provided that:

(i) the check, instrument or device constitutes the only means of accessing the funds the license holder receives for transmission; or

(ii) a receipt is always issued for any funds received for transmission.

(B) If the license holder or its agent personally receives all the funds paid by a customer, the required notice may be conspicuously posted in each area where the license holder or its agent conducts business under Finance Code, Chapter 152, with customers on a face-to-face basis.

(C) The license holder may provide each customer with a required notice separately, provided that:

(i) not later than the time a transmission is initiated, the license holder delivers the required notice in a form that the customer can retain, in at least 10 point type. If the access device, such as a stored value card, is mailed to the customer, the notice may be included in the mailing; and

(ii) if the same access device may be used continuously, such as a reloadable card, the license holder also delivers the required notice to the customer at least once every twelve months. The notice may be included with or on a statement, included with a privacy statement, or provided by other means so long as the customer actually receives the notice within each twelve-month period.

(6) If a license holder's business is entirely internet based, so that account relationships and transactions are initiated solely by means of the internet, the additional disclosures described in subsection (b)(5) of this section are not required.

(7) A license holder that conducts business through an agent is subject to enforcement sanctions under Finance Code, Chapter 152, Subchapter F, if the agent does not post the required notice in accordance with subsection (b)(5)(B) 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 June 18, 2004.

TRD-200404022
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 20, 2004
For further information, please call: (512) 475-1300

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.91 - 153.96

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly propose new 7 TAC §§153.91-153.96, concerning interpretations of the nature of and process by which a lender or holder ("lender") of a home equity loan may cure its failure to fully comply with its obligations under the Texas Constitution, Article XVI, §50 (Section 50).

Section 50 limits the nature and type of liens that can be imposed on a Texas homestead by identifying and conditioning the specific purposes for which such secured financing may be used. Because of the significantly adverse consequences that can befall a lender who violates a provision of Section 50, clear and unambiguous guidance regarding the meaning of such provisions supports the stability of the credit markets and ensures that home equity loans are as widely available to Texas homeowners as possible. (Since Section 50 primarily addresses only the elements necessary to create a valid lien on a homestead, other statutes and constitutional provisions must also be consulted to fully evaluate the legality under Texas law of credit transactions involving the homestead.)

Each commission is separately and independently authorized to issue interpretations of certain provisions in Section 50, see Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), and the Texas Constitution, Article XVI, §50(u). The commissions seek to jointly exercise their authority to interpret Section 50 in order to promote consistency and better support the confidence of homeowners and lenders transacting home equity loans in compliance with Section 50. In addition, the commissions interpret the extent of their interpretive authority to include not only determinations of the explicit meaning of words and terms in Section 50, but also to encompass "filling in the gaps" with respect to material matters that are inadequately addressed in Section 50, including possible addition of further details to the extent the commissions believe this to be necessary to fully implement the intent and purposes of Section 50.

Proposed §§153.91-153.96 interpret Section 50(a)(6)(Q)(viii) and Section 50(a)(6)(Q)(x), the constitutional provisions that govern the nature of and process by which a lender of a home equity loan may cure its failure to fully comply with its obligations under Section 50. Each section is more fully explained in the following paragraphs.

Section 153.91 delineates the minimum information necessary to constitute adequate notice from a borrower to a lender that the lender has failed to comply with its obligations under the home equity extension of credit. Although the borrower must give the lender reasonable notice of certain facts of the alleged failure to comply and of the identity of the loan, it is not necessary for the borrower to refer to the constitution when notifying the lender. The borrower must notify the lender that the loan in question is a home equity loan in order to put the lender on notice that the 60-day cure provisions apply.

Section 153.92 explains that the 60-day cure period starts on the day following the day notice is received and ends at midnight on

the 60th day unless the 60th day is a Sunday or federal legal public holiday, then the deadline is midnight on the following day that is not a Sunday or federal legal public holiday.

Section 153.93 explains the methods of service which constitute a rebuttable presumption of service. This rule does not limit the borrower to any specific method of delivery. However, if the borrower opts for a method of delivery not included in §153.93, the rebuttable presumption will not apply and it will be the borrower's burden of proving delivery.

This rule also allows the borrower to notify the lender under Section 50(Q)(x) of the Texas Constitution either at the address given for payments or at any other place held out by the lender as the place for receipt of the notification. The commissions believe that the borrower should not have to search through the loan documents to determine if the lender has named a specific party or address for notification. If the lender specifies an address for the notice, the borrower may send the notice to the specified address. However, the borrower may always send notification to the address where loan payments are accepted at the time the notice is sent.

Section 153.94 interprets Section 50(Q)(x)(a) -- (e). Section 153.94 informs the lender of the actions it must take by the 60th day after the date it receives notice from the owner of the lender's failure. The lender has the burden to prove it complied with §153.94.

Section 153.95 explains that a lender correcting its failure does not invalidate the lien. The lender must comply with its obligations under this section of the constitution and other statutory and constitutional provisions to correct the failure in order for the failure to comply to be considered corrected and the lien to not be invalidated due to that corrected failure.

Section 153.96 interprets Section 50(Q)(x)(f). Section 153.96 informs the lender of the actions it must take by the 60th day after the date it receives notice from the owner of the lender's failure when the lender cannot cure the failure under Section 50(x)(a) -- (e). The lender has the option to refund or credit the $1,000. A borrower and lender may refinance by complying with Section 50(a)(6) or it may modify the terms of the existing equity loan. It is the intent of §153.96(c) to discuss that, although the lender may chose a method of delivery not specified in this section if agreed to by the borrower after the lender receives notice of the failure to comply, the lender has the burden of proving its compliance with the Constitution and other interpretations of the constitution..

Finally, the commissions emphasize that the Code Construction Act (Texas Government Code, Chapter 311) applies to 7 TAC, Chapter 153. For example, words used in the singular include the plural and the plural includes the singular, the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of an interpretation, and the use of the word "include" means "including but not limited to." A reference in 7 TAC, Chapter 153 to "Section 50" refers to the Texas Constitution, Article XVI, §50, unless otherwise noted.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the interpretations are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn also have determined that for each year of the first five years the interpretations as proposed are in effect, the public benefit anticipated as a result of the proposed interpretations will be to support the stability of the credit markets and ensure that home equity loans are as widely available to Texas homeowners as possible, through the creation of reliable standards and guidelines for both lenders and borrowers.

There is no anticipated cost to persons who are required to comply with the interpretations as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed interpretations may be submitted in writing to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to kerri.galvin@tcud.state.tx.us or sealy.hutchings@occc.state.tx.us. To be considered, a comment must be received on or before the 30th day after the date the proposed sections are published in the *Texas Register*.

The sections (interpretations) are proposed pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5)-(7), (e)-(p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6)(Q)(viii) and §50(a)(6)(Q)(x), are affected by the proposed sections.

§153.91. Adequate Notice of Failure to Comply.

(a) A borrower notifies a lender or holder of its alleged failure to comply with an obligation by taking reasonable steps to notify the lender or holder of the alleged failure to comply. The notification must include:

(1) identification of the borrower;

(2) identification of the loan; and

(3) description of the alleged failure to comply.

(b) A borrower is not required to cite in the notification the section of the constitution that the lender or holder allegedly violated.

§153.92. Counting the 60-Day Cure Period.

For purposes of Section 50(Q)(x), the day after the lender or holder receives the borrower's notification is day one of the 60-day period. All calendar days thereafter are counted up to day 60. If day 60 is a Sunday or federal legal public holiday, the period is extended to include the next day that is not a Sunday or federal legal public holiday.

§153.93. Methods of Notification.

If a borrower mails the notification to the lender or holder either at the address given for payments or at any other place held out by the lender or holder as the place for receipt of the notification, then the delivery date indicated on a certified mail return receipt or other carrier delivery receipt, signed by the lender or holder, constitutes a rebuttable presumption of receipt by the lender or holder. This does not preclude other methods of notification. If the borrower opts for a different method of delivery, the borrower has the burden of proving delivery.

§153.94. Methods of Curing a Violation.

(a) The lender or holder may correct a failure to comply under Section 50(Q)(x)(a) -- (e), on or before the 60th day after the lender or

holder receives the notice from an owner, if the lender or holder delivers required documents, notices, acknowledgements, or pays funds by:

(1) placing in the mail, placing with other delivery carrier, or delivering in person the required documents, notices, acknowledgements, or funds;

(2) crediting the amount to borrower's account; or

(3) using any other method that the borrower agrees to in writing after the lender or holder receives the notice.

(b) The lender or holder has the burden of proving compliance with this section.

§153.95. Cured Failure Does Not Invalidate Lien.

If the lender or holder meets its obligation to correct its failure, then the failure does not invalidate the lien.

§153.96. Correcting Failures Under Section 50(Q)(x)(f).

(a) To correct a failure to comply under Section 50(Q)(x)(f), on or before the 60th day after the lender or holder receives the notice from the borrower the lender or holder may:

(1) refund or credit the $1,000 to the account of the borrower; and

(2) make an offer to modify or refinance the extension of credit on the terms provided in Section 50(Q)(x)(f) by placing the offer in the mail, other delivery carrier, or delivering the offer in person to the owner.

(b) To correct a failure to comply under Section 50(Q)(x)(f):

(1) the lender or holder has the option to either refund or credit $1,000; and

(2) the lender or holder and borrower may:

(A) modify the equity loan without completing the requirements of a refinance; or

(B) refinance with an extension of credit that complies with Section 50(a)(6).

(c) The lender or holder may use any other method that the borrower agrees to in writing after the lender or holder receives the notice of its failure to comply.

(d) The lender or holder has the burden of proving compliance with this section.

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

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

TRD-200404034
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 936-7640

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS
SUBCHAPTER A. DEFINITIONS

10 TAC §301.1

The Texas Residential Construction Commission (the "commission") proposes an amendment at Title 10, Part 7, Chapter 301, §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act (the Act), Title 16, Property Code.

Section 301.1, relating to definitions, defines words and terms that are used in Part 7 of Title 10 of the Texas Administrative Code. Amendment to the section is necessary to add definitions for the terms "cosmetic deficiency", "dwelling unit", "remodeler", "single-family residential dwelling" and "townhouse." These terms will be used in implementing warranties and performance standards and during the inspection process of the state-sponsored inspection and dispute resolution process. These new terms are defined to be in accord with similar terms defined and used in the International Residential Code (IRC) of 2000. Pursuant to §430.001 of the Act, the commission is required to adopt warranty and building and performance standards in accordance with the IRC of 2000.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the amendment is in effect the public will benefit from the clarity provided by the adoption of definitions that assist interested persons in interpreting commission-promulgated rules.

Mr. Thomas has also determined that there will be no effect on individuals or large, small and micro-businesses as a result of the adoption of the amendment.

Mr. Thomas has also determined that for each year of the first five-year period the amendment is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the amendment to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas, 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Definitions Amendments" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule.

The amendment is proposed to implement legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 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.

The statutory provisions affected by the proposal are those set forth in the Title 16, Property Code and House Bill 730, 78th Legislature, R.S.

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

§301.1. Definitions.

(a) The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) Accrual or accrued--when a homeowner first discovers a condition in the home that is a potential construction defect.

(2) Act--the Texas Residential Construction Commission Act, Title 16, Property Code.

(3) Affiliate--a person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person.

(4) Builder--

(A) any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(i) a new home;

(ii) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(iii) an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(B) When required by the context of the rule, the term may include:

(i) an owner, officer, director, shareholder, partner, affiliate or employee of the builder;

(ii) a risk retention group governed by §21.54, Insurance Code, that insures all or any part of builder's liability for the cost to repair a residential construction defect; and

(iii) a third-party warranty company and its administrator.

(5) Building and performance standards--those standards that apply to home construction built pursuant to a transaction governed by the Act.

(6) Commission--the Texas Residential Construction Commission.

(7) Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(8) Cosmetic deficiency--any marred, scuffed, scratched or smudged painted surface or countertop; chipped or stained porcelain, tile, grout, or fiberglass; chipped surfaces of appliances or plumbing fixtures; torn or defective window or door screens; marred, smudged, scratched or stained cabinet surfaces or finishes; or, broken, chipped or scratched glass, window or mirror.

(9) Dwelling unit--a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(10) [~~(8)~~] Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(11) [~~(9)~~] Home--the real property, improvements and appurtenances thereto for a single-family residential dwelling unit or duplex.

(12) [~~(10)~~] ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(13) [~~(11)~~] Improvement to the interior of an existing home when the cost of the work exceeds $20,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $20,000 to be paid by a homeowner to a single builder.

(14) [~~(12)~~] Living space--the enclosed area in a home that is suitable for year-round residential use.

(15) [~~(13)~~] Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(16) [~~(14)~~] Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(17) [~~(15)~~] Person--an individual, partnership, company, corporation, association, or any other legal entity, however organized.

(18) Remodeler--any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(19) Single-family residential dwelling--a building that contains one or two dwelling units, including a townhouse, complete with independent living facilities for one or more persons suitable for one household, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(20) [~~(16)~~] State inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process.

(21) [~~(17)~~] Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the number of years as set in statute, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and

(C) ten years for major structural components of the home.

(22) [~~(18)~~] Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(23) Townhouse--a single-family dwelling unit constructed in a group of three or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides not more than three stories in height with a separate means of ingress and egress.

(24) [~~(19)~~] Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost paid for the work exceeds $20,000.

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

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

TRD-200404041
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 463-9638

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.93

The Public Utility Commission of Texas (commission) proposes an amendment to §25.93, relating to Quarterly Wholesale Electricity Transaction Reports. The proposed amendment will specify that reports filed electronically will be afforded the same treatment with respect to confidentiality as information properly filed under §22.71 of this title, and will reduce certain reporting requirements. Project Number 29781 is assigned to this proceeding.

Dr. David Hurlbut, Senior Economist, Market Oversight Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Hurlbut has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be less paperwork on the part of entities required to comply with this section, more efficient analysis of report data by the commission, and less physical material maintained by the commission for record-keeping purposes. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed; compliance costs are expected to decrease as a result of this amendment. Costs savings are expected to include less staff time required to prepare a report, less legal staff time required to comply with procedures pertaining to confidentiality, and less paper and electronic media required to file a report.

Dr. Hurlbut has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, August 9, 2004. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 29781.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, PURA §39.001 which requires the commission to assure that electric services and their prices be determined by customer choices and the normal forces of competition, PURA §39.157 which requires the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state; and PURA §39.001(b)(4), which requires the commission to protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 39.001, 39.001(b)(4), and 39.157.

§25.93. Quarterly Wholesale Electricity Transaction Reports.

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

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

(1) Contract--An agreement for the wholesale provision of energy or capacity under specified prices, terms, and conditions. A contract governs the financial aspects of an electricity transaction.

(2) Full Report--A Quarterly Wholesale Transaction Report that contains all information required by this rule including information that the Wholesale Seller of Electricity claims is confidential or Protected Information. If the Wholesale Seller of Electricity does not claim confidentiality or Protected Information status for any of the information in its Full Report then the Full Report will be treated as a Public Report.

(3) [~~(2)~~] Protected information--Information contained in a Quarterly Wholesale Electricity Transaction Report that comports with the requirements for exception from disclosure under the Texas Public Information Act (TPIA). [~~Information ceases to be protected information upon a determination by the Legislature, a court, the attorney general, or the commission that the information is not subject to an exception under the TPIA.~~]

(4) Public Report--A Quarterly Wholesale Transaction Report that contains all information required by this rule except information that the Wholesale Seller of Electricity claims is confidential or Protected Information.

(5) [~~(3)~~] Transaction--The provision of a specific quantity of energy or the commitment of a specific amount of generating capacity for a specific period of time from a wholesale seller of electricity to a customer, whether pursuant to a contract, a market operated by an independent organization as defined in the Public Utility Regulatory Act §39.151(b), or any other provision of electricity or commitment of reserve capacity.

(6) [~~(4)~~] Wholesale seller of electricity--Any power generation company, power marketer, municipally owned utility, electric cooperative, river authority, or other entity that sells power at wholesale.

(d) (No change.)

(e) Filing procedures. Wholesale sellers of electricity shall file the Quarterly Wholesale Electricity Transaction Reports using forms, templates, and procedures approved by the commission. The commission may also approve the use of forms and templates issued by federal agencies for reporting information similar to that required under this section. Reports shall be filed according to §22.71 of this title (relating [~~Relating~~] to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) except as specified in this subsection and subsection (g) of this section.

(1) A Full Report [~~The entirety of the report~~] shall be submitted electronically and on standard-format compact disks (two [~~four~~] copies) without a paper hard copy. [~~The commission may also provide for reports to be submitted electronically.~~]

(2) If a Full Report is filed containing information that the Wholesale Seller of Electricity claims is confidential or is Protected Information, a Public Report shall also be submitted on standard-format compact disks (two copies).

(3) [~~(2)~~] Information [~~Pages containing the information~~] required under subsection (d)(2)(A) of this section along with attestations and other necessary documents shall be filed in hard copy form (two copies).

(f) (No change.)

(g) Confidentiality. [~~If a wholesale seller of electricity asserts that any part of its Quarterly Wholesale Electricity Transaction Report is confidential, it must submit its entire report according to §22.71(d) of this title, and in addition must submit for public disclosure a copy that omits specific information for which the reporting entity asserts confidentiality. The full report, including material for which confidentiality is asserted, shall be submitted electronically and on compact disk as described in subsection (e)(1) of this section. The public report shall be filed on compact disk and as hard copy and shall follow the requirements of §22.71 of this title.~~] If a Full Report contains information which the Wholesale Seller of Electricity has claimed is confidential or is Protected Information, commission [~~Commission~~] employees, and its consultants, agents, and attorneys shall treat the Full Report, including the electronic submission, as confidential to the same degree as information properly submitted under §22.71(d) of this title and[~~who have access to reports~~] shall not disclose protected information except as provided in this subsection and in accordance with the provisions of the Texas Public Information Act (TPIA).

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

(h) Implementation. The commission shall establish a detailed implementation process that includes training sessions to educate parties required to file under this section about the data required and the form in which it should be submitted, and technical workshops to permit the commission and filing parties to exchange technical systems information.

[~~(1) By February 14, 2004, reporting entities shall submit reports for the fourth quarter of 2003 using preliminary templates and procedures approved by the commission. After February 14, 2004, the commission will approve final reporting templates and procedures to be used for reports beginning with the first quarter of 2004.~~]

[~~(2) The commission shall establish a detailed implementation process that includes the following items:~~]

[~~(A) training sessions to educate parties required to file under this section about the data required and the form in which it should be submitted;~~]

[~~(B) technical workshops to permit the commission and filing parties to exchange technical systems information; and~~]

[~~(C) a pilot project to test systems and resolve operational problems with data submission.~~]

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

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

TRD-200404023
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 163. LICENSURE

22 TAC §163.15

The Texas State Board of Medical Examiners proposes new §163.15, concerning Visiting Physician Permit. The new rule concerns permits for applicants practicing under the supervision of a licensed Texas physician for educational purposes or providing charity care to underserved populations in Texas.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed. There will be no effect to individuals required to comply with the section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to permit physicians who are not licensed in Texas to practice in Texas under limited circumstances in order to obtain training or provide charity care without having to apply for full licensure. There will be no effect on small or micro businesses.

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

The new section is proposed under the authority of the Occupations Code Annotated, §153.001, 155.001-.002, and 155.104 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§163.15. Visiting Physician Permit.

(a) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of licensed Texas physician for educational purposes or in order to practice charity care to underserved populations in Texas. In order to be determined eligible for a visiting physician permit the applicant must:

(1) hold a current medical license that is free of any restriction, disciplinary order or probation in another state, territory, or Canadian province;

(2) not have any medical license that is under restriction, disciplinary order, or probation in another state, territory, or Canadian province;

(3) be supervised by a physician with an unrestricted license in Texas;

(4) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician but remain readily available; and

(5) present written verification from the supervising physician as to the purpose for the requested permit.

(b) Visiting physician permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the state if the applicant shows good cause for why the extended time is need.

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

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403936
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 305-7016

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

The Texas State Board of Medical Examiners proposes the repeal of §§171.1-171.7 and new §§171.1-171.12, concerning Postgraduate Training Permits. The repeal and new rules are necessary for reorganization and general cleanup of chapter. Changes proposed establish criteria for the eligibility and discipline of physicians who apply for and hold postgraduate training or teaching permits and describes conduct that must be reported on all individuals who are in postgraduate training in order to protect public health and welfare. Changes proposed also modify the length of a physician in training permit from 18 months to the actual length of the training program. Proposed new §171.12 concerns the Texas Department of Health Permits for medically underserved areas.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the rules as proposed. There may be an effect to Texas residency programs that will have to update administrative processes. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated rules. The intent of the changes is to provide greater efficiency in the issuance and regulation of postgraduate and teaching permits. The purpose of the creation of TDH permits is to allow out-of-state military doctors to work with TDH in providing care to medically underserved areas with civilian populations on non-federal land. There will be no effect on small or micro businesses.

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

22 TAC §§171.1 - 171.7

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

The repeals are proposed under the authority of the Occupations Code Annotated, §153.001, 155.001-.002, and 155.104-.105 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§171.1. Construction.

§171.2. Postgraduate Resident Permits.

§171.3. Institutional Permits.

§171.4. Visiting Professor Permit.

§171.5. National Health Service Corps Permit.

§171.6. Faculty Temporary Permit.

§171.7. Postgraduate Research Permit.

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

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403935
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 305-7016

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CHAPTER 171. POSTGRADUATE TRAINING AND PERMITS

22 TAC §§171.1 - 171.12

The new sections are proposed under the authority of the Occupations Code Annotated, §153.001, 155.001-.002, and 155.104-.105 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§171.1. Purpose.

This chapter is promulgated to:

(1) Provide criteria for the eligibility and discipline of physicians that apply for and hold postgraduate training or teaching permits; and

(2) Set forth conduct that must be reported on all individuals who are in postgraduate training in order to protect public health and welfare.

§171.2. Construction.

(a) Unless otherwise indicated, permit holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees under the Medical Practice Act and board rules. Permit holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Permit holders under this chapter shall cooperate with the board and board staff involved in the investigation, review, or monitoring associated with the permit holder's practice of medicine. Such cooperation shall include, but not be limited to, permit holder's written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) In accordance with §155.105 of the Medical Practice Act, the board shall retain jurisdiction to discipline a permit holder whose permit has been placed on inactive status and/or expired if the permit holder violated the Medical Practice Act or board rules during the time the permit was valid.

(d) The issuance of a permit to a physician shall not be construed to obligate the board to issue the physician subsequent permits or licenses. The board reserves the right to investigate, deny a permit and/or discipline a permit holder regardless of when the information was received by the board.

§171.3. Postgraduate Training Permits.

(a) Definitions.

(1) Approved Postgraduate Training Program: a clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), the Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior 1994), the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada.

(2) Board-approved Postgraduate Fellowship Training Program: a clearly defined and delineated postgraduate subspecialty-training program approved by the Texas State Board of Medical Examiners.

(3) Postgraduate Resident: a physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program or a board-approved fellowship training program.

(4) Postgraduate Training Permit:

(A) A postgraduate training permit is a permit issued by the board in its discretion to a postgraduate resident who does not hold a license to practice medicine in Texas and is enrolled in a training program as defined in paragraphs (2) and (3) of this subsection in Texas, regardless of his/her postgraduate year (PGY) status within the program.

(B) The permit shall be effective for the length of the postgraduate training program.

(C) A postgraduate training permit is valid only for the practice of medicine within the training program for which it was approved. If a permit holder enters into a new program that is not covered by the issued permit, the permit shall be terminated and the permit holder must apply for a new permit for the new program.

(D) A postgraduate training permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine that is outside of the approved program.

(b) Qualifications of Postgraduate Training Permit Holders.

(1) To be eligible for a postgraduate training permit, an applicant must present satisfactory proof to the board that the applicant:

(A) is at least 18 years of age;

(B) is of good professional character and has not violated §§161.051-.053 of the Medical Practice Act;

(C) is a graduate of a medical school:

(i) located in the United States or Canada and approved by the board as defined under Section 163.1(a)(1) of this title (relating to Definitions); or

(ii) located outside the United States or Canada that is acceptable to the board as defined under Section 163.1(a) (2) of this title (relating to Definitions) and meets the requirements set out in paragraphs (2) or (3) of this subsection as applicable.

(2) An applicant who is a graduate of a medical school located outside the United States or Canada or who has completed a Fifth Pathway Program, and who applies for a postgraduate training permit for an approved postgraduate training program that has an initial start date before January 1, 2005 must demonstrate that the medical school he or she attended required completion of a curriculum consistent with the curriculum requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board as provided under §163.1(13)(C) and (D) of this title (relating to Licensure).

(3) An applicant who is a graduate of a medical school located outside the United States or Canada or who has completed a Fifth Pathway Program, and who applies for a postgraduate training permit for an approved postgraduate training program that has an initial start date on or after January 1, 2005 must demonstrate that the medical school the applicant attended:

(A) is substantially equivalent to a Texas medical school as defined under §163.1(a)(13) of this title (relating to Licensure); and

(B) has not been disapproved by another state physician licensing agency unless the applicant can provide evidence that the disapproval was unfounded.

(4) To be eligible for a postgraduate resident permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B) an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(C) a prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude; or

(D) failed a licensure examination that would prevent the applicant from obtaining an unrestricted physician license in Texas as provided under Section 163.1(a)(9) of this title (relating to Definitions).

(c) Application for Postgraduate Training Permit.

(1) Application Procedures.

(A) Applications for a postgraduate training permit should be submitted to the board on or before the sixtieth (60th) day prior to the date the applicant begins postgraduate training in Texas to assist in the expedited processing of the application.

(B) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions shall be reviewed by the board's executive director on a case-by-case basis.

(C) The board's executive director shall review each application for a postgraduate training permit and shall approve the issuance of postgraduate training permits for all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee or a panel of the board for review of the application for a determination of eligibility.

(D) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee or panel of the board within 20 days of written receipt of such notice from the executive director.

(E) If the committee or panel of the board finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(F) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the open records law and the Medical Practice Act §§155.007(g), 155.058, and 164.007(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(2) Postgraduate Training Permit Application. An application for a postgraduate training permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules, payable by personal check, money order or cashier's check through a United States bank;

(B) a certified copy of the applicant's complete medical school transcript evidencing graduation submitted directly to the board by the school and/or a notarized "true copy" of the applicant's diploma, if requested;

(C) an official word-for-word translation must be furnished for each document presented to the board which is in a foreign language,. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) a notarized "true copy" of the applicant's valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate, if the applicant is a graduate of a medical school located outside the United States unless the applicant has completed a Fifth Pathway program. All Fifth Pathway applicants must request an ECFMG

Certification Status Report be submitted directly to the board by the ECFMG, if requested;

(E) certification by the director of medical education, and program director or supervising physician, if the director of medical education is not a physician, of the postgraduate training program on a form provided by the board that certifies that:

(i) the program meets the definition of an approved postgraduate training program in subsection (a)(2) or (a)(3) of this section;

(ii) the applicant has been accepted into the program;

(iii) the director has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training; and

(iv) if the applicant is completing rotations in Texas as part of the applicant's out-of-state residency training program, the director or supervising physician must provide the name of the facility at which the rotations are being completed, and the dates the rotations will be completed in Texas;

(F) a certified transcript of exam scores, attempts, and dates sent directly to the board from each appropriate authority, if requested;

(G) arrest records. If an Applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board;

(H) malpractice history. If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(i) have each medical liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(ii) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to this board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter should include supporting court records. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(iii) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations;

(I) medical records for inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance abuse or mental illness shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the hospitalization;

(ii) all records, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(J) medical records for outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse or mental illness shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(K) an oath on a form provided by the board attesting to the truthfulness of statements provided by the applicant.

(L) written evaluations, on forms provided by the board, from each facility and/or training program at which applicant has trained or held staff privileges in the United States or Canada, if requested; and

(M) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(3) Physicians who are applying for a Postgraduate Training Permit are encouraged to utilize, if appropriate, the Federation Credentials Verification Service (FCVS) offered by the Federation of State Medical Boards of the United States (FSMB) to verify medical education, postgraduate training, licensure examination history, board action history and identity, if documentation is requested by the board.

(d) Expiration of Postgraduate Training Permit.

(1) Postgraduate training permits shall be issued with effective dates corresponding with the beginning and ending dates of the postgraduate resident's training program as reported to the board by the program director.

(2) If a postgraduate resident was issued a permit for a program with an initial start date prior to April 1, 2005 and the permit is set to expire before the ending date of the permit holder's training program, and the expiration date is on or after July 2, 2005, the program director and/or permit holder must submit an application and fee requesting that the permit be extended to the ending date of the training program. The fee shall be in accordance with §175.1(2)(B) of this title (relating to Fees, Penalties, and Applications).

(3) Postgraduate training permits shall expire on either of the following, whichever occurs first:

(A) on the reported ending date of the postgraduate training program; or

(B) on the date the permit holder obtains full licensure or temporary licensure pending full licensure pursuant to Section 155.002 of the Act.

(4) Postgraduate training permit holders who require extensions to remain in a training program after a program's reported ending date must submit a written request to the board and fee, if required, along with a statement by the program director authorizing the request

for the extension. Such extensions shall be granted at the discretion of the board's executive director and may not be for longer than 90 days unless good cause is shown.

(e) Annual reports. Program directors for postgraduate training programs must ensure that the board receives certain information annually in order to keep the board informed on a permit holder's progress while in the approved training program. The required information shall be sent to the board on forms provided by the board and shall include:

(1) information regarding the permit holder's criminal and disciplinary history, professional character, mailing address, and place where engaged in training since the program director's last report;

(2) certification by the permit holder's program director, on a form provided by the board, regarding the permit holder's training; and

(3) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

§171.4. Board-Approved Postgraduate Fellowship Training Programs.

(a) The executive director may in his/her discretion, upon written request, approve training fellowship programs as referenced in subsection (a)(3) of this section for up to three years . The initial request should be submitted to the executive director 180 days prior to the beginning date of the program to assist in the expedited processing of an application. Said training programs shall be limited to postgraduate subspecialty programs. If the executive director does not recommend approval, the program's director may appeal to the board for its discretionary consideration of the request.

(b) Approval of training programs shall include but not be limited to the following considerations:

(1) the goals and objectives of the program;

(2) the process by which the program selects subspecialty residents;

(3) whether prior residency training in a related specialty is required of subspecialty residents in the program;

(4) the duties and responsibilities required of subspecialty residents in the program including the number of subspecialty residents to be enrolled each year and when subspecialty residents are required to be permanently licensed;

(5) the formal educational experiences required of subspecialty residents in the program, including grand rounds, seminars and journal club;

(6) the scholarly research required of subspecialty residents in the program, including participation in peer reviewed and funded research which may result in publications or presentations at regional and national scientific meetings;

(7) the type of supervision provided for subspecialty residents by the program;

(8) the curriculum vitae, including academic appointments, of all supervising staff;

(9) the academic affiliation of the program;

(10) the methods for evaluation of subspecialty residents by the program;

(11) whether a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists gives credit for the program; and

(12) the progressive nature of the fellowship if the fellowship training program is over one year in length.

(c) All program directors for fellowships training programs that have been approved by the board must apply to be re-evaluated to assure compliance with the above considerations and consideration of continuation of the fellowship training program. The program director must apply for re-evaluation at least six months prior to the expiration of the approved program in order to prevent a lapse in time of the fellowship training program. Permit holders shall be allowed to complete their training program regardless of continuing program re-evaluation.

(d) All board-approved fellowships that subsequently become approved by the ACGME or AOA must notify the board within 30 days of their approval. Fellowships may not be dually approved by the board and ACGME or AOA. A board-approved fellowship that becomes ACGME or AOA approved immediately loses its board-approved status when its new approval becomes effective through the ACGME or AOA.

(e) The executive director of the board may, in his/her discretion, issue a temporary postgraduate training permit to an applicant if the applicant and the postgraduate training program have submitted written requests. The executive director, in his/her discretion, will determine the length of the permit and may issue additional temporary postgraduate training permits to an applicant.

§171.5. Institutional Permits.

All physicians who are in postgraduate training must have a postgraduate training permit or full licensure. The board will amend all institutional permits to postgraduate training permits for the remaining period of the program under which an institutional permit holder is currently training. This shall not preclude an institutional permit holder from applying for full licensure while in a postgraduate training program.

§171.6. Reportable Conduct by Program Directors.

(a) Failure of any postgraduate training program director to comply with the provisions of this chapter or the Medical Practice Act §§160.002-.003 may be grounds for disciplinary action against the program director.

(b) The director of each approved postgraduate training program shall report in writing to the executive director of the board the following circumstances within seven days of the director's knowledge for any physician completing postgraduate training:

(1) if a physician did not begin the training program due to failure to graduate from medical school as scheduled or for any other reason(s);

(2) if a physician has been or will be absent from the program for more than 21 consecutive days (excluding vacation, family, or military leave) and the reason(s) why;

(3) if a physician has been arrested after the permit holder begins training in the program;

(4) if a physician poses a continuing threat to the public welfare as defined under Tex.Occ. Code Sec. 151.002(a)(2), as amended;

(5) if the program has taken action that adversely affects the physician's status or privileges in a program for a period longer than 30 days;

(6) if the program has suspended the physician from the program;

(7) if the program has requested termination or terminated the physician from the program, requested or accepted withdrawal of the physician from the program, or requested or accepted resignation of the permit holder from the program; and/or

(8) any such similar action and the reason(s) why.

(c) A violation of §§164.051-.053 or any other provision of the Medical Practice Act is grounds for disciplinary action by the Board.

§171.7. Inactive Status.

(a) A postgraduate training permit holder who is placed on suspension, dismissed, or terminated by a training program shall have his permit placed on inactive status.

(b) The board retains jurisdiction to investigate any postgraduate training permit holder placed on inactive status for possible violation(s) of the Medical Practice Act and/or board rules.

(c) If a postgraduate training program lifts the suspension of a postgraduate training permit holder, the program must notify the board of the lifted suspension and board shall return the physician's permit to active status effective the date the board is notified that the suspension is lifted.

§171.8. Visiting Professor Permit.

The board may issue a permit to practice medicine to a physician appointed as a visiting professor by a Texas medical school in accordance with this section.

(1) The visiting professor permit may be valid for any number of 31-day increments not to exceed 24 increments. The incremental periods wherein the permit is valid need not be contiguous, but rather may be in any arrangement approved by the executive director of the board.

(2) The visiting professor permit shall state on its face the periods during which it will be valid. If all periods of validity are not known at the time of the permit issuance, the permit holder shall request that the executive director of the board endorse the permit with each incremental period of validity as such becomes known. No permit shall be valid at any time when the period of validity is not stated on the permit unless suitable temporary alternative arrangements have been presented to and accepted by the executive director of the board.

(3) The visiting professor permit shall be issued to the institution authorizing the named visiting professor to practice medicine within the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the visiting professor. The visiting professor may participate in the full activities of the department in whichever hospital the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(4) The visiting professor and the school shall file affidavits with the board affirming acceptance of the terms, limitations and conditions imposed by the board on the medical activities of the visiting professor.

(5) The application for visiting professor permit or the renewal thereof shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the visiting professor. The chairman of the department in which the visiting professor will teach and provide such information and documentation to the board as may be requested shall make the application. Such application shall be endorsed by the dean of the medical school or by the president of the institution.

(6) All applications shall state the date when the visiting professor shall begin performance of duties.

§171.9. National Health Service Corps Permit.

The board may issue a permit to practice medicine to a physician who has contracted with the National Health Service Corps to practice medicine in Texas under the following terms and conditions.

(1) The physician must be a graduate of a medical school approved by the board. An 8 1/2 x 11 notarized true copy of the original medical diploma shall be submitted to the board.

(2) The physician must hold a valid, unrestricted license in another state or territory to practice medicine. A notarized true copy of the license registration certificate shall be submitted to the board. If the physician is not licensed in another state, he or she must have passed either the United States Medical Licensing Examination (USMLE), within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years, or the National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor, within three attempts, all steps must be passed within seven years, or the National Board of Medical Examiners Examination (NBME) within three attempts, all steps must be passed within seven years. A certified transcript of the scores shall be submitted to the board by the appropriate authority.

(3) The physician must have a valid contract with the National Health Service Corps. This permit will expire at the termination of the contract with the National Health Service Corps. A notarized true copy of the contract shall be submitted to the board.

(4) The permit shall be issued for one year and may be renewed.

(5) The permit allows the physician to practice medicine only within the scope of his or her contract with the National Health Service Corps.

§171.10. Faculty Temporary Permit.

(a) The board may issue a faculty temporary permit to practice medicine to a physician appointed by a Texas medical school in accordance with this section:

(1) The physician must hold a valid medical license is not subject to disciplinary action in another state, territory, or Canadian province; or have completed three years of postgraduate residency training.

(2) The physician must not have failed a licensure examination that would prevent the physician from obtaining an unrestricted physician license in Texas.

(3) The physician must hold a salaried faculty position of assistant professor-level or higher working full-time in one of the following institutions:

(A) University of Texas Medical Branch at Galveston;

(B) University of Texas Southwestern Medical Center at Dallas;

(C) University of Texas Health Science Center at Houston;

(D) University of Texas Health Science Center at San Antonio;

(E) University of Texas Health Center at Tyler;

(F) University of Texas M.D. Anderson Cancer Center;

(G) Texas A&M University College of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) University of North Texas Health Science Center at Fort Worth.

(4) The physician must sign an oath on a form provided by the board swearing that the applicant has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this chapter; and will subject themselves to the disciplinary procedures of the Texas State Board of Medical Examiners.

(b) The faculty temporary permit shall be issued for a period of one year, and may, in the discretion of the executive director of the board, be renewed three times.

(c) The faculty temporary permit holder's practice of medicine shall be limited the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the physician.

(d) The physician may participate in the full activities of the department in whichever hospitals the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(e) The physician and the school shall file affidavits with the board affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the physician.

(f) The application and fee for the faculty temporary permit or the renewal thereof shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the physician.

(g) The application shall be made by the chairman of the department in which the physician will teach and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the institution.

(i) Three years in a teaching faculty position at any institution listed in subsection (a)(3) of this section may be equivalent to three years of approved postgraduate training if, at the conclusion of this three-year period, the physician presents recommendations in his or her behalf from the chief administrative officer and the president of the institution.

§171.11. Postgraduate Research Permit.

The board may issue a permit to practice medicine to a medical school graduate, who holds a research appointment at a Texas medical school, in a program approved by the board, under the following terms and conditions listed in paragraphs (1)-(6) of this section.

(1) The research must be in clinical medicine and/or the basic sciences of medicine.

(2) The research must be conducted in the Texas medical school or its affiliated institutions.

(3) The research appointment must be approved by the Dean of the medical school or the president of the institution.

(4) The research appointment must be supervised by a faculty member of the Texas medical school who has an active unrestricted Texas medical license.

(5) The research appointment must be of good professional character as elaborated in the Medical Practice Act.

(6) The Postgraduate Research Permit may be issued for a maximum of one year and is not renewable.

§171.12. Texas Department of Health Permits.

The board may issue a permit to practice medicine to a physician who is appointed by the Texas Department of Health (TDH) to provide free services to indigent populations at its regional clinics.

(1) Length of Permit. The TDH permits may be valid for up to 31days and a physician may not be issued more than one permit in any 12-month period.

(2) Eligibility.

(A) The physician must hold a current medical license that is free of any restriction, disciplinary order or probation in another state, territory, a Canadian province, or uniformed service of the United States.

(B) Each medical license held in another state, territory, Canadian province, or uniformed service of the United States must be free of any restrictions, disciplinary order or probation.

(C) The physician must be employed by the Texas Army National Guard, the uniformed service of the United States, or the national branches of the military reserves.

(3) Scope. A TDH permit holder may only provide services at a TDH regional clinic in a medically underserved area as defined under Section 157.052 of the Medical Practice Act.

(4) Supervision. The TDH permit holder must be supervised by a physician who has an unrestricted and active license in Texas. The physician shall provide continuous supervision, but the constant physical presence of the supervising physician is not required.

(5) Deadline. TDH must submit applications on behalf of physicians requiring permits at least 30 days before the anticipated start date at the TDH regional clinic.

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

Filed with the Office of the Secretary of State on June 15, 2004.

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 305-7016

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CHAPTER 175. FEES, PENALTIES AND APPLICATIONS

22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, concerning Fees. The amendment is related to increases in application and registration fees mandated by the Texas Online Authority and increase in physician-in-training fee relating to the length of the permit.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rule is in effect there will be fiscal implications to state or local government as a result of enforcing the rule as proposed. There may be an effect to individuals required to comply with the section as proposed. Approximately 6,000 applicants each year will be affected by the application fee increases relating to the development and maintenance of online applications. The fee

increases for online applications range from $2 to $5 per application, depending on the type of application. Physician-in-training application fees would also increase from $60 per permit application to $140, due to the change in length of the permit. Most physician training programs are three years in length, so the net increase would be $20 per physician in training applicant (approximately 2,100 each year) for these individuals. Physicians in training programs lasting longer than three years would see an overall net decrease.

Ms. Shackelford also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be compliance with the Texas Online Authority. The amendments to the chapter are made pursuant to the Texas Online Authority's recent mandate for fee increases in relation to application and registration fees. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, and Texas Government Code §2054.252(g) which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§175.1. Fees.

The board shall charge the following fees.

(1) Physicians:

(A) processing an application for licensure examination (includes surcharges of $205 [~~$200~~])-$805 [~~$800~~];

(B) processing an application for a special purpose license for practice of medicine across state lines (includes surcharges of $205 [~~$200~~]) - $805 [~~$800~~];

(C) temporary license:

(i) regular - $50;

(ii) distinguished professor - $50;

(iii) state health agency - $50;

(iv) rural/underserved areas - $50;

(v) continuing medical education - $55;

(D) Registration permits:

(i) permits issued to license holders with an expiration date before December 30, 2003;

(I) initial permit (includes surcharges of $209) - $339;

(II) subsequent permit (includes surcharges of $205) - $335;

(ii) permits issued to license holders with an expiration date between January 1, 2004 and December 31, 2004;

(I) initial permit (includes surcharges of $289) - $419;

(II) subsequent permit (includes surcharges of $285) - $415;

(iii) permits issued to license holders with an expiration date on or after January 1, 2005;

(I) initial permit (includes surcharges of $494) - $754;

(II) subsequent permit (includes surcharges of $490) - $750;

(E) processing an application for reissuance of license following revocation (includes surcharges of $205 [~~$200~~]) - $805 [~~$800~~];

(F) office-based anesthesia site registration - $300 per year [~~$600~~].

(2) Physicians in Training:

[~~(A) institutional permit (began training program prior to 6-1-2000) - $45;~~]

(A) [~~(B)~~] postgraduate resident permit for program with initial start date prior to April 1, 2005 (includes surcharges of $2) - $62;

(B) postgraduate resident permit for program with initial start date on or after April 1, 2005 (includes surcharges of $2) - $142;

(C) postgraduate resident permit for a program other than the program with which the permit was associated when issued in subsection (b) of this section, with initial start date on or after April 1, 2005 (includes surcharges of $2) - $72;

(D) [~~(C)~~] temporary postgraduate resident permit - $50;

(E) [~~(D)~~] faculty temporary permit - $110;

(F) [~~(E)~~] visiting professor permit - $110;

(G) [~~(F)~~] evaluation or re-evaluation of postgraduate training program -$250.

(3) Physician Assistants:

(A) processing application for licensure as a physician assistant (includes surcharges of $5) - $205;

[~~(A) processing application for licensure as a physician assistant - $200;~~]

(B) temporary license - $50;

(C) annual renewal:

(i) initial permit (includes surcharges of $10) - $160;

(ii) subsequent permit (includes surcharges of $1) - $156;

(D) processing application for reissuance of license following revocation (includes surcharges of $5) - $205 [~~($200~~].

(4) Acupuncturists/Acudetox Specialists:

(A) processing an application for licensure as an acupuncturist (includes surcharge of $5) - $305 [~~($300~~];

(B) temporary license for an acupuncturist - $50;

(C) annual renewal for an acupuncturist:

(i) initial permit (includes surcharges of $10) - $260;

(ii) subsequent permit (includes surcharges of $6) - $256;

(D) acupuncturist distinguished professor - $50;

(E) processing an application for acudetox specialist (includes surcharge of $2) - $52 [~~$50~~];

(F) annual renewal for acudetox specialist - $25;

(G) review of continuing acupuncture education courses - $50;

(H) review of application for continuing acupuncture education provider - $50;

(I) review of continuing acudetox acupuncture education courses - $50.

(5) Non-Certified Radiologic Technicians:

(A) processing an application (includes surcharge of $2) - $52 [~~$50~~];

(B) annual renewal (includes surcharges of $2) - $52.

(6) Certification as a Non-Profit Health Organization:

(A) processing an application for new or initial certification - $2,500;

(B) processing an application for biennial recertification - [(~~includes surcharges of $30~~)] $1,000 [~~$1030~~];

(C) fee for a late application for biennial recertification - $1,000.

(7) Surgical Assistants:

(A) processing licensure application fee (includes surcharge of $5) - $305 [~~$300~~];

(B) temporary license - $50;

(C) biennial registration fee:

(i) initial permit (includes surcharges of $6) - $406;

(ii) subsequent permit (includes surcharges of $2) - $402.

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

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Donald W. Patrick, MD, JD
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CHAPTER 183. ACUPUNCTURE

22 TAC §183.2, §183.16

The Texas State Board of Medical Examiners proposes amendments to §183.2 and §183.16, concerning Definitions and Texas Acupuncture Schools. The amendments clarify that certificates and diplomas are acceptable for acupuncture licensure.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rules are in effect the may be the following fiscal implications:

None to the state

Students: No negative impact for applicants seeking licensure

Public: Unknown whether there will be impact on Texas acupuncture schools

There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the rules. Attorney General Opinion GA-0144 issued on February 5, 2004 ruled that the Texas Higher Education Coordinating Board (THECB) is responsible for the oversight of Texas acupuncture schools and not the Texas State Board of Acupuncture Examiners (TSBAE). As a result of this opinion, the THECB has determined that these schools cannot issue master's degrees, but only issue diplomas or certificates upon graduation. This remains in effect until such time as the THECB grants them authority to offer master's degrees. In order to allow licensure of affected students by the TSBAE, this rule clarifies that certificates and diplomas are acceptable for acupuncture licensure. There will be no effect on small or micro businesses.

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

The amendments are proposed under the authority of the Occupations Code Annotated, §§153.001, 205.203 and 205.206 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§183.2. Definitions.

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

(1) Ability to communicate in the English language--An applicant who has met the requirements set out in §183.4(a)(7) of this title (relating to Licensure).

(2) Acceptable approved acupuncture school--Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Tex. Occ. Code and with the exception of the provisions outlined in §183.4(h) of this title (relating to Exceptions),

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), offered no more than a certificate upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAOM, offered a masters degree, or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a Texas acupuncture school or a school defined in subparagraph (B) of this paragraph through an evaluation by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) [~~a board-approved credential evaluation service~~].

(3) Acupuncture Act or "the Act"--Chapter 205 of the Texas Occupations Code.

(4) Acupuncture--

(A) The insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition, including the evaluation and assessment of the condition; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by subparagraph (A) of this paragraph.

(5) Acupuncture board or "board"--The Texas State Board of Acupuncture Examiners.

(6) Acupuncturist--A licensee of the acupuncture board who directly or indirectly charges a fee for the performance of acupuncture services.

(7) Agency--The divisions, departments, and employees of the Texas State Board of Medical Examiners, the Texas State Board of Physician Assistant Examiners, and the Texas State Board of Acupuncture Examiners.

(8) APA--The Administrative Procedure Act, Government Code, §2001.001 et seq.

(9) Applicant--A party seeking a license from the board.

(10) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be printed in ink or typed;

(ii) photographs must meet United States Government passport standards;

(B) a fingerprint card, furnished by the acupuncture board, completed by the applicant, that must be readable by the Texas Department of Public Safety;

(C) all documents required under §183.4(c) of this title (relating to Licensure Documentation); and

(D) the required fee, payable by check through a United States bank.

(11) Assistant Presiding Officer--A member of the acupuncture board elected by the acupuncture board to fulfill the duties of the presiding officer in the event the presiding officer is incapacitated or absent, or the presiding officer's duly qualified successor under Robert's Rules of Order Newly Revised or board rules.

(12) Board member--One of the members of the acupuncture board, appointed and qualified pursuant to §§205.051.053 of the Act.

(13) Chiropractor--A licensee of the Texas State Board of Chiropractic Examiners.

(14) Contested case--A proceeding, including but not restricted to, licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(15) Documents--Applications, petitions, complaints, motions, protests, replies, exceptions, answers, notices, or other written instruments filed with the medical board or acupuncture board in a licensure proceeding or by a party in a contested case.

(16) Eligible for legal practice and/or licensure in country of graduation--An applicant who has completed all requirements for legal practice of acupuncture and/or licensure in the country in which the school is located except for any citizenship requirements.

(17) Executive Director--The executive director of the agency or the authorized designee of the executive director.

(18) Full force--Applicants for licensure who possess a license in another jurisdiction must have it in full force and not restricted, canceled, suspended or revoked. An acupuncturist with a license in full force may include an acupuncturist who does not have a current, active, valid annual permit in another jurisdiction because that jurisdiction requires the acupuncturist to practice in the jurisdiction before the annual permit is current.

(19) Full NCCAOM examination--The National Certification Commission for Acupuncture and Oriental Medicine examination, consisting of the Comprehensive Written Exam (CWE), the Clean Needle Technique Portion (CNTP), the Practical Examination of Point Location Skills (PEPLS), and the Chinese Herbology Exam.

(20) Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Act, §205.351.

(21) Administrative Law Judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(22) License--Includes the whole or part of any board permit, certificate, approval, registration, or similar form of permission required by law; specifically, a license and a registration.

(23) Licensing--Includes the medical board's and acupuncture board's process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(24) Medical board--The Texas State Board of Medical Examiners.

(25) Misdemeanors involving moral turpitude--Any misdemeanor of which fraud, dishonesty, or deceit is an essential element; burglary; robbery; sexual offense; theft; child molesting; substance diversion or substance abuse; an offense involving baseness, vileness, or depravity in the private social duties one owes to others or to society in general; or an offense committed with knowing disregard for justice or honesty.

(26) Party--The acupuncture board and each person named or admitted as a party in a SOAH hearing or contested case before the acupuncture board.

(27) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(28) Physician--A licensee of the medical board.

(29) Pleading--Written documents filed by parties concerning their respective claims.

(30) Presiding officer--The member of the acupuncture board appointed by the governor to preside over acupuncture board proceedings or the presiding officer's duly qualified successor in accordance with Robert's Rules of Order Newly Revised or board rules.

(31) Register--The Texas Register.

(32) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. This definition includes substantive regulations.

(33) Secretary--The secretary-treasurer of the acupuncture board.

(34) Substantially equivalent to a Texas acupuncture school--A school or college of acupuncture that is an institution of higher learning designed to select and educate acupuncture students; provide students with the opportunity to acquire a sound basic acupuncture education through training; to develop programs of acupuncture education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual and practical environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The school of acupuncture shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The school of acupuncture shall include, but not be limited to, the following characteristics:

(A) the facilities for didactic and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) the admissions standards shall be substantially equivalent to a Texas school of acupuncture.

(C) the basic curriculum shall include courses substantially equivalent to those delineated in the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) core curriculum at the time of applicant's graduation.

(D) the curriculum shall be of at least 1800 hours in duration.

§183.16. Texas Acupuncture Schools.

(a) A licensed Texas acupuncturist operating an acupuncture school in Texas which has not yet been accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or reached candidate status for accreditation by ACAOM, a licensed Texas acupuncturist with any ownership interest in such a school, or a licensed Texas acupuncturist who teaches in or operates such a school, shall ensure that students of the school and applicants to the school are made aware of the provisions of the Medical Practice Act governing acupuncture practice, the rules and regulations adopted by the Texas State Board of Acupuncture Examiners, and the educational requirements for obtaining a Texas acupuncture license to include the rules and regulations establishing the criteria for an approved acupuncture school for purposes of licensure as an acupuncturist by the Texas State Board of Acupuncture Examiners as set forth in subsection (b) of this section.

(b) Compliance with the provisions of subsection (a) of this section shall be accomplished by providing students and applicants with a copy of Subchapter H of the Act, a copy of Chapter 183 (Acupuncture) contained in the Rules of the Texas State Board of Medical Examiners, and the following typed statement:
Figure: 22 TAC §183.16(b)

(c) A licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by ACAOM or is not a candidate for ACAOM accreditation shall not state directly or indirectly, explicitly or by implication, orally or in writing, either personally or through an agent of the acupuncturist or the school, that the school is endorsed, accredited, registered with, affiliated with, or otherwise approved by the Texas State Board of Acupuncture Examiners for any purpose.

(d) Failure to comply with the requirements or abide by the prohibitions of this section shall be grounds for disciplinary action against a licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by ACAOM or is not a candidate for ACAOM accreditation. Such disciplinary action shall be based on the violation of a rule of the Texas State Board of Acupuncture Examiners as provided for in the Act, §205.351(a)(6).

(e) For purposes of licensure and regulation of acupuncturists practicing in Texas, ACAOM approved acupuncture schools in Texas meeting the criteria set forth in §183.2 of this title (relating to Definitions) may issue masters of science in oriental medicine degrees in a manner consistent with the laws of the State of Texas. The Texas State Board of Acupuncture Examiners shall recognize any such lawfully issued degrees. For purposes of licensure and regulation of acupuncturists practicing in Texas, acupuncture schools in Texas which are ACAOM candidates for masters level programs in acupuncture and oriental medicine and who have issued diplomas or degrees during the period of candidacy, may upgrade such degrees to masters degrees upon obtaining full ACAOM accreditation. The Texas State Board of Acupuncture Examiners shall recognize any such lawfully upgraded degrees.

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

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

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CHAPTER 190. DISCIPLINARY GUIDELINES SUBCHAPTER D. ADMINISTRATIVE PENALTIES

22 TAC §190.16

The Texas State Board of Medical Examiners proposes new §190.16, concerning Administrative Penalties. The new rules concern limits on the amount of administrative penalty assessed and describes the criteria on which the penalty is based.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rule is in effect there may be fiscal implications to state or local government as a result of enforcing the rule as proposed. The impact on the state could be positive because it may recapture state money spent for the cost of the administrative hearing. There may be fiscal implications to individuals required to comply with the rule as proposed because a licensee could be required to pay the cost of the administrative hearing.

Ms. Shackelford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the section will be a new rule regarding administrative penalties. Disciplinary actions include informal and formal processes. If a licensee is found to have violated the Medical Practice Act after a contented hearing, the State should have the means to require the licensee to pay the costs of an administrative hearing as justice may require. There will be no effect on small or micro businesses.

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

The new rules is proposed under the authority of the Occupations Code Annotated, §153.001 and §§165.001-.008 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§190.16. Administrative Penalties.

(a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including;

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

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

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require, including, but not limited to, the costs of the administrative hearing. Such costs include, but are not limited to, investigative costs, attorney and other staff time spent preparing and presenting the case, witness fees, deposition expenses, travel expenses of witnesses, transcription fees, costs of adjudication before SOAH and any other costs that are necessary for the preparation of the board's case including the costs 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.

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CHAPTER 192. OFFICE-BASED ANESTHESIA

22 TAC §§192.1 - 192.4

The Texas State Board of Medical Examiners proposes amendments to §§192.1-192.4, concerning Office-Based Anesthesia. The amendments relate to the provision of anesthesia in outpatient settings, compliance with office-based anesthesia rules, and registration to include additional requirements for patient rights, emergency power sources, ancillary services, credentialing of personnel, peer review requirements, and registration requirements.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rules are in effect there are no anticipated fiscal implications to state or local government as a result of enforcing the rules as proposed. There may be an effect to individuals required to comply with the sections as proposed. Unknown higher operations costs are anticipated for physicians to meet compliance.

Ms. Shackelford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to establish and clarify additional standards to improve public safety relating to the rendering of anesthesia in outpatient settings that are subject to Board regulation under the Medical Practice Act. There will be no effect on small or micro businesses.

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

The amendments are proposed under the authority of the Occupations Code Annotated, §153.001 and §§162.101-107 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state;

enforce this subtitle; and establish rules related to office-based anesthesia.

No other statutes, articles or codes are affected by this proposal.

§192.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) Anesthesiologist's assistant--A graduate of an approved anesthesiologist's assistant training program.

(2) Anesthesiology resident--A physician who is presently in an approved Texas anesthesiology residency program who is either licensed as a physician in Texas or holds a postgraduate resident permit issued by the Texas State Board of Medical Examiners.

(3) Certified registered nurse anesthetist (CRNA)--A person licensed by the Board of Nurse Examiners for the State of Texas (BNE) as a registered professional nurse, authorized by the BNE as an advanced practice nurse in the role of nurse anesthetist, and certified by a national certifying body recognized by the BNE.

(4) Deep sedation/analgesia--A drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to maintain ventilatory function may be impaired. Patients often require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(5) General anesthesia--A drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

[~~(4) Monitored anesthesia care--Situations where a patient undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway for the majority of the procedure. If, for an extended period of time, the patient is rendered unconscious and/or loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.~~]

(6) Minimal sedation (anxiolysis)--A drug-induced state during which a patient responds normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are usually not affect. If, for an extended period of time, the patient is rendered unconscious and/or loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(7) Moderate sedation/analgesia (conscious sedation)--a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are usually required to maintain a patent airway, and spontaneous ventilation is usually adequate. Cardiovascular function is usually maintained. If, for an extended period of time, the patient is rendered unconscious and/or loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(8) [~~(5)~~] Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of [~~all of~~] the following [~~listed in subparagraphs (A)-(D) of this paragraph~~]:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. 479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting accredited by either the Joint Commission on Accreditation of Healthcare Organizations as an [~~relating to~~] ambulatory surgical center [~~centers~~], the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(9) [~~(6)~~] Board--The Texas State Board of Medical Examiners.

(10) [~~(7)~~] Physician--A person licensed by the Texas State Board of Medical Examiners as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefor, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

§192.2. Provision of Anesthesia in Outpatient Settings.

(a) Purpose. The purpose of these rules is to identify the roles and responsibilities of physicians providing, or overseeing by proper delegation, anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings. Except as provided under subsection (b) of this section, these rules shall apply to the administration of deep sedation/analgesia, general anesthesia, minimal sedation, and moderate sedation/analgesia.

(b) Exceptions. The rules promulgated under this title do not apply to physicians who practice in the following settings [~~listed in paragraphs (1)-(8) of this subsection~~]:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the significant probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes;

(3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;

(4) a licensed ambulatory surgical center;

(5) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. 479-1 or as listed under a successor federal statute or regulation;

(6) a facility maintained or operated by a state or governmental entity;

(7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(8) an outpatient setting accredited by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

(c) ASA Standards. Physicians who practice medicine in this state and who administer anesthesia or perform a surgical procedure for which anesthesia services are provided in an outpatient settings shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following [~~listed in paragraphs (1)-(8) of this subsection~~]:

(1) Basic Standards for Preanesthesia Care;

(2) Standards for Basic Anesthetic Monitoring;

(3) Standards for Postanesthesia Care;

(4) Position on Monitored Anesthesia Care;

(5) The ASA Physical Status Classification System;

(6) Guidelines for Nonoperating Room Anesthetizing Locations;

(7) Guidelines for Ambulatory Anesthesia and Surgery; [~~and~~]

(8) Guidelines for Office-Based Anesthesia ; and[~~.~~]

(9) Statement on Qualifications of Anesthesia Providers in the Office-Based Setting.

[~~(d) A physician delegating the provision of anesthesia or anesthesia-related services to a certified registered nurse anesthetist shall be in compliance with ASA standards and guidelines when the certified registered nurse anesthetist provides a service specified in the ASA standards and guidelines to be provided by an anesthesiologist.~~]

[~~(e) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during peri-anesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.~~]

[~~(f) The anesthesiologist or physician providing anesthesia or anesthesia-related services in an outpatient setting shall perform a pre-anesthetic evaluation, counsel the patient, and prepare the patient for anesthesia per current ASA standards. If the physician has delegated the provision of anesthesia or anesthesia-related services to a CRNA, the CRNA may perform those services within the scope of practice of the CRNA. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained per indications and assessment findings. Pre-anesthetic diagnostic testing and specialist consultation should be obtained as indicated by the pre-anesthetic evaluation by the anesthesiologist or suggested by the nurse anesthetist's pre-anesthetic assessment as reviewed by the surgeon. If responsibility for a patient's care is to be shared with other physicians or non-physician anesthesia providers, this arrangement should be explained to the patient.~~]

[~~(g) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O2 analyzer and end-tidal CO2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current ASA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current ASA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored. There should be in each location, sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. A two-way communication source not dependent on electrical current shall be available. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.~~]

(d) Patients' Rights. Physicians who provide office-based anesthesia must ensure that:

(1) patients are treated with respect, consideration and dignity;

(2) patient privacy and confidentiality is protected pursuant to state and federal law including the Health Information Protection and Accountability Act (HIPAA) 45 C.F.R. Parts 160-164, if applicable;

(3) the patient's, or a designated person when appropriate, is provided information concerning the patient's diagnosis, evaluation, treatment options and prognosis;

(4) patients retain the right to refuse an diagnostic procedure or treatment and be advised of the medical consequences of that refusal; and

(5) patients may obtain information about a physician's professional liability coverage.

(e) Preanesthesia Assessment and Informed Consent.

(1) Except as provided in subsection (g) of this section, the anesthesiologist or physician providing anesthesia or anesthesia-related services shall perform a pre-anesthetic evaluation, counsel the patient, and prepare the patient for anesthesia per the ASA standards that are current at the time of the procedure.

(2) The pre-anesthesia evaluation should at a minimum consist of reviewing the patient history, conducting a physical examination, providing for diagnostic testing and specialist consultation

per indications and assessment findings, developing a plan of anesthesia care, acquainting the patient or the responsible adult with the proposed plan, and discussing the risks and benefits of the surgery and alternative methods or treatments.

(3) Informed consent shall:

(A) Be obtained from the patient or legal guardian and maintained as part of the medical record; and

(B) Include explanation of the technique, expected results, potential risks and complications, and alternatives.

(4) If responsibility for a patient's care is to be shared with other physicians or non-physician anesthesia providers, this arrangement should be explained to the patient.

(f) Patient monitoring.

(1) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status.

(2) The patient shall be monitored continuously throughout the duration of the procedure.

(3) Monitors shall include, but not be limited to:

(A) Pulse oximetry continuously;

(B) EKG continuously;

(C) Non-invasive blood pressure to be measured at least every five minutes;

(D) If general anesthesia is utilized, then an O2 analyzer and end-tidal CO2 analyzer must also be used;

(E) A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per ASA standards current at the time of the procedure;

(F) An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized.

(4) Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until the patient is determined to be stable by a licensed health care provider. Monitoring and observations shall be documented per ASA standards current at the time of the procedure.

(5) Discharging patients is the responsibility of the surgeon and/or the individual responsible for anesthesia care and should only occur when patients have met specific physician-defined criteria. Such criteria should be in writing and include stable vital signs, responsiveness and orientation, ability to move voluntarily, controlled pain and minimal nausea and vomiting. Written instructions and an emergency phone number should be provided to the patient. If sedation, regional block, or general anesthesia has been used, patients must leave with a responsible adult who had been instructed with regard to the patient's care.

(6) Monitoring during an electrical outage.

(A) In the event of an electrical outage which disrupts the capability to continuously monitor all patient parameters specified in paragraphs (1)-(3) of this subsection, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored.

(B) There should be in each location, sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply.

(C) A two-way communication source not dependent on electrical current shall be available.

(D) Sites shall also have an emergency power supply as a secondary power source for equipment in use in case of power failure. A maintenance log must be maintained onsite indicating that monthly checks have been made and that the secondary power source is operational.

(g) Delegation to Certified Nurse Anesthetist. If the physician has delegated the provision of anesthesia or anesthesia-related services to a CRNA, the CRNA may do the following within the scope of the CRNA's practice:

(1) Select, obtain, and administer drugs, which includes making the determination of appropriate dosages, techniques, and medical devices for their administration and to maintain the patient in sound physiologic status;

(2) Perform the pre-anesthetic evaluation, counsel the patient, and prepare the patient for anesthesia in accordance with the ASA standards current at the time of the procedure;

(3) If suggested by the CRNA's pre-anesthetic evaluation as reviewed by the surgeon, obtain pre-anesthetic diagnostic testing and specialist consultation;

(4) Order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia; and

(5) Select, order, obtain, and administer drugs which fall within the categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during the perianesthesia period.

(h) Maintenance of anesthesia-related equipment and monitors.

(1) All anesthesia-related equipment and monitors shall be maintained to current operating room standards.

(2) All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations.

(3) Service/maintenance checks shall be performed by appropriately qualified biomedical personnel.

(4) Prior to the administration of anesthesia, all equipment/monitors shall be checked using the [~~current~~] FDA recommendations current at the time the services are provided as a guideline.

(5) Records of equipment checks shall be maintained pursuant to the following:

(A) The records shall be kept in a separate, dedicated log, which must be made available upon request.

(B) The records shall include documentation [~~Documentation~~] of any criteria on which the equipment is deemed to be substandard and shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy.

(C) All documentation relating to equipment shall be maintained for at least seven years or for a period of time as determined by the board.

(i) Emergency supplies.

(1) Each location must have emergency supplies immediately available, including, but not limited to, the following: [. ~~supplies should include~~] emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation [. ~~This must include~~] including a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia.

(2) Equipment shall be appropriately sized for the patient population being served.

(3) Resources for determining appropriate drug dosages shall be readily available.

(4) The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be maintained for seven years or for a period of time as determined by the board.

(j) Ancillary services.

(1) Provisions should be made for appropriate ancillary services on site or in another predetermined location.

(2) Ancillary services should be provided in a safe and effective manner in accordance with accepted ethical professional practice and statutory requirements.

(3) Ancillary services include but are not limited to pharmacy, laboratory, pathology, radiology, occupational health and other associated services.

(k) Policies, procedures, or protocols.

(1) [~~(j)~~] The operating surgeon shall verify that the appropriate policies, [~~or~~] procedures, or protocols are in place. This shall include the following:

(A) Evaluating and reviewing all policies, procedures, or protocols at least annually. [~~Policies, procedure, or protocols shall be evaluated and reviewed at least annually.~~]

(B) Ensuring that agreements [~~Agreements~~] with local emergency medical service (EMS) [~~shall be~~] are in place for purposes of transfer of patients to the hospital in case of an emergency. EMS agreements shall be evaluated and re-signed at least annually.

(C) Ensuring that policies [~~Policies~~], procedures, [~~procedure~~] protocols and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request.

(2) Policies, [~~or~~] procedures, or protocols must include, but are not limited to the following [~~listed in paragraphs (1)-(2) of this subsection~~]:

(A) [~~(1)~~] Management of outpatient anesthesia. At a minimum, these must address:

(i) [~~(A)~~] patient selection criteria;

(ii) [~~(B)~~] patients/providers with latex allergy;

(iii) [~~(C)~~] pediatric drug dosage calculations, where applicable;

(iv) [~~(D)~~] ACLS (advanced cardiac life support) or PALS (pediatric advanced life support) algorithms;

(v) [~~(E)~~] infection control;

(vi) [~~(F)~~] documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and

(vii) [~~(G)~~] discharge criteria.

(B) [~~(2)~~] Management of emergencies. At a minimum, these must include, but are not be limited to:

(i) [~~(A)~~] cardiopulmonary emergencies;

(ii) [~~(B)~~] fire;

(iii) [~~(C)~~] bomb threat;

(iv) [~~(D)~~] chemical spill; and

(v) [~~(E)~~] natural disasters.

(l) Personnel.

(1) All health care practitioners should have appropriate licensure or certification and the necessary training and skills to deliver the services provided by the facility.

(2) All personnel assisting in the provision of health care services must be appropriately trained, qualified, supervised and sufficient in number to provide appropriate care.

(3) [~~(k)~~] Operating surgeons or anesthesiologists shall maintain current competency in ACLS, PALS, or a course approved by the board.

(4) In all settings under these rules, at a minimum, at least two persons, including the surgeon or anesthesiologist, shall maintain current competency in basic life support.

(5) All medical personnel, at a minimum, should maintain training in basic cardiopulmonary resuscitation.

(m) Credentialing. Credentials, including delineation of privileges, of all health care practitioners should be established by written policy, periodically verified and maintained on file.

(n) Peer review. Written procedures for credible peer review to determine the appropriateness of clinical decision-making and the overall quality of care should be established.

(o) [~~(l)~~] Notice to the Board. Physicians or surgeons must notify the board in writing within 15 days if a procedure performed in any of the settings under these rules resulted in an unanticipated and unplanned transport of the patient to a hospital for observation or treatment for a period in excess of 24 hours, or a patient's death intraoperatively or within the immediate postoperative period. Immediate postoperative period is defined as 72 hours.

§192.3. Compliance with Office-Based Anesthesia Rules.

(a) A physician who practices medicine in this state and who administers anesthesia or performs a surgical procedure for which anesthesia services are provided in an outpatient setting shall comply with the rules adopted under this title.

(b) [~~(a)~~] The board may require a physician to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the physician's provision of anesthesia in a outpatient setting in accordance with the Medical Practice Act, Title 3 Subtitle C §§162.101-.107 of the Texas Occupations Code, or rules of the board.

(c) [~~(b)~~] Any physician who violates these rules shall be subject to disciplinary action and/or termination of the registration issued by the board as authorized by the Medical Practice Act or rules of the board.

§192.4. Registration.

(a) [~~Beginning January 1, 2004, each~~] Each physician who administers anesthesia or performs a surgical procedure for which anesthesia services are provided in an outpatient setting shall [~~to biennially~~] register with the board on a form prescribed by the board and [~~to~~] pay a fee to the board in an amount established by the board.

(b) The physician who owns, maintains, controls, or is otherwise deemed to be responsible for the office-based anesthesia site shall pay a biennial office-based anesthesia site registration fee to the board in an amount established by the board. In the event that a non-physician or any other entity owns, maintains, controls, or is otherwise deemed to be responsible for the office-based anesthesia site, that non-physician or entity shall designate a duly licensed Texas physician to be responsible for that office-based anesthesia site. The designated physician shall be responsible for the registration of the office-based anesthesia site.

(c) The board shall coordinate the registration required under this section with the registration required under the Medical Practice Act, Texas Occupations Code Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

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

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.11

The Texas State Board of Medical Examiners proposes an amendment to §193.11, Use of Lasers, regarding continuing education on the use of laser devices.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed. There will be an effect to individuals required to comply with the section as proposed. There is a potential positive impact to licensees and delegates because of the elimination of a set number of required continuing education hours.

Ms. Shackelford also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an updated rule. Evidence has been presented that physicians should retain discretion on establishing continuing education requirements for themselves and delegates. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §§153.001, 157.001 and 157.006 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to physician delegation.

No other statutes, articles or codes are affected by this proposal.

§193.11. Use of Lasers.

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

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

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

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

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

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

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

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

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

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

(d) Delegation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Alternate physicians.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) fundamentals of laser operation;

(B) bioeffects of laser radiation on the eye and skin;

(C) significance of specular and diffuse reflections;

(D) non-beam hazards of lasers;

(E) non-ionizing radiation hazards;

(F) laser and laser system classifications; and

(G) control measures.

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

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

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

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

(j) Quality assurance. The physician must ensure that there is a quality assurance program for the facility at which non-ablative procedures are performed in order for the purpose of continuously improving

the selection and treatment of patients. An appropriate quality assurance program shall consist of the elements listed in paragraphs (1) - (5) of this subsection.

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403929
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 305-7016

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22 TAC §193.12

The Texas State Board of Medical Examiners proposes new §193.12, Use of Prescription Medical Devices, concerning rules governing delegation and supervision of medical acts involving the use of prescription medical devices.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed. There will be an effect to individuals required to comply with the section as proposed. There is an anticipated/unknown impact on physicians and facilities operating or delegating the use of these devices.

Ms. Shackelford also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to establish and clarify additional standards to improve public safety related to the use, supervision, and delegation of prescription medical devices. The Texas Department of Health and the Office of the Attorney General brought the need for regulation to the Board's attention. There will be no effect on small or micro businesses.

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

The new rule is proposed under the authority of the Occupations Code Annotated, §§153.001, 157.001 and 157.006 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to physician delegation.

No other statutes, articles or codes are affected by this proposal.

§193.12. Use of Prescription Medical Devices.

(a) Purpose. Pursuant to 21 C.F.R. 801.109 and 25 T.A.C. 229.433(23), a prescription medical device is a restricted device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which adequate directions for use cannot be prepared. The purpose of this section is to provide guidelines for the use of these devices when delegated by a licensed Texas physician. Nothing in these rules shall be construed to relieve the delegating physician of the professional or legal responsibility for the care and treatment of the physician's patients. Provisions under Section 193.11 of this chapter that conflict with this section shall control.

(b) Delegation.

(1) A physician may delegate the operation of prescription medical devices, if consistent with the generally accepted standard of practice, through the use of written protocols to a properly trained delegate acting under the adequate supervision of a physician. Physician supervision must conform to what a reasonably prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the delegate.

(2) In accordance with the generally accepted standard of care, a physician may never appropriately delegate the operation of some prescription medical devices for the diagnosis of a medical condition. Physician delegation inconsistent with the accepted standard of care, includes but is not limited to the use of needle electromyography and cardiac catheters.

(3) Prior to ordering the use of any prescription medical device, a physician must examine the patient and document such order or prescription in the patient's record or medical chart. This is not intended to require a physical examination each time a prescription medical device is used on a patient, but rather for each time a series of treatment is prescribed for a particular condition. This paragraph does not apply to the use of prescription medical devices in the performance of emergency medical services.

(c) Oversight Responsibilities of the Delegating Physician. A physician that delegates the use of prescription medical devices must:

(1) ensure that patients are adequately informed about reasonably foreseeable side effects and untoward complications that may result from the use of a prescription medical device. Informed consent should be documented in the patient's medical chart;

(2) formulate or approve written protocols and any patient-specific deviations from the protocols;

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

(4) receive, on a schedule defined in the written protocols, a periodic status report on patients, including any problems or complications encountered;

(5) ensure delegates are licensed or certified to use the device by a state licensing or regulatory agency, if appropriate; and

(6) evaluate the technical skills of the delegate using the prescription medical devices by documenting and reviewing at least quarterly the delegate's ability:

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

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

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

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

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

(3) selection criteria to screen patients for the appropriateness of treatment with a prescription medical device;

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

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

(6) a description of appropriate care and follow-up for common complications, serious injury, or emergencies as a result of the use of the prescription medical device; and

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

(e) Educational requirements. Physicians that delegate the use of prescription medical devices must:

(1) complete basic training devoted to the use of the prescription medical devices to be delegated, their instrumentation, physiological effects and safety requirements. For each device the physician intends to delegate the use of, the physician must attend an initial training program that includes clinical applications of the devices; and

(2) maintain competence for the use of the prescription medical devices and obtain continued training regarding the appropriate standard of care for each prescription medical device utilized.

(f) Educational requirements for delegates. A physician may delegate to a qualified delegate. The physician must maintain documentation and retention of training activities/records for at least five years. The delegating physician must ensure that a delegate who operates prescription medical devices:

(1) is adequately trained regarding the use of each prescription medical device by the delegate, including documentation of initial training for each device;

(2) has read and signed the facility's policies and procedures regarding the safe use of prescription medical devices;

(3) has attended additional hours of documented training annually for each prescription medical device;

(4) has completed at least ten procedures of documented precepted training under the physician's supervision for each prescription medical device to assess competency.

(g) Quality assurance. The physician must ensure that there is a quality assurance program for the facility at which prescription medical devices are used for the purpose of continuously improving the selection and treatment of patients. An appropriate quality assurance program shall consist of the elements listed in paragraphs (1) - (5) of this subsection.

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

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

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

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

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

(h) The deadline for compliance with the provisions of this section will be January 1, 2005.

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

Filed with the Office of the Secretary of State on June 15, 2004.

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER E. COLLECTION AND RELEASE OF AMBULATORY SURGICAL CARE AND EMERGENCY DEPARTMENT DATA ON REPORTING HOSPITALS

25 TAC §§1301.61 - 1301.69

The Texas Health Care Information Council (Council) proposes new §§1301.61 - 1301.69, concerning the collection and release of Ambulatory Surgical Care and Emergency Department Data on reporting hospitals. The new rules are proposed under §§108.006(a)(1), (3), (7), and 108.009(a), (b), (h), Health and Safety Code, which authorize the Council to collect hospital ambulatory care data and hospital emergency department

data. Submission of the data will be voluntary, not required. The sections are proposed to enhance the statewide health care data collection system established by the Council and provide additional information to the legislature, governor and public regarding the quality and effectiveness of health care and access to health care by the citizens of Texas.

Mike Gilliam, Jr., MSW, MPH Director, Texas Department of Health, Center for Health Statistics, (which provides all administrative support to the Council), has determined that for the first five-year period the new rules are in effect there will be approximately $859,000 in additional costs to the state.

The $858,000 figure was determined as follows: Developmental costs of $237,000, including additional staff and contractual costs for additional data collection, auditing, and modifications to existing software applications, will be expended in the first two years. In years three through five the state will expend approximately $207,000 annually in payments to the entity that currently receives inpatient data for the Council's Health Care Data Collection System. The costs are associated with the projected costs of staff time for data cleansing, analysis for file (public use data, research data, or open records requests) and report release. The staff time includes the time and resources necessary to retrieve, review and post comments on the files and Internet as required by Chapter 108, Health and Safety Code, as a result of the proposed rules.

The total cost of the project is $2,272,000 and the state if awarded the Health Information Technology contract (AHRQ Solicitation #04-0015) through the United States Department of Health and Human Services, Agency for Healthcare Research and Quality (AHRQ) competitive process could anticipate receiving federal monies in the amount of $1,413,000 from AHRQ. The estimates are derived from the contract bid submitted to AHRQ.

Mr. Gilliam has determined that for the first five-year period the new rules are in effect there will be between $6,823 and $14,230 in costs to local governments for each hospital owned and participating in this data collection and reporting effort (cost breakdowns are provided in the section below in the impact statement to providers). There is $5,053 to $9,952 per hospital in fiscal implications relating to administrative costs of the local governments as a result of §§1301.61-1301.69, because local governments are affected if they own a hospital that participates in this data collection program.

Mr. Gilliam has determined that for the first five-year period the new rules are in effect there will be between $6,823 and $14,230 in costs to small businesses for each hospital owned and participating in this data collection and reporting effort (cost breakdowns are provided in the section below in the impact statement to providers). A comparison of the cost for small businesses with the cost of compliance for the largest business affected by the rule indicates that the cost for each hour of labor for small business is between $35.41 and $42.78 (Computer Programmers wages, Occupational Wages for All Industries: State of Texas; Data Collected May-November 2003, Source: Occupational Employment Statistics Program, Labor Market Information, Texas Workforce Commission) and the cost per hour of labor for the largest business is $35.41 and $42.78 (Occupational Wages for All Industries: State of Texas; Data Collected May-November 2003, Source: Occupational Employment Statistics Program, Labor Market Information, Texas Workforce Commission). The one time programming costs would be the hourly wages times and estimated 50 - 100 hours of programming time giving a range of $1,171 to $4,278. A comparison of the cost for small businesses with the cost of compliance for the largest business affected by the rule indicates that the cost for each hour of labor for the first year of the five years for small business is between $30.48 and $36.02 (Medical and Health Services Mangers, Occupational Wages for All Industries: State of Texas; Data Collected May-November 2003, Source: Occupational Employment Statistics Program, Labor Market Information, Texas Workforce Commission) and the cost per hour of labor for the largest business is $30.48 and $36.02 (Medical and Health Services Mangers, Occupational Wages for All Industries: State of Texas; Data Collected May-November 2003, Source: Occupational Employment Statistics Program, Labor Market Information, Texas Workforce Commission). The annual costs would be the hourly wages times the estimated 30 to 50 hours per year for administrative work for submitting, correcting and certifying the data ranges between $5,053 and $9,952 per hospital. The annual costs estimate a 5% increase in the hourly wages each year.

Mr. Gilliam has determined that for the first five-year period the new rules are in effect there will be between $6,823 and $14,230 for each hospital owned and participating in this data collection and reporting effort in costs to each of the providers. There is $5,053 and $9,952 per hospital in fiscal implications relating to administrative costs of the providers as a result of §§1301.61-1301.69, because the providers would need to modify their computer records systems identify and submit the ambulatory surgical care and emergency department data to the Council. Texas Hospital Association (THA) provided an estimate range of costs for each hospital participating of $8,000 - $22,000 based on 50-100 hours programming times $160 - $220 per hour of programming time for computer programmer. The THA programmer wages are significantly higher than the states experience computer programmer hourly wage average ("Occupational Wages for All Industries: State of Texas; Data Collected May-November 2003", Source: Occupational Employment Statistics Program, Labor Market Information, Texas Workforce Commission) for an experience programmer ($42.78 per hour), which would provide an estimate range of cost of $2,139 - $4,278. The THA estimate also assumes that the hospitals would be creating or building a separate data extract file for submission to the Council. The Council's estimates are based on the belief that reporting hospitals are able to submit a Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant billing claim file and the only modifications needed would be to modify the reporting hospitals current process to create and submit a HIPAA compatible claim file that includes the addition of Race and Ethnic background for each patient and potentially up to 9 additional external cause of injury codes (E-codes). The submission of additional E-codes in the ANSI Institutional Guide format only requires submitting the additional data elements with the proper qualifying code in the Health Information (HI) data segments. Section 2001.024(a)(4)(A) and 2001.024(a)(5)(B), Government Code, requires that the fiscal note estimate additional costs associated with implementing the proposed amendments and the probable economic cost to persons required to comply with the rule. The fiscal note is not required to anticipate costs for providing optional features based on the amendments, such as building a separate data extract system to submit data to the Council.

The Council's estimates for the first year costs for each reporting hospital to range from $2,685 - $6,079 with annual costs (second year - $960-$1,891; third year - $1,008 - $1,986; fourth year - $1,059 - $2,085; fifth year - $1,111 - $2,189) associated with

the submission, correction and certification of the ambulatory surgical care and emergency department data (The costs were based on the average hourly wage and the experienced average hourly wage of Medical and Health Services mangers for 2003 and a 5% increase in the hourly wage each year. ("Occupational Wages for All Industries: State of Texas; Data Collected May-November 2003", Source: Occupational Employment Statistics Program, Labor Market Information, Texas Workforce Commission).

Mr. Gilliam has determined for each year of the first five-year period the proposed sections are in effect, the anticipated public benefit will be greater ease in identifying under educated and underserved areas. The new data will provide information regarding the access to care for the citizens of Texas and assist in identifying populations at risk. The data will provide information to the Texas Department of Health (TDH) and the Department of State Health Services (DSHS) regarding areas and subjects requiring additional health education or assistance.

Mr. Gilliam has determined for each year of the first five-year period the proposed sections are in effect, there is no anticipated impact to local employment.

Comments on the proposed rules may be submitted to Bruce M. Burns, D.C., Program Specialist, Texas Department of Health, Center for Health Statistics, 1100 West 49th Street, Room M-660 Austin, Texas 78751. Comments must arrive no later than 30 calendar days after the date that these proposed sections are published in the *Texas Register*.

The Council will entertain requests for a public hearing until the 25th day after the date the rules are published in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, §108.006 and §108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data collection requirements. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats in order for the incoming data to be substantially valid, consistent, compatible and manageable.

The Health and Safety Code, §§108.002, 108.006, 108.009, 108.010 and 108.011, are affected by the new sections.

§1301.61. Definitions.

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

(1) Accurate and Consistent Data--Data that has been edited by DSHS and subjected to provider validation and certification.

(2) Ambulatory Surgical Care Data--Data for events associated with reporting hospital services, which require surgery to be performed in an operating room on an anesthetized patient.

(3) ANSI 837 Institutional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide.

(4) APC--Ambulatory Payment Classification.

(5) Attending Physician--The individual licensed under the Medical Practice Act (Occupations Code, Chapter 151) who would normally be expected to certify and recertify the medical necessity of the services rendered during the hospital episode.

(6) Audit--An electronic standardized process developed and implemented by DSHS to identify potential errors and mistakes in file structure format or data element content by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(7) Certification File--One or more electronic files (may include reports concerning the data and its compilation process) compiled by DSHS that contain one record for each patient event submitted for each reporting hospital under this subchapter during the reporting quarter and may contain one record for any patient event occurring during one prior reporting quarter for whom additional event claims have been received.

(8) Certification Process--The process by which a provider confirms the accuracy and completeness of the certification file required to produce the public use data file as specified in §1301.66 of this title (relating to Certification of Event Data).

(9) Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write-offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(10) Clinical Classification Software--A classification systems that groups ICD-9-CM diagnoses and procedures into a limited number of clinically meaningful categories.

(11) Comments--The notes or explanations submitted by the reporting hospitals, physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

(12) Council--The Texas Health Care Information Council, until the abolition of the Council, the Department of State Health Services after abolition of the Council.

(13) CPT--Current Procedural Terminology.

(14) Data format--The sequence or location of data elements in an electronic record according to prescribed specifications.

(15) Discharge--The formal release of a patient by a physician authorized to practice in a reporting hospital ambulatory surgical unit or emergency department; that is, the termination of a period of medical services by death or by disposition to a residence or another health care provider.

(16) DSHS--Department of State Health Services, the successor state agency to the Texas Health Care Information Council and the Texas Department of Health.

(17) DRG--Diagnosis Related Group.

(18) EDI--Electronic Data Interchange--A method of sending data electronically from one computer to another. EDI helps providers and payers maintain a flow of vital information by enabling the transmission of claims and managed care transactions.

(19) Electronic Filing--The submission of computer records in machine readable form by modem transfer from one computer to another (EDI) or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to DSHS.

(20) Emergency Department--Department or room within a reporting hospital as determined by federal or state law for the provision of emergency health care.

(21) Emergency Department Data--Events associated with hospital services in an emergency department or emergency room.

(22) Error--Data submitted on a event file which are not consistent with the format and data standards contained in this subchapter or with auditing criteria established by DSHS.

(23) Ethnicity--The status of patients relative to Hispanic background. Reporting hospitals shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(24) Event--The medical screening examination, triage, observation, diagnosis or treatment of a patient with in the authority of a reporting hospital.

(25) Event claim--A set of computer records as specified in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes) relating to a specific patient. "Event claim" corresponds to the ANSI 837 Institutional Guide term, "Transaction set."

(26) Event file--A computer file as defined in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes) periodically submitted on or on behalf of a reporting hospital in compliance with the provisions of this subchapter. "Event File" corresponds to the ANSI 837 Institutional Guide terms, "Communication Envelope" or "Interchange Envelope."

(27) Executive director--The chief administrative officer of the Council or of the department designated by the Department of State Health Services to perform the functions of the Council.

(28) Facility--For the purposes of this subchapter a facility is a reporting hospital.

(29) Facility Type Indicators--An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that reporting hospital (e.g., Hospital based ambulatory surgical unit and hospitals with an emergency department or emergency room). A hospital may have more than one indicator.

(30) Geographic identifiers--A set of codes indicating the public health region and county in which the patient resides.

(31) HCPCS--HCFA's Common Procedure Coding System (HCFA-Health Care Finance Administrations (Now called Centers for Medicare and Medicaid Services)).

(32) HIPPS--Health Insurance Prospective Payment System.

(33) Hospital--A public, for-profit, or nonprofit institution licensed as a general or special hospital (25 TAC §133.2(22)(52)), or a hospital owned by the state.

(34) ICD--International Classification of Disease.

(35) IRB--Institutional Review Board.

(36) Operating or Other Physician--The "physician" licensed by the Texas State Board of Medical Examiners, or "other health professional" licensed by the State of Texas who performed the principal procedure or performed the surgical procedure most closely related to the principal diagnosis.

(37) Other health professional--A person licensed to provide health care services other than a physician. An individual other than a physician who provides diagnostic or therapeutic procedures to patients. The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized by the reporting hospital to examine, observe or treat patients.

(38) Panel--Scientific Review Panel.

(39) Patient account number--A number assigned to each patient by the hospital, which appears on each computer record in a patient event claim. This number is not consistent for a given patient from one hospital to the next, or from one admission to the next in the same hospital. DSHS will delete or encrypt this number to protect patient confidentiality prior to release of data.

(40) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code, Chapter 151.

(41) Provider--For the purposes of this subchapter, a physician or reporting hospital.

(42) Public use data file--A data file composed of event claims which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of ambulatory surgical care and emergency department data imposed by statute.

(43) Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Reporting hospitals shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(44) Reporting hospital--A public, for-profit, or nonprofit institution licensed or owned by this state as a general or special hospital or a hospital owned by the state that volunteers to participate in the data collection, correction, certification and analysis process specified in this subchapter.

(45) Required minimum data set--The list of data elements for which reporting hospitals may submit an event claim for each patient event occurring in the hospital. The required minimum data set is specified in §1301.68(d) of this title (relating to Event Files--Records, Data Fields and Codes) and is only required if the hospital chooses to participate in reporting under this subchapter. This list does not include the data elements that are required by the ANSI 837 Institutional Guide to submit an acceptable event file. For example: Interchange Control Headers and Trailers, Functional Group Headers and Trailers, Transaction Set Headers and Trailers and Qualifying Codes (which identify or qualify subsequent data elements).

(46) Research data file--A customized data file, which includes the data elements in the public use file and may include data elements other than the required minimum data set submitted to DSHS, except those data elements that could reasonably identify a patient or physician. The data elements may be released to a requestor when the requirements specified in §1301.67(j) of this title (relating to Release of Ambulatory Surgical Care and Emergency Department Data from Reporting Hospitals) are completed.

(47) Scientific Review Panel--DSHS' appointees or agent who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the public use data. Described in §1301.69 of this title (relating to Scientific Review Panel).

(48) Submission--The transfer of a set of computer records as specified in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes) that constitutes the event file for one or more reporting hospitals under this subchapter.

(49) Submitter--The person or organization, which physically prepares an event file for one or more reporting hospitals and submits them under this subchapter. A submitter may be a hospital or an agent designated by a hospital or its owner.

(50) TDH--Texas Department of Health, or its successor agency, the Department of State Health Services.

(51) THCIC Identification Number--A string of 6 characters assigned by DSHS to identify hospitals for reporting and tracking purposes.

(52) Uniform patient identifier--A unique identifier assigned by DSHS to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals and patient events. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(53) Uniform physician identifier--A unique identifier assigned by the Council to a physician or other health professional who is reported as attending or treating a patient in a hospital and which remains constant across hospitals. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(54) Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

§1301.62. Collection of Ambulatory Surgical Care and Emergency Department Data.

(a) Reporting hospitals in operation for all or any of the reporting periods described in §1301.63 of this title (relating to Schedule for Filing Event Files) may submit event claims as specified in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes) on all patient events to DSHS. If a hospital chooses to participate in reporting under this subchapter, the hospital shall comply with the requirements in this subchapter. To the extent the medical screening examination, triage, observation, diagnosis or treatment is made by a health professional, other than a physician, data elements specified in §1301.68(d)(33)-(36) of this title shall be filled accordingly or data elements §1301.68(d)(38) or (41) shall be marked with one of DSHS approved temporary "Physician" or "Other health professional" code numbers and data elements §1301.68(d)(31)(A-C) or (34)(A-C) may be left blank. .

(b) All patient events shall be reported by the reporting hospitals, for which the reporting hospital prepares one or more bills for patient services, the reporting hospital shall submit an event claim corresponding to each bill containing the data elements required by §1301.68 of this title (relating to Event Files - Records, Data Fields and Codes). For all patients for which the hospital does not prepare a bill for patient services, the hospital shall submit an event claim containing the required minimum data set.

(c) All reporting hospitals shall submit event files by electronic filing unless the hospital receives an exemption letter from DSHS.

(d) All reporting hospitals shall submit event claims and event files in the format specified in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes).

(e) All reporting hospitals shall submit event files, data certifications and other required information to DSHS or its agents at physical or telephonic addresses specified by DSHS. DSHS shall notify all reporting hospitals and submitters in writing and by publication in the Texas Register at least 30 calendar days before any change in the addresses.

(f) Reporting hospitals may submit event files themselves, or may designate an agent to submit the event files. If a hospital designates an agent, it shall inform DSHS of the designation in writing at least 30 calendar days prior to the agent's submission of any discharge report. The reporting hospital shall inform DSHS in writing at least 30 calendar days prior to changing agents or making the submissions itself.

§1301.63. Schedule for Filing Event Files.

(a) For discharges occurring on or after January 1, 2006, as specified by DSHS, reporting hospitals shall file event files according to the following schedule as shown in paragraphs (1)-(4) of this subsection:

(1) Each event claim covering patient events occurring between January 1 and March 31, inclusive, shall be submitted no later than June 1 of the calendar year in which the discharge occurred.

(2) Each event file covering patient events occurring between April 1 and June 30, inclusive, shall be submitted no later than September 1 of the calendar year in which the discharge occurred.

(3) Each event file covering patient events occurring between July 1 and September 30, inclusive, shall be submitted no later than December 1 of the calendar year in which the discharge occurred.

(4) Each event file covering patient events occurring between October 1 and December 31, inclusive, shall be submitted no later than March 1 of the year following the year in which the discharge occurred.

(b) Extensions to processing due dates may be granted by DSHS in response to a written request signed by the reporting hospital's chief executive officer. Requests must be in writing, must be received at least 5 working days prior to the due date and must be accompanied by adequate justification for the delay.

§1301.64. Instructions for Filing Event Files.

(a) Electronic Data Interchange. Event files may be filed by modem using electronic data interchange (EDI). All event files and event claims shall be reported using the same file and record formats specified in §1301.68 of this title (relating to Event Files - Records, Data Fields and Codes) regardless of the medium of transmission. DSHS shall document instructions for filing event files by EDI and shall make this documentation available to reporting hospitals at no charge and to the public for the cost of reproduction. DSHS shall notify hospitals reporting under this subchapter and their designated agents directly in writing at least 90 days in advance of any change in instructions for filing event files by EDI. DSHS' instructions shall follow Department of Information Resources standards for EDI.

(b) File Transfer Protocol (FTP). Event files may be filed by FTP using a Transmission Control Protocol over Internet Protocol (TCP/IP) Network connection. DSHS shall document instructions for filing event files by FTP and shall make this documentation available to reporting hospitals at no charge and to the public for the cost of reproduction or on DSHS' Internet website. DSHS shall notify hospitals reporting under this subchapter and their designated agents directly in writing at least 90 days in advance of any change in instructions for filing event files by FTP. DSHS' instructions shall follow Department of Information Resources standards for FTP.

§1301.65. Acceptance of Event Files and Correction of Data Content Errors.

(a) Upon receipt of an event file, DSHS shall establish a process to determine if it satisfies minimum criteria for processing. If it does not, DSHS shall establish a process to provide a report to be returned to the submitter regarding the invalid event file in a format and media that is approved for that provider and states the

deficiencies. The reporting hospital shall submit a corrected event file within 10 calendar days of notification by DSHS or DSHS' agent. An event file does not meet minimum standards for processing if the file structure does not conform to the specifications in §1301.68 of this title (relating to Event Files - Records, Data Fields and Codes).

(b) Correction of Data Content Errors.

(1) DSHS shall establish an audit process for all event files accepted for processing. DSHS shall notify the reporting hospital identified from the event file in detail of all errors detected in an event file which was received in an acceptable format as provided in §1301.68 of this title (relating to Event Files - Records, Data Fields and Codes).

(2) Within 30 calendar days of receiving initial notice of errors in an event file, the reporting hospital shall correct all event claims containing errors, add any event claims determined to be missing from the initial event file and resubmit the corrected and/or previously missing event claims. If the reporting hospital disagrees with any identified error, the hospital may indicate that the discharge claim is as accurate as it can be or cannot be corrected. Each reporting hospital shall submit such modified and/or additional event claims as may be required to allow the chief executive officer or the chief executive officer's designated agent to certify the quarterly event file as required by §1301.66 of this title (relating to Certification of Compiled Event Data). Corrections to a event file shall be submitted on approved media and formats as specified in §1301.64 of this title (relating to Instructions for Filing Event Files) and §1301.68 of this title (relating to Event Files-Records, Data Fields and Codes) unless DSHS approves another medium or format.

(3) Within 10 calendar days of receiving corrections to an event file from a reporting hospital, DSHS shall notify the reporting hospital of any remaining errors. The reporting hospital shall have 10 calendar days from receipt of this notice to correct the errors noted or indicate why the data should be deemed acceptable and complete. This process may be repeated until the data is substantially accurate and the reporting hospital is able to certify the event file as required by §1301.66 of this title (relating to Certification of Compiled Event Data) or the deadline for submitting corrections prior to certification is reached. Corrected data is required to be submitted on or before the following dates for the respective quarter's discharges; Quarter 1 - August 1, Quarter 2 - November 1, Quarter 3 - February 1, Quarter 4 - May 1. DSHS may grant an extension to all hospitals with ambulatory surgical units or emergency departments when deemed necessary.

(4) Event claims that have not been previously submitted shall be submitted prior to the deadline for the following quarter's data. Correction and certification of these previously missing or additional event claims for the prior calendar quarter shall be made according to the deadlines established for following quarter in which the data that is scheduled to be processed as specified in §1301.63(a) of this title (relating to the Schedule for Filing Event Files), paragraph (3) of this subsection concerning the acceptance of event files and correction of data content errors), and §1301.66(b) and (d) of this title (relating to the Certification of Compiled Event Data). Corrections to event claims previously submitted or that have a discharge date prior to calendar quarter immediately before the calendar quarter being processed scheduled will not be processed.

(c) DSHS will document format acceptance criteria for event files. DSHS shall make this information available to submitters and reporting hospitals.

§1301.66. Certification of Compiled Event Data.

(a) Within 5 months after the end of each reporting quarter, DSHS shall establish a process to compile one or more electronic data files for each reporting hospital using the event claims received from each reporting hospital. The certification file shall have one record for each patient event during the reporting quarter and one record for any patient event occurring during one prior reporting quarter for which additional event claims have been received. The data files, including reports returned to the reporting hospitals, allows the reporting hospital to provide physicians and other health professionals the opportunity to review, request correction of, and comment on patients for whom and event occurred under the jurisdiction of the reporting hospitals and they are indicated as "attending" or "operating or other". DSHS shall determine the format and medium in which the quarterly file will be delivered to reporting hospitals.

(b) The chief executive officer or chief executive officer's designated agent of each reporting hospital shall mark the appropriate box on the form provided whether the reporting hospital is certifying or not certifying the event data and reports in the certification file specified in subsection (a) of this section. The chief executive officer or chief executive officer's designated agent shall sign and return the form to DSHS by fax or mail. A person designated by the chief executive officer and acting as the officer's agent may sign the certification form. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide DSHS with detailed comments regarding the errors or submit a written request (on a form supplied by DSHS) and provide the data, processes and resources necessary to correct any inaccuracy and certify the certification file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification event data shall be submitted on or prior to the following schedule: Quarter 1 - October 15; Quarter 2 - January 15; Quarter 3 - April 15; Quarter 4 - July 15. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach the justification to the certification form. Election to not certify data does not prevent certification file data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that:

(1) policies and procedures are in place within the reporting hospital's processes to validate and assure the accuracy of the event data and any corrections submitted; and

(2) all errors and omissions known to the reporting hospital have been corrected or the reporting hospital has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted accurately represents the reporting hospital's administrative status of discharged patients for the reporting quarter; and

(4) the reporting hospital has provided physicians and other health professionals a reasonable opportunity to review and comment on the event data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes) (for example, "attending physician" or "operating or other physician" as applicable. The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent and shall address any comments by the physicians or other health professionals; or

(5) if the chief executive officer or the officer's designee elects not to certify the event data file for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and

completeness of the data at the time of the certification shall be included on the certification form. Event claim data that has been audited, returned to the reporting hospital and is not certified, may be released and published in the public use data file and used by DSHS for analysis.

(d) Each reporting hospital shall submit its certification form for each quarter's data to DSHS by the first day of the ninth month (Quarter 1 - December 1; Quarter 2 - March 1; Quarter 3 - June 1; Quarter 4 - September 1) following the last day of the reporting quarter as specified in §1301.63(a)(1)-(4) of this title (relating to Schedule for Filing Event Files). DSHS may extend the deadline for any or all reporting hospitals when deemed necessary.

(e) Reporting hospitals, physicians or other health professionals may submit concise written comments regarding any data submitted by the associated reporting hospitals or relating to services, they have delivered which may be released as public use data. Comments shall be submitted to DSHS on or before the dates specified in subsection (d) of this section, regarding the submission of the certification form. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §1301.64(a) and (b) of this title (relating to Instructions for Filing Event Files).

(f) Failure to submit a signed certification form that is supplied by DSHS on or before the dates specified in subsection (d) of this section corresponding to event data previously submitted shall be considered as not certified.

§1301.67. Release of Ambulatory Surgical Care and Emergency Department Data from Reporting Hospitals.

(a) DSHS shall review and verify the accuracy of the data. Until DSHS determines the data are reliable and valid, data, tables or reports generated from ambulatory surgical care data and emergency department data are not subject to Texas Public Information Act. After DSHS determines the data are reliable and valid, the hospital ambulatory surgical care data or hospital emergency department data, and subsequent reports may be published and made available to the public, on a time schedule DSHS considers appropriate. The public use data file shall be available for public inspection during normal business hours. Event claims in the original format as submitted to DSHS are not available to the public, are not stored at DSHS's office and are exempt from disclosure pursuant to Health and Safety Code, §108.010 and §108.013, and shall not be released. Likewise, patient and physician identifying data collected by DSHS through editing of the reporting hospital data shall not be released. Reporting hospital data collected under this subchapter and determined by DSHS in consultation with the Health Data Collection Workgroup as not reliable or valid shall be kept confidential and not released to the public.

(b) Creation of codes and identifiers. DSHS shall develop the following codes and identifiers, as listed in paragraphs (1)-(2) of this subsection, required for creation of the public use data file and for other purposes.

(1) DSHS shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) DSHS shall create a process for assigning geographic identifiers to each discharge record.

(c) Creation of public use data file. DSHS will create a public use data file by creating a single record for each patient event and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1)-(8) of this subsection:

(1) delete patient, and insured name, Social Security Number, address and certificate data elements and any patient identifying information, if submitted; delete patient control and medical record numbers;

(2) convert patient birth date to age;

(3) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(4) convert procedure and occurrence dates to day of stay values;

(5) delete physician and other health professional names and numbers and assign a alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "attending" or "operating or other" on discharged patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by §108.011(i)(2) of the Health and Safety Code shall be 5, unless DSHS determines that a higher cell size is required to protect the confidentiality of an individual patient or physician. When determining a higher cell size, DSHS shall consider comments submitted by a hospital;

(8) data elements to be included in the public use data file:

(A) Discharge Year and Quarter;

(B) Provider Name (Facility Name);

(C) THCIC Identification Number;

(D) Facility Type Indicators;

(E) Patient Sex/Gender;

(F) Type of Admission;

(G) Source of Admission;

(H) Patient ZIP Code;

(I) County Code;

(J) Public Health Region Code;

(K) Patient State;

(L) Patient Status;

(M) Patient Race;

(N) Patient Ethnicity;

(O) Claim Type Indicator;

(P) Type of Bill;

(Q) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted);

(R) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. (Current version of ICD or CPT codes at the time data is submitted);

(S) Principal Procedure code (if applicable) (Current version of ICD or CPT codes at the time data is submitted);

(T) Other Procedure codes (Up to 24 procedure codes can be submitted and reported) (Current version of ICD or CPT codes at the time data is submitted);

(U) Patient's Reason for Visit (Current version of ICD or CPT codes at the time data is submitted);

(V) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted) up to 9 E-codes can be submitted and reported;

(W) Day of Week Patient is admitted code (Sun. = 1, Mon. = 2, Tues. = 3, Wed. = 4, Thur. = 5, Fri. = 6, Sat. = 7);

(X) Length of Stay;

(Y) Age of patient;

(Z) HCFA-DRG Code (Obtained from the 3M HCFA-DRG Grouper);

(AA) Uniform Physician Identifier assigned to Attending Physician;

(BB) Uniform Physician Identifier assigned to Operating or Other Physician;

(CC) Ambulatory Payment Classifications (APC);

(DD) Ancillary Service--Other Charges;

(EE) Ancillary Service--Pharmacy Charges;

(FF) Ancillary Service--Medical/Surgical Supply Charges;

(GG) Ancillary Service--Durable Medical Equipment Charges;

(HH) Ancillary Service--Used Durable Medical Equipment Charges;

(II) Ancillary Service--Physical Therapy Charges;

(JJ) Ancillary Service--Occupational Therapy Charges;

(KK) Ancillary Service--Speech Pathology Charges;

(LL) Ancillary Service--Inhalation Therapy Charges;

(MM) Ancillary Service--Blood Charges;

(NN) Ancillary Service--Blood Administration Charges;

(OO) Ancillary Service--Operating Room Charges;

(PP) Ancillary Service--Lithotripsy Charges;

(QQ) Ancillary Service--Cardiology Charges;

(RR) Ancillary Service--Anesthesia Charges;

(SS) Ancillary Service--Laboratory Charges;

(TT) Ancillary Service--Radiology Charges;

(UU) Ancillary Service--MRI Charges;

(VV) Ancillary Service--Outpatient Services Charges;

(WW) Ancillary Service--Emergency Service Charges;

(XX) Ancillary Service--Ambulance Charges;

(YY) Ancillary Service--Professional Fees Charges;

(ZZ) Ancillary Service--Organ Acquisition Charges;

(AAA) Ancillary Service--ESRD Revenue Setting Charges;

(BBB) Ancillary Service--Clinic Visit Charges;

(CCC) Total Charges--Ancillary;

(DDD) Total Non-Covered Ancillary Charges;

(EEE) Total Charges;

(FFF) Total Non-Covered Charges;

(GGG) Encounter Identifier - a unique number for each encounter for the quarter;

(HHH) Service Line Revenue Code;

(III) Service Line Procedure Code;

(JJJ) HCPCS/HIPPS Procedure Code;

(KKK) HCPCS/HIPPS Procedure Modifiers (Up to 4 may be submitted and reported);

(LLL) Service Line Charge Amount;

(MMM) Service Line Unit Code;

(NNN) Service Line Unit Count;

(OOO) Service Line Non-Covered Charge Amount; and

(PPP) Patient Country (when address is not in United States of America and confidentiality can be maintained).

(d) Texas State agencies that request data solely for internal use in accordance with Health and Safety Code, §108.012(b,) shall abide by the data users agreement.

(e) DSHS shall establish procedures for screening all requests to assure that filling the request will not violate the provisions of Health and Safety Code, §108.013(c).

(f) The data elements specified for event files in §1301.68 of this title (relating to Event Files--Records, Data Fields and Codes) do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(g) A public use data file, which is specified by the requestor, shall not be considered a "report issued by DSHS" as referenced in Health and Safety Code, §108.011(f).

(h) Requests for data files including data on one or more providers are matters of public record and DSHS shall maintain copies of all requests for two years from the date of receipt. DSHS shall make available on DSHS' Internet site and publish in DSHS' numbered letter for reporting hospitals a summary of all requests received for public use data.

(i) With any public use data file prepared by DSHS, DSHS shall attach all comments submitted by providers, which relate to any data included in the file. DSHS shall also make these comments available at DSHS' offices on DSHS' Internet site.

(j) A research data file may be released provided the following criteria are met:

(1) DSHS has determined, subject to this rule, that data are reliable and valid.

(2) the Ambulatory Surgical Care and Emergency Department Research Data Request Form is completed and submitted to DSHS;

(3) the Scientific Review Panel reviews the research request and has determined the proposed research outcome can be achieved with the requested data;

(4) DSHS' Scientific Review Panel grants authorization to the request or restricts access to specified data elements determined

to be inappropriate for the research proposal in accordance with this subsection of this section (relating to Scientific Review Panel);

(5) the requestor agrees to dispose of the research data using authorized methods by the established end date stated on the written data release agreement; and

(6) the requestor has signed a written data release agreement.

§1301.68. Event Files--Records, Data Fields and Codes.

(a) Reporting Hospitals shall submit event files, electronically in the file format for outpatient hospital bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI ASC X12N form 837 Health Care Claims transaction for institutional claims. ANSI updates this format from time to time by issuing new versions.

(b) DSHS will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the ANSI 837 Institutional Guide, DSHS has specified the location where each the following data elements in this subsection shall be reported in the ANSI 837 Institutional format Guide. Data element content, format and locations may change as state legislative requirements or federal legislative changes (i.e., HIPAA).

(1) Patient race - This data element shall be reported at Loop 2010BA or 2010CA in the segment DMG05 as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/ Aleut, 2 = Asian or, Pacific Islander, 3 = Black, 4 = White and 5 = Other Race. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Loop 2300 in the segment NTE02 as a numeric value. Acceptable codes are 1 = Hispanic or Latino Origin and 2 = Not of Hispanic or Latino Origin. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(3) Other E-codes - These additional E-codes (maximum of 9 other E-codes, a total of 10 E-codes may be submitted) shall be reported in the following ANSI X12N Form 837 locations: Loop 2300, segments, HI05-2, HI06-2, HI07-2, HI08-2, HI09-2, HI10-2, HI11-2 and HI12-2. (The first E-code is generally reported in Loop 2300 segment HI04-2).

(4) THCIC Identification Number - This data element shall be submitted in data segment REF02 (Secondary Identification Number) of one of the followings Loops where the patient received the event services:

(A) Loop 2010AA associated with the "Billing Provider"; or

(B) Loop 2010AB associated with the "Pay-to provider"; or

(C) Loop 2310E associated with the "Service Facility Provider".

(d) Reporting hospitals shall submit the required minimum data set for all patients for which an event claim is required by this subchapter. The required minimum data set includes the following data elements as listed in this subsection:

(1) Patient Name:

(A) Patient Last Name;

(B) Patient First Name; and

(C) Patient Middle Initial.

(2) Patient Address:

(A) Patient Address Line 1;

(B) Patient Address Line 2 (if applicable);

(C) Patient City;

(D) Patient State;

(E) Patient ZIP; and

(F) Patient Country (if address is not in United States of America, or one of its territories).

(3) Patient Birth Date;

(4) Patient Sex;

(5) Patient Race;

(6) Patient Ethnicity;

(7) Patient Social Security Number;

(8) Patient Account Number;

(9) Patient Medical Record Number;

(10) Claim Filing Indicator Code (primary and secondary);

(11) Payer Name - Primary and secondary (if applicable, for both);

(12) National Plan Identifier - for primary and secondary (if applicable) payers (National Health Plan Identification number, if applicable and when assigned by the Federal Government);

(13) Type of Bill;

(14) Statement Dates;

(15) Start of Care:

(A) Start of Care Date; and

(B) Start of Care Hour;

(16) Patient (Discharge) Status;

(17) Patient Discharge Hour;

(18) Principal Diagnosis;

(19) Patient's Reason for Visit;

(20) External Cause of Injury (E-Code) up to 10 occurrences (if applicable);

(21) Other Diagnosis Codes - up to 24 occurrences (all applicable);

(22) Principal Procedure Code (if applicable);

(23) Principal Procedure Date (if applicable);

(24) Other Procedure Codes - up to 24 occurrences (if applicable);

(25) Other Procedure Dates - up to 24 occurrences (if applicable);

(26) Occurrence Code - up to 24 occurrences (if applicable);

(27) Occurrence Code Associated Date - up to 24 occurrences (if applicable);

(28) Value Code - up to 24 occurrences (if applicable);

(29) Value Code Associated Amount - up to 24 occurrences (if applicable);

(30) Condition Code - up to 24 occurrences (if applicable);

(31) Attending Physician or Attending Practitioner Name:

(A) Attending Practitioner Last Name;

(B) Attending Practitioner First Name; and

(C) Attending Practitioner Middle Initial.

(32) Attending Practitioner Primary Identifier (National Provider Identifier, when HIPAA rule is implemented);

(33) Attending Practitioner Secondary Identifier (Texas state license number or UPIN);

(34) Operating Physician or Other Practitioner Name (if applicable):

(A) Operating Physician or Other Practitioner Last Name;

(B) Operating Physician or Other Practitioner First Name; and

(C) Operating Physician or Other Practitioner Middle Initial.

(35) Operating Physician or Other Practitioner Primary Identifier (National Provider Identifier, when HIPAA rule is implemented);

(36) Operating Physician or Other Practitioner Secondary Identifier (Texas state license number or UPIN);

(37) Total Claim Charges;

(38) Revenue Service Line Details (up to 999 service lines) (all applicable);

(A) Revenue Code;

(B) Procedure Code;

(C) HCPCS/HIPPS Procedure Modifier 1;

(D) HCPCS/HIPPS Procedure Modifier 2;

(E) HCPCS/HIPPS Procedure Modifier 3;

(F) HCPCS/HIPPS Procedure Modifier 4;

(G) Charge Amount;

(H) Unit Code;

(I) Unit Quantity;

(J) Unit Rate; and

(K) Non-covered Charge Amount.

(39) Service Provider Name;

(40) Service Provider Primary Identifier - Provider Federal Tax ID (EIN) or National Provider Identifier (when HIPAA rule is implemented);

(41) Service Provider Address:

(A) Service Provider Address Line 1;

(B) Service Provider Address Line 2 (if applicable);

(C) Service Provider City;

(D) Service Provider State; and

(E) Service Provider ZIP; and

(42) Service Provider Secondary Identifier - THCIC 6-digit Hospital ID assigned to each facility

§1301.69. Scientific Review Panel.

(a) DSHS establishes the Scientific Review Panel (Panel) for the purposes of:

(1) evaluating applications for various measures or variables in the ambulatory surgical care and emergency department data "research" file; and

(2) deciding whether the data requests should be granted.

(b) The Scientific Review Panel is abolished at such time as DSHS ceases to maintain an ambulatory surgical care and emergency department data "research" file.

(c) DSHS may establish the scientific review function through a contract with an existing institutional review board that meets federal guidelines or by appointing a separate review panel.

(d) Membership if Scientific Review Panel is appointed. The Scientific Review Panel will consist of the Department of State Health Services Institutional Review Board (DSHS IRB).

(e) Meetings.

(1) The Scientific Review Panel shall meet as necessary to conduct business, but in any case, at least once every three months if applications for all or part of the research file are pending.

(2) A simple majority of the members of the Scientific Review Panel shall constitute a quorum for the purpose of transacting business. All action of the Panel must be approved by majority vote. Each member shall have one vote and may not vote by proxy or in absentia.

(3) Meetings of the Panel or Subcommittees of the Panel shall be posted and conducted in accordance with the Texas Open Meetings Act, Government Code, Chapter 551. All meetings of the Panel or any Subcommittee will be recorded.

(4) Minutes of all Panel and Subcommittee meetings shall be maintained by DSHS staff and shall include the names of members in attendance and a record of all formal actions and votes taken.

(5) DSHS staff shall provide administrative support for the Panel and any Subcommittees, including making of meeting arrangements. Each Panel or Subcommittee member shall be informed of a meeting at least 10 calendar days prior to a meeting.

(6) The Panel and Subcommittees shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(f) Decision-Making Guidelines.

(1) Requests should reasonably identify and justify the requested data elements. Requesters who have detailed information that would assist in justifying the records request are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as

Open Records requests. Requests should include the fee or request determination of the fee.

(2) Fee structures for the public use data file and the research file shall be set by DSHS in consultation with the "Health Data Collection Workgroup".

(3) Waiver or reduction of the fees charged for the public use data file or the research file may be made upon a determination by DSHS in consultation with the "Health Data Collection Workgroup" when such waiver or reduction is in the best interest of the State of Texas and it's citizens.

(4) All requests for data must be submitted in writing, either on the form provided by DSHS or on a similar form containing all of the same information. Denials of written requests will be in writing and will contain the reasons for the denial including, as appropriate, a statement that a document or data element requested is nonexistent or is not reasonably described, or is subject to one or more clearly described exemption(s). Denials will also provide the requester with appropriate information on how to exercise the right of appeal to the DSHS.

(5) In cases where there is an alleged conflict between the Texas Public Information Act and DSHS' procedures, DSHS will refer the issue to the Office of the Attorney General.

(6) Only data elements requested by the requestor and approved for release by the Scientific Review Panel, shall be included in the research file for release to the requestor in accordance with this subchapter.

(g) Reports to the DSHS. The Chair of the Scientific Review Panel shall file with DSHS a written report of all action taken at any meeting of the Panel or of a Subcommittee within three working days of such meeting, including a detailed list of how each participating member voted.

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

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

TRD-200404067
Lewis E. Foxhall, M.D.
Presiding Officer
Texas Health Care Information Council
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER U. USE OF CREDIT INFORMATION OR CREDIT SCORES

28 TAC §5.9941

The Texas Department of Insurance proposes amendments to §5.9941, regarding the allowable differences in rates charged by insurers due solely to differences in credit scores. In general, Insurance Code Article 21.49-2U provides certain requirements pertaining to the use of credit information and credit scoring by insurers in Texas for underwriting or rating certain personal insurance policies. Article 21.49-2U applies to insurers authorized to write property and casualty insurance in this state that write certain types of personal insurance coverage and use credit information or credit reports for the underwriting or rating of that coverage. However, Article 21.49-2U does not apply to farm mutual insurance companies.

Article 21.49-2U, Section 13(b) requires the commissioner to adopt rules regarding the allowable differences in rates charged by insurers due solely to differences in credit scores. The proposed amendments to §5.9941 establish an allowable percentage difference in rates an insurer may charge due solely to credit scoring if the difference in rates is based on sound actuarial principles and fully supported by data filed with the department. Section 5.9941 was adopted on November 10, 2003 and became effective on November 30, 2003. Prior to the adoption of §5.9941, the Texas Department of Insurance received numerous comments from members of the legislature, the public and insurers on proposed §5.9941. Many comments were received concerning the appropriate allowable differences in rates charged by insurers due solely to differences in credit scores. Some commenters suggested that the allowable difference be a dollar amount; most other commenters requested that a percentage amount be set by the Commissioner. The department proposed an amendment to §5.9941 on December 12, 2003. A public hearing was held on January 7, 2004 where many comments were received from insurers, legislators, and members of the public. That proposed credit scoring amendment was withdrawn by operation of law on June 12, 2004 in accordance with TEX. GOV'T CODE §2001.027. After further evaluation of that proposed amendment, the department believes substantive changes need to be made to include additional requirements regarding the use of rates charged by insurers due solely to differences in credit scores.

After further consideration of the statute, comments received and legislative history, the department is proposing an amendment to establish a rate difference due solely to the use of credit scoring that cannot be greater than +/- 10% from what would have been charged had credit scoring not been used. The amendment further provides that if an insurer proposes to use credit scoring to rate personal insurance policies and if the rate difference due solely to credit scoring is greater than +/-10%, the insurer must request and justify an allowable difference in rates and may not use the proposed rate difference until it is permitted by the department. The insurer's request must include actuarial support and information required by the Commissioner. An insurer can reference the Filings Made Easy Guide for information on actuarial support. The proposed amendments to §5.9941 are necessary to ensure that insurance consumers are charged premiums that are reasonable, fair, and related to their risk profiles while minimizing market disruption. The proposed amendments will further promote stability in the market and promote an increase in consumer choices while promoting a competitive environment. The department believes that it is good public policy to set some type of limitation on the allowable differences in rates. The department further believes that to minimize market disruption and to provide stability, insurers must request and justify a difference in rates that exceeds the +/-10% limitation and this must be permitted by the department before an insurer may charge such a

rate. This would assure that any rate increases due to a difference in rates greater than +/-10% are fully supported and justified.

Marilyn Hamilton, Associate Commissioner, Property and Casualty Group, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Hamilton has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of the proposed section will be that consumers will not be charged rates, due solely to the use of credit scoring, that vary more than +/-10% unless they are fully supported by actuarial information that is reasonably related to actual or anticipated loss experience and are permitted by the department. Requiring insurers to request and justify differences in rates charged due to the use of credit scoring minimizes the possibility that consumers will realize unjustified rate increases and minimizes market disruption. The costs of compliance with the proposed section for large, small and micro-businesses result entirely from the legislative enactment of Senate Bill 14, 78th Legislature, Regular Session, and not as a result of the administration or enforcement of the rules. Based upon the cost of labor per hour, there will be no difference in the cost of compliance between a large and small business as a result of the proposal. There is no disproportionate economic impact on small or micro-businesses. The proposed section may not be waived for insurers that qualify as small or micro-businesses because the requirements of the section are prescribed by statute, and the statute does not provide for an exemption.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 2, 2004, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Group, MC 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under Insurance Code Article 21.49-2U and §36.001. The 78th Legislature, Regular Session, enacted Senate Bill 14, which added Article 21.49-2U. Article 21.49-2U, Section 13(a) authorizes the commissioner to adopt rules as necessary to implement the article. Article 21.49-2U, Section 13(b) requires the commissioner to adopt rules regarding the allowable differences in rates charged by insurers due solely to differences in credit scores. 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.

The following statute is affected by this proposal: Rule Statute §5.9941 Insurance Code Article 21.49-2U

§5.9941. Differences in Rates Charged Due Solely to Difference in Credit Scores.

(a) An insurer may vary its rates charged to applicants or insureds for personal insurance policies due solely to credit scoring. The differences in rates charged due solely to credit scoring shall be based on sound actuarial principles and supported by data filed with the department and must meet the following requirements: [.]

(1) The rate differences due solely to the use of credit scoring cannot be greater than +/- 10% from what would have been charged had credit scoring not been used.

(2) Notwithstanding paragraph (1) of this subsection, if an insurer proposes a credit scoring rating structure for rating personal insurance policies in Texas that has a rate differential greater than +/-10%, the insurer must request and justify an allowable difference in rates for its proposed credit scoring rating structure. The request for a rate differential shall include actuarial support and any information required by the Commissioner, including the numbers of policyholders and associated premiums that would be affected by the rate differential. For a definition of "actuarial support," insurers may refer to the Filings Made Easy Guide. The Filings Made Easy Guide may be obtained from the TDI website at www.tdi.state.tx.us or by request from the Texas Department of Insurance, Property and Casualty Intake Unit, Mail Code 104-3B, P.O. Box 14910, Austin, TX 78714-9104.

(3) An insurer may not use a rate differential greater than +/-10% until it is permitted by the department.

(4) An insurer that proposes a rate differential that is not greater than +/-10% is subject to the filing requirements of article 5.13-2, 5.101 or 5.142 of the Insurance Code, whichever is applicable.

(b) A request for a rate differential greater than +/-10% filed [~~Filings~~] under this section must be submitted to the Texas Department of Insurance, [~~no later than March 1, 2004 to the~~] Property & Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104 or to the Texas Department of Insurance, Property & Casualty Intake Unit, 333 Guadalupe, Austin, Texas 78701.

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

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

TRD-200404069
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 463-6327

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CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS

28 TAC §19.713

The Texas Department of Insurance proposes new §19.713, concerning the Public Insurance Adjusters' Rules of Professional Conduct and Ethics. This proposal is required by Texas Insurance Code Article 21.07-5, §18(1). Article 21.07-5 was adopted pursuant to Senate Bill 127, during the 78th Legislature's Regular Session. The proposed rule concisely states certain legal and ethical requirements that are of prime importance for public insurance adjusters' professional conduct. Many additional laws, however, govern public insurance adjusters' conduct, including laws relating to matters of licensure, as well as those defining specific obligations of public insurance adjusters. Accordingly, while this proposal states certain

requirements for the legal and ethical professional conduct of public insurance adjusters, it does not exhaust the legal or ethical requirements that govern their actions.

Proposed §19.713 is necessary to implement Article 21.07-5, §18(1) and further effective regulation of public insurance adjusters by providing public insurance adjusters with a statement of certain legal and ethical requirements that are of prime importance in the conduct of their business. This proposed rule is based upon the recommendations of the public insurance adjusters' advisory committee, appointed by the commissioner pursuant to Insurance Code Article 21.07-5, §18(1), and reflects requirements found in existing law, as well as the National Association of Public Insurance Adjusters' Rules of Professional Conduct and Ethics. The statement of these legal and ethical requirements in proposed §19.713 should result in enhanced protection for consumers and others interacting with public insurance adjusters by providing a concise point of reference for judging the conduct of public insurance adjusters.

Matt Ray, deputy commissioner, licensing division, has determined that for each year of the first five years the proposed section will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed rule. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefit will be enhanced consumer protection, as well as improved public understanding of the role that public insurance adjusters play in the state's insurance industry. Any economic costs to comply with the proposed rule result from the enactment of Insurance Code Article 21.07-5, §18(1), which requires the commissioner to adopt a code of ethics for public insurance adjusters, as well as the other provisions of Article 21.07-5 upon which the requirements of this proposed section are based and not as a result of the adoption, enforcement, or administration of the proposed section. There will be no difference in the cost of compliance between a large and small business as a result of the proposed rule. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed rule would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed section for small or micro businesses, when the Insurance Code requires equal application of these provisions to all affected persons.

To be considered, written comments on the proposal must be submitted no later than 5 p.m. on August 2, 2004 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

This section is proposed under the Insurance Code Article 21.07-5, §18(1) and §36.001. Article 21.07-5, §18(1) directs the commissioner to adopt a code of ethics for public insurance adjusters that governs their conduct. This proposal is based upon the following Insurance Code statutes relating to the conduct of public insurance adjusters. Article 21.07-5, §5(a)(4) requires that public insurance adjusters conduct their business "fairly and in good faith without detriment to the public." Article 21.07-5, §23(j) requires that public insurance adjusters refrain from improper solicitation. Article 21.07-5, §23(m)(1) requires that public insurance adjusters refrain from using misrepresentations in the conduct of their business. Article 21.07-5, §22 sets forth the fees and commissions that public insurance adjusters may charge. Article 21.07-5, §21(a) requires that public insurance adjusters complete continuing education. Article 21.07-5, §§5(8) and 15(a)(8) require that public insurance adjusters possess adequate knowledge and experience to handle their work appropriately. Article 21.07-5, §2 prohibits public insurance adjusters from engaging in the unauthorized practice of law. Article 21.07-5, §23(l) prohibits public insurance adjusters from engaging in activities that may be construed as presenting a conflict of interest or obtaining a financial interest in salvaged property that is the subject of a claim. Article 21.07-5, §§28 and 29 prohibit public insurance adjusters from using advertisements that violate the Insurance Code. Article 21.07-5, §23(d) requires that public insurance adjusters use contract forms that are approved by the commissioner. Finally, §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by the proposal: Insurance Code Article 21.07-5

§19.713. Public Insurance Adjuster Rules of Professional Conduct and Ethics.

(a) This section states certain legal and ethical requirements that are of prime importance for public insurance adjusters' professional conduct. This section does not exhaust the legal or ethical requirements that govern public insurance adjusters.

(b) All public insurance adjuster licensees shall comply with the following requirements:

(1) Licensees shall conduct business with their clients, insurance companies, and the public, in a spirit of fairness and justice.

(2) Licensees shall not employ any improper solicitation which would violate Insurance Code Article 21.07-5 or this subchapter.

(3) Licensees shall not make a misrepresentation, in violation of Insurance Code Article 21.07-5, §23(m)(1), to an insured or to an insurance company in the conduct of their actions as a public insurance adjuster.

(4) Licensees shall charge only commissions and fees which are in compliance with the requirements set forth in Insurance Code Article 21.07-5 and this subchapter.

(5) Licensees shall complete continuing education as required by Insurance Code Article 21.07-5 and this subchapter.

(6) Licensees shall have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their area of expertise.

(7) Licensees shall not engage in the unauthorized practice of law.

(8) Licensees shall avoid situations of conflict of interest, including acquiring any interest in salvaged property or participating in any way, directly or indirectly in the reconstruction, repair or restoration of damaged property that is the subject of a claim adjusted by the licensee, except as allowed in Insurance Code Article 21.07-5 and this subchapter.

(9) Licensees shall not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of public insurance adjusting and that does not comply with Insurance Code Article 21.07-5, this subchapter or other provisions of the Insurance Code.

(10) Licensees shall use only contracts that comply with Insurance Code Article 21.07-5 and this subchapter.

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

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

TRD-200404050
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 463-6327

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PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS

The Texas Workers' Compensation Commission (commission) proposes amendments to §122.2, concerning Injured Employee's Claim for Compensation, and §122.100, concerning Claim for Death Benefits.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

The proposed amendments to §122.2 are to allow submission of an injured employee's claim for compensation in an electronic format and delete the requirement for the injured employee's signature. The proposed amendments to §122.100 are to allow submission of a claim for death benefits in an electronic format and provide the manner of filing subsequent filings of all additional evidence that establishes that the claimant is a legal beneficiary. The electronic filing options provided by the proposed amendments are part of an overriding goal of the commission, in its Business Process Improvement (BPI) project, to improve and streamline agency processes and applications through the use of advanced technology and tools, as appropriate, to increase agency effectiveness, efficiency, and accountability.

Currently, §122.2 specifies the form that must be used by injured employees to file a claim for compensation. In order to achieve standardization with existing rule 102.5, General Rules for Written Communication to and from the Commission, which allows electronic submission of information, the commission proposes to amend subsection (c) to allow reporting of a claim for compensation to the commission either on paper or via electronic transmission, in the form, format, and manner prescribed by the commission.

The commission proposes to amend subsection (c)(6) by adding language to clarify that, if the injury claimed is an occupational disease, the claim must include the name and location of the employer at the time of the last injurious exposure to the hazards of the occupational disease. As a result of this clarification, the commission proposes to delete subsection (d) because it is redundant of subsection (c)(6) as amended.

The commission proposes to delete current subsection (e), which requires the prescribed form TWCC-41 or other written claim for compensation must be signed by the person filing it and change the reference to "no later than" one year to "within" one year. As a result of deleting subsections (d) and (e), the commission proposes to re-designate subsection (f) as subsection (d).

Currently, §122.100 specifies the form that must be used by claimants to file a claim for death benefits. In order to achieve standardization with existing rule 102.5, General Rules for Written Communication to and from the Commission, which allows electronic submission of information, the commission proposes to amend subsection (b) to allow reporting of a claim for death benefits to the commission either on paper or via electronic transmission, in the form, format, and manner prescribed by the commission.

The commission also proposes to amend subsection (c) to clarify that a claimant is required to submit not only a copy of the deceased employee's death certificate but also and any additional evidence that establishes that the claimant is a legal beneficiary of the deceased employee. In subsection (c), paragraphs (1) and (2) are added to address how the additional evidence regarding legal beneficiary status should be submitted depending on whether the claim is filed on paper or electronically. The commission also proposes to amend subsection (c) by deleting certain unnecessary language.

Stacey Jefferson, Director of the commission's Business and Information Technology Services Division, has determined that, for the first five-year period the proposed rules are in effect, the proposed amendments will result in minimal, if any, fiscal impact on state or local governments as a result of enforcing or administering the amended rules. The commission may experience minimal costs associated with staff time involved with any necessary modifications to the instructions, or the potential development of educational materials, associated with the use of the electronic interface referred to in the amended rules. No other state or local governments will be involved in enforcing or administering the amended rules.

Local governments and state governments as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rules as proposed.

Ms. Jefferson has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules will include easier access by claimants to TWCC for purposes of reporting incident details because, in addition to filing standard paper claims, claimants will be able to file the forms either from a computer at home, office, or a TWCC field office; and ultimately allowing access to the filing by associated claim participants, thereby eliminating some requests for copies of claim file information.

There will be no anticipated economic costs to persons required to comply with the rules as proposed because the rule allows, but does not require, electronic filing. There will be no economic costs to injured employees, as these proposed amendments remove a signature requirement and allow easier and greater access to the commission.

There will be no costs of compliance for small businesses and no adverse economic impact on small businesses or micro-businesses as a result of the proposed amendments.

Comments on the proposal must be received by 5:00 p.m., August 2, 2004. You may comment via the Internet by accessing the commission's website at *www.twcc.state.tx.us* and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@ twcc.state.tx.us* or by mailing or delivering your comments to Linda Velásquez at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Ste. 100, Austin, TX 78744.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

SUBCHAPTER A. CLAIMS PROCEDURE FOR INJURED EMPLOYEES

28 TAC §122.2

The amendments are proposed pursuant to Texas Labor Code §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form, manner and procedure for transmission of information to the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §409.003, which sets forth the requirements for an injured employee or person acting on their behalf to file a claim for compensation with the commission; and Texas Labor Code §409.007, which sets forth the requirements for a legal beneficiary or person acting on their behalf to file a claim for death benefits with the commission.

The amendments are proposed under Texas Labor Code §§402.042, 402.061, 409.003, and 409.007.

The previously sited sections of the Texas Labor Code are affected by this proposed rule action. No other code, statute, or article is affected by this rule action.

§122.2. Injured Employee's Claim for Compensation.

(a) An injured employee, or a person acting on the injured employee's behalf, shall file with the commission a written claim for compensation within one year after the date of the injury's occurrence, except as provided in subsection (b) of this section.

(b) An employee whose injury results from an occupational disease, or a person acting on that employee's behalf, shall file with the commission a written claim for compensation within one year after the date the employee knew or should have known that the disease was related to the employment.

(c) The claim should be submitted to the commission either on paper or via electronic transmission, in the form, format, and manner prescribed by the commission, [~~on a Form TWCC 41 prescribed by the commission~~] and should include the following:

(1) the name, address, telephone number (if any), occupation, wage, and social security number of the injured employee;

(2) the length of time the employee worked for the employer prior to the date of injury;

(3) the date, time, and location the injury occurred (or the date the employee knew or should have known that the occupational disease was related to the employment);

(4) a description of the circumstances and nature of the injury;

(5) the names of witnesses (if any);

(6) the name and location of the employer at the time of the injury (or, if the injury claimed is an occupational disease, the name and location of the employer at the time of the last injurious exposure to the hazards of the occupational disease);

(7) the name of the employee's immediate supervisor;

(8) the name and address of at least one health care provider that has treated the employee for the injury; and

(9) the identity of the person (if any) acting on behalf of the injured employee.

[~~(d) If the injury claimed is an occupational disease, the claim shall list the name and location of the employer at the time of the last injurious exposure to the hazards of the disease if known.~~]

[~~(e) The prescribed Form TWCC-41 or other written claim for compensation must be signed by the person filing it.~~]

(d) [~~(f)~~] Failure to file a claim for compensation with the commission no later than one year from the incident shall relieve the employer and the employer's insurance carrier from liability under the Act unless:

(1) good cause exists for failure to file a claim in a timely manner; or

(2) the employer or insurance carrier does not contest the claim.

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

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

TRD-200404054
Susan Cory
General Counsel
Texas Workers' Compensation Commission
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For further information, please call: (512) 804-4287

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SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

28 TAC §122.100

The amendments are proposed pursuant to Texas Labor Code §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form, manner and procedure for transmission of information to

the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §409.003, which sets forth the requirements for an injured employee or person acting on their behalf to file a claim for compensation with the commission; and Texas Labor Code §409.007, which sets forth the requirements for a legal beneficiary or person acting on their behalf to file a claim for death benefits with the commission.

The amendments are proposed under Texas Labor Code §§402.042, 402.061, 409.003, and 409.007.

The previously sited sections of the Texas Labor Code are affected by this proposed rule action. No other code, statute, or article is affected by this rule action.

§122.100. Claim for Death Benefits.

(a) In order for a legal beneficiary, other than the subsequent injury fund, to receive the benefits available as a consequence of the death of an employee which results from a compensable injury, a person shall file a written claim for compensation with the commission within one year after the date of the employee's death.

(b) The claim should be submitted to the commission either on paper or via electronic transmission, in the form, format, and manner prescribed by the commission, [~~on a Form TWCC 42 prescribed by the commission~~] and should include the following:

(1) the claimant's name, address, telephone number (if any), social security number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, social security number (if known)[~~,~~] and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death; and

(D) other known legal beneficiaries.

(c) A claimant shall file with the commission [~~Each claim shall be accompanied by~~] a copy of the deceased employee's death certificate and any additional documentation or other[~~. In addition, each claimant shall file~~] evidence that establishes that the claimant is a legal beneficiary of the deceased employee. [~~under the Act, §4.42. (See §§132.2-132.6 of this title (relating to Determination of Facts of Dependent Status; Eligibility of Spouse To Receive Death Benefits; Eligibility of a Child To Receive Death Benefits; Eligibility of a Grandchild To Receive Death Benefits; and Eligibility of Other Surviving Dependent's To Receive Death Benefits) for required proof of eligibility.)~~]

(1) If the claim is filed with the commission in paper format, the additional evidence regarding legal beneficiary status shall be filed at the same time as the claim.

(2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper format and sent either by mail, facsimile, or hand delivery.

(d) Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(e) Failure to file a claim for death benefits within one year after the date of the employee's death shall bar the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent; or

(2) good cause exists for failure to file the claim in a timely manner.

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

Filed with the Office of the Secretary of State on June 23, 2004.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 804-4287

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 377. HYDROGRAPHIC SURVEY PROGRAM

31 TAC §377.3

The Texas Water Development Board (board) proposes an amendment to 31 TAC §377.3, relating to the Hydrographic Survey Program. The proposed amendment to §377.3(a) revises the authority of the executive administrator to execute contracts to conduct hydrographic surveys to include the authority to execute contracts with any entity.

The proposed amendment to §377.3(a) inserts the language "with any person" to reflect that the executive administrator may execute a contract for a hydrographic survey with any person rather than just the political subdivisions and agencies listed in the existing subsection. The board has encountered instances in which a hydrographic survey is requested for a reservoir that serves as the water supply a political subdivision of this state but is actually owned by a water supply corporation or other private entity. While the survey will benefit the political subdivision as well as the state, the contract should be executed with the entity that owns or operates the lake. This proposed amendment would provide that authority to the executive administrator. The remaining portion of the section is rearranged to retain the statutory requirements that a survey be performed upon the request of a political subdivision or agency of this state, a neighboring state, or a federal agency, and if the information collected will benefit this state. These requirements are imposed as a condition for the executive administrator to execute a contract to perform the survey in order to insure compliance with the statute.

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 to state or local government as a result of enforcement and administration of this section.

Ms. Callahan has also determined for the first five years that the section, as proposed, is in effect the public benefit anticipated as a result of implementing the proposed section will be to provide the board with greater flexibility to perform hydrographic surveys that benefit political subdivisions and the state. Ms. Callahan has further determined there will not be increased economic cost to small businesses or individuals required to comply with the section as proposed because the provisions apply only to political subdivisions applying for board assistance.

It is estimated that the rule amendment will not adversely affect local economies because the rule does not require activity that the parties do not deem beneficial.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Attorney, 512/475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §15.805.

Cross-reference to statute: Water Code, Chapter 15, Subchapter M.

§377.3. Studies.

(a) The executive administrator may negotiate and execute receivable contracts with any person to perform hydrographic surveys in this state or outside of this state. In order to execute the contract, the executive administrator must: [~~if the information collected will benefit this state with:~~]

(1) receive a written request to perform the survey from the authorized representative of a:

(A) political subdivision or agency of this state;

(B) political subdivision or agency of a neighboring state; or

(C) federal agency; and

(2) find that the information collected will benefit this state.

[~~(1) political subdivisions or agencies of this state;~~]

[~~(2) political subdivisions or agencies of a neighboring state; or~~]

[~~(3) a federal agency.~~]

(b) Fees collected for the studies will be deposited into and costs of conducting the studies will be paid from the hydrographic survey account of the water assistance fund.

(c) Hydrographic surveys may include, but are not limited to, the following:

(1) determining and delineating the form and position of a body of water;

(2) evaluating the profiles and capacities of a water body;

(3) evaluating available water supplies;

(4) evaluating levels, rates, and quality of sediment levels;

(5) mapping of bathymetric contours, obstructions to navigation, or other specialized hydrographic mapping;

(6) processing, archiving, retrieving, and providing hydrographic data;

(7) potential mitigative measures; and

(8) collecting geohydrologic information from water-bearing formations.

(d) The executive administrator may determine priorities when scheduling conflicts exist between competing applications for hydrographic services.

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

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

TRD-200403973
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: August 18, 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 S. MOTOR FUEL TAX

34 TAC §3.434

The Comptroller of Public Accounts proposes a new §3.434, concerning liquefied gas tax decal. The rule was originally filed as new §3.744, appearing in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5304), and is being re-filed to comply with Texas Register requirements for numbering sequence. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides a liquefied gas decal rate schedule, sets out exceptions to liquefied gas tax, discusses the display of decals, and provides guidance for refunds of prepaid liquefied gas tax.

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

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

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

The new rule 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 Tax Code, Title 2.

The new rule implements the Tax Code, §§162.302, 162.3021, 162.305, 162.307, 162.309, and 162.311.

§3.434. Liquefied Gas Tax Decal (Tax Code, §§162.302, 162.3021, 162.305, 162.307, 162.309, and 162.311).

(a) Effective date. This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Use of decal. Except as provided in subsections (c), (d), and (g) of this section, a person who operates a motor vehicle that is required to be licensed in Texas for use on the public highways of Texas and that is powered by natural gas, methane, ethane, propane, butane, or a mixture of those gases, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, must:

(1) obtain from the comptroller a liquefied gas decal; and

(2) prepay the liquefied gas tax to the comptroller on an annual basis.

(c) Motor Vehicle Dealer. A motor vehicle dealer registered under Transportation Code, Chapter 503, must pay the liquefied gas tax to a licensed liquefied gas dealer when the fuel is delivered into the fuel supply tanks of each motor vehicle that display a motor vehicle dealer decal and that is held for resale.

(d) Interstate trucker. An interstate trucker registered under a multistate tax agreement (International Fuel Tax Agreement), must pay the liquefied gas tax to a licensed liquefied gas dealer when the fuel is delivered into the fuel supply tanks of motor vehicles that have two axles and a registered gross weight in excess of 26,000 pounds; have three or more axles, or are used in combination and the registered gross weight of the combination exceeds 26,000 pounds, and that display current multistate tax agreement (International Fuel Tax Agreement) decals.

(e) Vehicle registered in another state. A liquefied gas tax decal cannot be issued to a motor vehicle registered in a state other than Texas. Owners of such vehicles must pay tax to a licensed liquefied gas dealer on fuel delivered into the fuel supply tanks.

(f) Application. Each person purchasing liquefied gas for use in a liquefied gas powered motor vehicle must submit an annual application to the comptroller for each vehicle.

(1) Initial application. An applicant initially applying for a liquefied gas tax decal for a Class A- F motor vehicle must purchase a decal based on an estimate of miles that will be driven during the next one-year period.

(2) Renewal. The applicant must produce an ending odometer reading on the renewal application. In the absence of an ending odometer reading, the previous year's mileage will be presumed to be at least 15,000 miles. Applications for the upcoming year should be submitted during the month of expiration of the current decal.

(A) The liquefied gas tax does not apply to miles traveled outside the state. A record of miles traveled by the motor vehicle outside Texas must be maintained and submitted with the renewal each year. The record must include the date(s) of travel, beginning and ending odometer readings and destination.

(B) Special use vehicles. Vehicles required to be licensed for highway use but whose main purpose, design, and use is off the highway may renew a liquefied gas decal for a rate less than the mileage indicated on the odometer if a record or log indicating the miles traveled on the highway by the vehicle is maintained and attached to the renewal application.

(g) Exceptions.

(1) School district transportation and county exceptions. The liquefied gas tax does not apply to liquefied gas sold to public school districts and counties in this state, or to commercial transportation companies providing transportation services to public school districts in this state. These transportation companies must obtain letters of exception from the comptroller, as discussed in §3.448 of this title (relating to Transportation Services for Texas Public School Districts).

(2) Decal not required. A public school district, a commercial transportation company providing transportation services to a public school district and holding a valid letter of exception from the comptroller, or a county in this state operating a motor vehicle powered by liquefied gas is not required to prepay the liquefied gas tax and obtain a decal for the motor vehicle.

(h) Rate schedule.

(1) The following rate schedule (based on mileage driven the previous year) applies.
Figure: 34 TAC §3.434(h)(1)

(2) Transit company. A special use liquefied gas tax decal and tax is required for the following type of vehicles: Class T: Transit carrier vehicles operated by a transit company, $444.

(i) Display of decal. The decal shall be affixed to the inside, lower right corner of the windshield (passenger side) of the vehicle. An expired or invalid liquefied gas tax decals shall be removed before installing a new decal or transferring ownership of the motor vehicle.

(j) Refunds; transfer of decal. If a motor vehicle bearing a liquefied gas tax decal is sold, transferred, destroyed, or the liquefied gas carburetor system (regulator or fuel supply tank) is removed from the motor vehicle the owner is entitled to a refund of the unused portion of the advanced taxes paid for the decal year. The owner must submit to the comptroller the liquefied gas tax decal with an affidavit identifying the motor vehicle and circumstances for requesting a refund. The comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the decal year.

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

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403883
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.437

The Comptroller of Public Accounts proposes a new §3.437, concerning trip permit in lieu of interstate trucker license. The rule was originally filed as new §3.747, appearing in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5304), and is being re-filed to comply with Texas Register requirements for numbering sequence. The new rule incorporates legislative changes in

House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides qualification for a trip permit, conditions for trip permit use, procedures for obtaining trip permit, and limitations on the use of trip permits.

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

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

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

The new rule 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 Tax Code, Title 2.

The new rule implements Tax Code, §§162.003, 162.106, 162.110, 162.207, and 162.211.

§3.437. Trip Permit in Lieu of Interstate Trucker License (Tax Code, §§162.003, 162.106, 162.110, 162.207, and 162.211).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Who may qualify. A person entering Texas for commercial purposes with a motor vehicle that has two axles and a registered gross weight in excess of 26,000 pounds; or has three or more axles, or is used in combination and the registered gross weight of the combination exceeds 26,000 pounds, may purchase a temporary trip permit in lieu of the required interstate trucker license or registration under a multistate tax agreement (International Fuel Tax Agreement) if no more than five entries into the state are made during a calendar year.

(c) Conditions.

(1) A trip permit must be obtained before or at the time of entry into Texas.

(2) The trip permit is valid for 20 days from date of purchase.

(3) The trip permit may be used for only one entry into the state.

(d) Procedures.

(1) A fee of $50 for the trip permit shall be paid to the Texas comptroller.

(2) The fee may be paid in the form of a cashier's check or a money order delivered by mail or wire service to the Texas comptroller's office, Austin.

(3) The receipt from the cashier's check or money order shall be marked "trip permit" and, identify the motor vehicle by license plate number or the manufacture's vehicle identification number.

(4) The receipt must be carried in the vehicle for which the tax payment is made.

(e) Limitations. Persons who make more than five entries in a calendar year must obtain an interstate trucker license or register under a multistate tax agreement (International Fuel Tax Agreement).

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

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403884
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.438

The Comptroller of Public Accounts proposes a new §3.438, concerning signed statements for purchasing dyed diesel fuel tax free. The rule was originally filed as new §3.748, appearing in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5304), and is being re-filed to comply with Texas Register requirements for numbering sequence. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides registration for end user numbers, sets out the content of a signed statement, and describes the limitations on the use of signed statements.

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

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

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

The new rule 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 Tax Code, Title 2.

The new rule implements Tax Code, §162.206.

§3.438. Signed Statements for Purchasing Dyed Diesel Fuel Tax Free (Tax Code, §162.206).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) End User Number. A person who wants to use a signed statement to purchase dyed diesel fuel tax free for use in nonhighway

equipment must apply to the comptroller for an End User Number. The comptroller will issue to a qualified applicant an End User Number with a prefix of DD (for non-agriculture off road equipment) or AG (for agriculture off road equipment) depending on the manner in which the applicant will use the dyed diesel fuel. A person cannot use a signed statement to purchase tax-free dyed diesel fuel unless the person holds an End User Number issued by the comptroller.

(c) Signed Statement. A person with a valid End User Number may purchase dyed diesel fuel tax free for nonhighway use by providing the seller with a signed statement subject to the limitations that are stated in paragraphs (2), (3) and (4) of this subsection. Copies of the blank signed statements are available for inspection at the office of the Texas Register. Copies may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528 or requested by calling 512/463-4600, or our toll-free number 1-800-252-1383. (From a Telecommunication Device for the Deaf (TDD) only, call 512/463-4621 or 1-800-248-4099 toll free) Taxpayers may download copies at www.window.state.tx.us.

(1) The signed statement must include the purchaser's End User Number, must be signed by the buyer or the buyer's authorized representative, and must specify that:

(A) only dyed diesel fuel will be purchased using the signed statement;

(B) all dyed diesel fuel will be used by the buyer and will not be resold; and

(C) none of the dyed diesel fuel will be delivered into the fuel supply tanks of motor vehicles operated on public highways.

(2) A person issued an End User Number beginning with DD may buy, and a licensed diesel fuel supplier, permissive supplier, or distributor may sell, dyed diesel fuel tax free using a signed statement subject to the following limitations:

(A) not more than 7,400 gallons of dyed diesel fuel may be purchased or sold in a single delivery; or

(B) not more that 10,000 gallons of dyed diesel fuel may be purchased or sold to a purchaser during a month. The purchase, sale, or delivery that causes the 10,000 gallon limit to be exceeded during a month is not taxable. Any subsequent purchase, sale, or delivery made during the same month is taxable.

(3) A person who has been issued an end user number beginning with DD and who uses the dyed diesel fuel exclusively in the original production of oil and gas, or to increase the production of oil and gas, must obtain a letter of exception authorizing the person to exceed the 10,000 gallon limit. Examples of uses that may occur in the original production or to increase production of oil and gas include the use of dyed diesel fuel to drill, fracture, perforate, squeeze cement, acidize, log, plug back, complete, plug and abandon, install a casing liner, pull or reset a casing liner, swab, drill out a plug, jet, pack gravel or workover, and perform a hot oil treatment on a formation. Oil and gas production does not include maintaining the site, mowing, painting, gauging tanks, changing pumps, performing rod or tubing jobs, fishing for rods or tubing, repairing a tubing leak, changing a packer or anchor, performing hot oil or water treatment on casing, tubing or flow lines, and transporting. A person who uses dyed diesel fuel exclusively in the original production of oil and gas or to increase the production of oil and gas, may buy, and a licensed diesel fuel supplier, permissive supplier, or distributor may sell, dyed diesel fuel tax free by using a letter of exception and a signed statement, subject to the following limitations:

(A) not more than 7,400 gallons of dyed diesel fuel may be purchased or sold in a single delivery; or

(B) not more than 25,000 gallons of dyed diesel fuel may be purchased or sold to a purchaser during a calendar month. The purchase, sale, or delivery that causes the 25,000 gallon limit to be exceeded during a calendar month is not taxable. Any subsequent purchase, sale, or delivery made during the same calendar month is taxable.

(4) A person who has been issued an end user number beginning with AG and who uses dyed diesel fuel exclusively for an agricultural purpose as described in Tax Code, §162.001, may buy, and a diesel fuel licensed supplier, permissive supplier, or distributor may sell, dyed diesel fuel tax free using a signed statement subject to the following limitations:

(A) not more that 7,400 gallons of dyed diesel fuel may be purchased or sold in a single delivery; or

(B) not more than 25,000 gallons of dyed diesel fuel may be purchased or sold to an end user during a calendar month. The purchase, sale, or delivery that causes the 25,000 gallon limit to be exceeded during a calendar month is not taxable. Any subsequent purchase, sale, or delivery made during the same calendar month is taxable.

Figure: 34 TAC §3.438(c)(4)(B)

(d) A person who exceeds the limitations in subsection (c) of this section shall be required to obtain a dyed diesel fuel bonded user license.

(e) A separate operating division of a corporation may apply for and receive an End User Number to buy dyed diesel fuel tax free using a signed statement if the division:

(1) does not resell the fuel;

(2) consumes the fuel; and

(3) maintains separate storage apart from other corporate divisions.

(f) The signed statement remains in effect until:

(1) it is revoked in writing by either the buyer or seller; or

(2) the comptroller notifies the supplier or distributor in writing or by means of electronic transmission that the buyer may no longer make tax-free purchases.

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

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403885
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.443

The Comptroller of Public Accounts proposes new §3.443, concerning diesel fuel tax exemption for water, fuel ethanol, biodiesel, and biodiesel mixtures. The rule was originally filed as new §3.753, appearing in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5304), and is being re-filed to comply with Texas Register requirements for numbering sequence. The new rule incorporates legislative changes in House Bill 2458,

78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule provides an exception from the motor fuels tax on biodiesel or to the volume of water, ethanol, or biodiesel blended with taxable diesel fuel. The new rule provides definitions, invoice documentation requirements, storage tank and retail pump labeling requirements, refund procedures, and reporting requirements of interstate commercial carriers licensed under the International Fuel Tax Agreement.

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

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

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

The new rule 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 Tax Code, Title 2.

The amendment implements Tax Code, §§162.003, 162.204, and 162.227.

§3.443. Diesel Fuel Tax Exemption for Water, Fuel Ethanol, Biodiesel, and Biodiesel Mixtures (Tax Code, §§162.003, 162.204, and 162.227).

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

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

(1) Water-based diesel fuel--a combination of water, petroleum diesel fuel, emulsifier, and seasonal additives (when necessary) into an emulsion that is suitable or used for the propulsion of a diesel-powered motor vehicle.

(2) Fuel ethanol--alcohol that is made from agricultural products and bioethanol that is made from cellulosic biomass materials.

(3) Biodiesel--a fuel comprised of monoalkyl esters of long chain fatty acids generally derived from vegetable oils or fats, designated B100, and meeting the requirements of ASTM D 6751.

(4) Biodiesel Blend--a blend of biodiesel fuel meeting ASTM D 6751 with petroleum based diesel fuel, designated Bxx where xx represents the volume percentage of biodiesel fuel in the blend. (Example: B20 is 20% biodiesel and 80% petroleum diesel)

(c) Diesel fuel tax exception. The tax imposed on the first sale or use of diesel fuel in this state does not apply to biodiesel or to the volume of water, fuel ethanol, or biodiesel that is blended with taxable diesel fuel, when the finished product is clearly identified on the retail pump, storage tank, and sales invoice as biodiesel or a combination of diesel fuel and water, fuel ethanol, or biodiesel.

(d) Invoice documentation.

(1) The volume of biodiesel must be identified on the sales invoice on each sales transaction, and must continue to be identified on sales invoices until the blended product is sold to the ultimate consumer.

(2) The volume of water, fuel ethanol, or biodiesel that is combined with taxable diesel fuel must be identified on the sales invoice on each sales transaction after the water, fuel ethanol, or biodiesel is first blended with taxable diesel fuel, and must continue to be identified on sales invoices until the blended product is sold to the ultimate consumer.

(3) A sales invoice must:

(A) identify a water-based diesel fuel, ethanol blended diesel fuel, biodiesel, or biodiesel blend by a commonly accepted commercial or industry name for the blended product;

(B) list the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest tenth of one percent) of the blended product that is water, fuel ethanol, or biodiesel;

(C) list the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest tenth of one percent) of the blended product that is taxable diesel fuel. Taxable diesel fuel includes emulsifiers and additives, but not water, fuel ethanol, or biodiesel; and

(D) list the basis of calculating the tax (if a taxable sale) as either $0.20 for each gallon of taxable diesel fuel in the blended product or a ratable tax rate based on the percent of taxable diesel in the blended product. For example, the invoice for the sale of 100 gallons that is a blend of 20% water and 80% taxable diesel fuel may list: state diesel fuel tax of $0.20 per gallon on 80 gallons, or state diesel fuel tax of $0.16 per gallon on 100 gallons of water-based diesel fuel.

(e) Notice required on storage tank and retail pump.

(1) A notice must be posted in a conspicuous location on each storage tank and retail pump from which biodiesel is stored or sold until sold to the ultimate consumer.

(2) A notice must be posted in a conspicuous location on each storage tank and retail pump from the time that the water, fuel ethanol, or biodiesel is first blended with taxable diesel fuel until the blended product is sold to the ultimate consumer, and state the volume percentage of water, fuel ethanol, or biodiesel that is blended with petroleum diesel fuel.

(3) The notice must:

(A) identify the product by the common industry name or commercial name of the blended product,

(B) state the percentage (rounded to the nearest tenth of one percent) of the finished blended product that is water, fuel ethanol, or biodiesel, and

(C) state the percentage (rounded to the nearest tenth percent of one percent) of the finished blended product that is taxable diesel fuel. Taxable diesel fuel includes emulsifiers and additives, but not water, fuel ethanol, or biodiesel.

(f) Refund of diesel tax paid. The ultimate consumer who has paid tax on biodiesel or on the percentage of product that is water, fuel ethanol, or biodiesel may file a claim for refund of taxes that have been paid on biodiesel or on the volume of water, fuel ethanol, or biodiesel that is blended with taxable diesel fuel as provided by §3.432 of this

title (relating to Refunds on Gasoline and Diesel Fuel Tax). The refund claim must be supported with purchase invoice(s) as described in subsection (d) of this section. The total volume of diesel fuel that is purchased is presumed to be taxable diesel fuel if the purchase invoice does not meet the requirements of subsection (d) of this section.

(g) Commercial motor vehicles licensed under the International Fuel Tax Agreement (IFTA).

(1) A water-based diesel fuel, ethanol blended diesel fuel, biodiesel, or biodiesel blend that is delivered into the fuel supply tank(s) of a motor vehicle that is licensed under the IFTA is presumed to be used in the jurisdiction in which it was purchased. This presumption may be overcome if it is shown that the total amount of water-based diesel fuel, ethanol blended diesel fuel, biodiesel, or biodiesel blend that is purchased in other IFTA jurisdictions is greater than the amount of total diesel fuel used in other IFTA jurisdictions by all diesel-powered motor vehicles that the IFTA licensee operates.

(2) In calculating the IFTA fleet average mile-per-gallon, the total gallons of diesel fuel that are consumed includes the total gallons of water-based diesel fuel, ethanol blended diesel fuel, biodiesel, or biodiesel blend.

(3) An IFTA licensee who overpays the tax on a water-based diesel fuel, ethanol blended diesel fuel, biodiesel, or biodiesel blend by way of an IFTA tax return may request a refund from the comptroller. A refund claim must be supported with purchase invoice(s) as described in subsection (d) of this section. The total volume of diesel fuel that is purchased is presumed to be taxable diesel fuel if the purchase invoice(s) do not meet the requirements of subsection (d) 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 June 15, 2004.

TRD-200403886
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.448

The Comptroller of Public Accounts proposes new §3.448, concerning transportation services for Texas public school districts. The rule was originally filed as new §3.758, appearing in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5304), and is being re-filed to comply with Texas Register requirements for numbering sequence. The new rule incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to add Tax Code, Chapter 162, relating to motor fuel taxes and the repeal of Tax Code, Chapter 153. The new rule prescribes the application, exception letter, record requirements, refunds, and method to compute taxable use by a commercial transportation company providing transportation services for a public school district in Texas.

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

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

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

The new rule 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 Tax Code, Title 2.

The amendment implements Tax Code, §§162.104, 162.125, 162.204, 162.227, and 162.3041.

§3.448. Transportation Services for Texas Public School Districts (Tax Code, §§162.104, 162.125, 162.204, 162.227, and 162.3041).

(a) Effective date. This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Application. To purchase gasoline or diesel fuel less the state tax and not prepay the liquefied gas tax for vehicles equipped to use liquefied gas, a commercial transportation company that provides transportation services to a public school district in Texas must submit to the comptroller an affidavit stating:

(1) that the company has contracted with a specific public school district to provide transportation services (other than charter trips) for the school district;

(2) that motor fuel purchased tax free will be used exclusively by the company to provide the transportation services for the school district; and

(3) the vehicle identification number and vehicle license plate number for each vehicle equipped to use liquefied gas to furnish transportation services exclusively to public school districts in Texas.

(c) Exception letter. After review and approval of the affidavit, the comptroller shall issue to the company a letter of exception specifying that the company may purchase tax free gasoline and/or diesel fuel used to provide transportation services to a public school district in Texas. The letter of exception may be reproduced for licensed suppliers and licensed distributors. An exception letter shall be issued to the company for specific vehicles operated using liquefied gas. The letter may be furnished to inspectors when a liquefied gas-powered bus is undergoing a safety inspection and to liquefied gas dealers when the company purchases liquefied gas tax free to be placed into the fuel supply tank of the bus.

(d) Records required. A commercial transportation company providing transportation services to a Texas public school district shall keep separate records for tax-free and tax-paid fuels. Both sets of records must show:

(1) the number of gallons of gasoline, diesel fuel, and liquefied gas on hand on the first day of each month;

(2) the number of gallons of gasoline, diesel fuel, and liquefied gas purchased or received, showing the name of the seller and the date of each purchase;

(3) the date and number of gallons of gasoline, diesel fuel, and liquefied gas delivered into the fuel supply tanks of vehicles used to furnish transportation services to public school districts;

(4) the date and number of gallons of gasoline, diesel fuel, and liquefied gas delivered into the fuel supply tanks of vehicles used to furnish transportation services other than to public school districts;

(5) the date and number of miles traveled to provide transportation services for the public school district, including starting point, destination, purpose of trip, beginning and ending odometer readings, vehicle identification number, and the vehicle license plate number;

(6) the date and number of miles traveled to provide transportation services for customers other than public school district(s), including the beginning and ending odometer readings, vehicle identification number, and vehicle license plate number of the vehicle so used.

(e) Taxable use. A commercial transportation company forfeits its right to purchase fuel tax free if:

(1) the fuel is sold, other than to a Texas public school district for which the commercial transportation company provides transportation services; or

(2) the fuel is used in a vehicle for any purpose other than providing transportation services for a Texas public school district.

(f) Cancellation or completion of contract. A commercial transportation company shall report the following to the comptroller within five days of the cancellation or completion of a contract with a Texas public school district:

(1) the total number of gallons of tax-free gasoline and/or diesel fuel on hand in storage tanks and in the fuel supply tanks of motor vehicles, and remit the tax due on the ending tax-free inventory; and/or

(2) in the case of a liquefied gas vehicle, obtain a liquefied gas tax decal for previously excepted vehicles used to provide transportation services under the canceled/completed contract.

(g) Charter trips. A commercial transportation company that charters round-trip transportation to special events for a Texas public school district may claim a refund for the fuel used in the charter vehicle.

(1) The refund shall be computed by starting the trip with a full fuel supply tank or tanks, maintaining records of the fuel delivered into the fuel supply tank or tanks of the vehicle during the trip, and filling the fuel supply tank or tanks upon arrival back at the origination point. The number of gallons delivered into the fuel supply tank or tanks after the start of the trip will be the number of gallons upon which the charter company may claim a tax refund.

(2) The records required by subsection (d)(5) of this section shall also be maintained for each charter trip.

(3) The commercial transportation company shall keep a copy of the billing to the school district for the trip.

(h) Refunds. A commercial transportation company providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline and diesel fuel used exclusively for such transportation 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.

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403887

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 15. MEDICAID ELIGIBILITY

The Texas Department of Human Services (DHS) proposes to amend §15.442 and §15.503, concerning resources and budgets and payment plans, in its Medicaid Eligibility chapter. The purpose of the amendments is to ensure compliance with federal law concerning the treatment of annuities, and to implement an option available under federal law that requires an institutionalized spouse to divert income to a community spouse before the institutionalized spouse may request that the protection of the couple's resources be expanded.

The proposed amendment to §15.442 clarifies that an annuity purchased by a person is a countable resource for Medicaid eligibility purposes unless the annuity meets certain criteria, and removes the current requirement that an annuity purchase be considered a transfer of assets if the annuity does not name the state of Texas, DHS, or its successor agency as residuary beneficiary. The amendment is in accord with recent interpretive guidance provided by the federal Centers for Medicare and Medicaid Services (CMS). CMS has recently informed states that the federal regulation at 20 Code of Federal Regulations (CFR) §416.1201 requires an annuity to be counted as a resource if it can be sold. CMS has also clarified that the purchase of an annuity is not necessarily a transfer of assets for which a penalty period of Medicaid ineligibility may be imposed merely because the annuity does not name the state as residuary beneficiary. The amendment to §15.442(g) would also implement an option available to the state under §1902(r)(2) of the Social Security Act (42 U.S.C. §1396a(r)(2)) to be less restrictive in the counting of annuities than that which is otherwise required by 20 CFR 416.1201. Under this option, DHS would not count as a resource an annuity that meets the criteria described in the proposal at §15.442(g)(1).

The proposed amendment to §15.503 relates to the procedure described in §1924(d) of the Social Security Act (42 U.S.C. §1396r-5) for increasing the amount of a married couple's resources that are not counted in determining the institutionalized spouse's eligibility for Medicaid, in order to protect income for the spouse who is remaining in the community (the community spouse). The amendment requires that an institutionalized spouse who applies for Medicaid must first divert income to his or her community spouse (who is not applying for Medicaid), before the institutionalized spouse may request expansion of the amount of the couple's resources that would be protected from consideration in evaluating the institutionalized spouse's Medicaid eligibility. This has been referred to as the "income first" method for determining the extent of protection of the couple's assets. The United States Supreme Court has found this method to be permissible under federal law in the case of *Wisconsin Dept. of Health and Family Svcs. v. Blumer*, 534

U.S. 473 (2002). DHS proposes to implement this change as a Medicaid cost savings measure, and to help ensure that limited Medicaid dollars are more likely to be available to those truly in need of the assistance. The amendment also clarifies the established methodology DHS follows to calculate the amount of a couple's resources that is subject to protection.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period is an estimated reduction in cost. However, DHS lacks sufficient data to accurately estimate the cost savings. DHS has not found that there would be any fiscal implications for local government as a result of enforcing or administering the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is increased clarity in the Medicaid eligibility requirements for annuitants, and the preservation of limited Medicaid dollars for those truly in need of the assistance. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposed amendments relate only to financial status requirements for individuals to become eligible to receive Medicaid benefits. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to John Stockton at (512) 438- 3225 in DHS's Long Term Care-Policy section. Written comments on the proposal may be submitted to Supervisor, Rules Unit-141, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

These Medicaid eligibility rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to HHSC. DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing Texas Health and Human Services Commission (HHSC) and a new agency, the Texas Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Leg., R.S. (2003). At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. In addition, the statutory reorganization mandates the transfer to HHSC of the policy, rulemaking, and operational authority, within an eligibility services division, for eligibility determinations for all health and human services programs. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

SUBCHAPTER D. RESOURCES

40 TAC §15.442

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§15.442. Personal Property.

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

(g) Annuities. A person [~~client~~] may purchase a revocable or irrevocable [~~an~~] annuity to provide income (a nonemployment-related annuity), or may receive the benefits of an employment-related annuity that provides a return on prior services, as part of or in similar manner to a pension or retirement plan. [~~An annuity can be revocable or irrevocable.~~]

(1) An employment-related annuity is not a countable resource. A nonemployment-related [~~revocable~~] annuity is a countable resource unless the annuity:[~~. An irrevocable annuity is a transfer of assets if it does not pay back the principal (original purchase price) to the client during his life expectancy. To qualify for exemption from transfer of assets rules, an annuity must be issued by an insurance company licensed and approved to do business in the state of Texas. The eligibility specialist must review the terms of an annuity contract or agreement to determine if the principal of the annuity is an available resource or considered a transfer of assets.~~]

(A) is irrevocable;

(B) pays out principal in equal monthly installments and pays out interest in either equal monthly installments or in amounts that result in increases of the monthly installments at least annually;

(C) is guaranteed to return within the person's life expectancy at least the person's principal investment plus a reasonable amount of interest (based on prevailing market interest rates at the time of the annuity purchase, as determined by DHS);

(D) names the state of Texas, DHS, or DHS's successor agency as the residual beneficiary of amounts payable under the annuity contract, not to exceed any Medicaid funds expended on the person during his lifetime; and

(E) is issued by an insurance company licensed and approved to do business in the state of Texas.

(2) Income from an annuity that is not a countable resource under paragraph (1) of this subsection is treated in accordance with §15.455(d) of this chapter (relating to Unearned Income). An annuity that is a countable resource under paragraph (1) of this subsection and that does not meet the criterion described in paragraph (1)(C) of this subsection is also a transfer of assets. The date of the transfer of assets is the date of the annuity purchase or, if applicable, the date that the annuity contract was last amended in exchange for consideration. DHS determines the penalty period based on the amount payable under the annuity contract during that portion of the guarantee period of the annuity that is after the date the person is reasonably expected to die. [~~To avoid a transfer of assets penalty, an annuity purchased by or for the client must:~~]

[~~(A) be irrevocable;~~]

[~~(B) pay out principal and interest in equal monthly installments to the client in sufficient amounts that the principal is paid out during the life expectancy of the client; and~~]

[(C) name the state of Texas, Texas Department of Human Services or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the client during his lifetime.]

(3) A revocable annuity that is a countable resource under paragraph (1) of this subsection is valued according to the amount refundable upon revocation. A transfer of assets occurs if a person sells a revocable annuity for less than this amount. An irrevocable annuity that is a countable resource under paragraph (1) of this subsection is valued according to its fair market value. DHS presumes that the fair market value of such an annuity is 80% of its total remaining payout. A person may overcome this presumption by providing credible evidence to the contrary. If, however, the annuity contract by its terms is non-negotiable, the total remaining payout is a transfer of assets, as provided by §15.435(g)(3) of this chapter (relating to Liquid Resources). A transfer of assets also occurs if a person sells an irrevocable annuity for less than the purchase price (that is, the total principal invested) minus the amount of principal that has already been paid. [The average number of years of expected life remaining for the client must equal or exceed the stated life of the annuity. If the client is not reasonably expected to live longer than the guarantee period of the annuity, the client will not receive fair market value for the annuity based on projected returns. In this case, the annuity is not actuarilly sound and a transfer of assets for less than fair market value of the premium has taken place to the extent of the portion not anticipated to be repaid in the client's lifetime. The penalty is assessed based on a transfer of assets that is considered to have occurred at the time the annuity was purchased, minus any principal paid to the client prior to the file date for Medicaid benefits.]

(4) The requirement in paragraph (1)(D) of this subsection does not apply to an annuity purchased by or for a person who is a "community spouse," as described in §15.503 of this chapter (relating to Protection of Spousal Income and Resources). As provided by §15.430(d)(2)(A) of this chapter (relating to Transfer of Assets), the purchase of an annuity by the institutional spouse is not a transfer of assets on the basis that the community spouse is the annuitant.

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

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

TRD-200404018
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER F. BUDGETS AND PAYMENT PLANS

40 TAC §15.503

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§15.503. Protection of Spousal Income and Resources.

(a) - (i) (No change.)

(j) Formula for increased PRA at appeal.

(1) In nursing facility and waiver cases with a community spouse, the client (institutionalized spouse or waiver applicant/recipient) can make a request or file an appeal to increase the protected resource amount (PRA) to produce additional income for the community spouse. This option is available only after the client diverts all of his or her available income (that is, gross income minus allowable deductions) to the community spouse, and only if the community spouse's resulting total income is less than the minimum monthly maintenance needs allowance (MMMNA). The eligibility specialist or hearing officer may then increase the PRA to an amount that is [a level] adequate to produce income that equals [up to], but does not exceed, the MMMNA [monthly maintenance needs allowance].

(2) The couple can protect an amount of [additional] resources equal to the dollar amount that must be deposited in a one-year certificate of deposit (CD), at current interest rates, to produce interest income equal to the difference between the MMMNA [monthly maintenance needs allowance] (in effect at the time of the request or the filing of the appeal) and other countable income not generated by either spouse's countable resources. The couple is not required to invest in the CD as a condition of eligibility.

(3) To determine the amount of the increased PRA, the eligibility specialist or hearing officer determines the current interest rate of a one-year CD as published in the local newspaper [paper] or provided by a local bank [that offers one-year CD's]. The eligibility specialist or hearing officer then determines the amount of resources required to produce income, at the specified interest rate, that would increase the community spouse's income to the MMMNA [monthly maintenance needs allowance].

(4) The amount of resources to be protected is determined by using the methodology described [formula specified] in subparagraphs (A)-(E) [through (D)] of this paragraph. This methodology [formula] is to be used to determine the maximum amount of resources to be protected regardless of the actual income the couple's [a] resource may or may not be producing [at the time of the original PRA or at the time of the appeal hearing].

(A) Subtract from the amount of the MMMNA the community spouse's monthly [non-resource-producing] income from all sources other than resources of the couple (including any income that must first be diverted by the client as required by paragraph (1) of this subsection [, if any) from the monthly maintenance needs allowance (MMNA]). The result [difference] is the additional monthly income needed by the community spouse.

(B) Multiply by 12 the additional monthly income needed by the community spouse (from subparagraph (A) of this paragraph) [by 12]. The product equals the annual income needed by the community spouse.

(C) Multiply by 100 the annual income needed by the community spouse (from subparagraph (B) of this paragraph) [by 100].

(D) Divide the product from subparagraph (C) of this paragraph by the interest rate described in paragraph (3) of this subsection [for a one-year CD]. Do not use a percentage. The result is the expanded PRA, subject to subparagraph (E) of this paragraph.

(E) The expanded PRA may not exceed the value of the couple's combined countable resources as of the first month of entry

by the client to a medical care facility for a continuous stay, or, if applicable, as of the first month of application by the client to a waiver program.

(5) When determining the post-eligibility applied income or co-payment of the client [~~co-pay~~] and the amount available for [~~spousal~~] diversion to the community spouse, DHS [~~the caseworker~~] uses the actual income from the resources if it is more than the amount of income that [~~dollar amount being produced if the actual amount is in excess of the amount~~] a one-year CD would produce. However, if the actual amount of income from the resources [~~a resource produces~~] is less than the amount of income that a one-year CD would produce, DHS [~~the caseworker~~] uses the amount of income that a one-year CD would produce.

(k) Spousal impoverishment provisions do not apply in the case of void or annulled marriages. Clients with void marriages or who have obtained a court annulment of their marriage are treated as though they were always individuals. In the instance of a divorce, spousal impoverishment provisions apply through the end of the calendar month of the court order granting the divorce [~~in which the divorce is issued~~].

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

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

TRD-200404019
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) proposes to amend §19.405, concerning additional requirements for trust funds in Medicaid-certified facilities; §19.2302, concerning requirements for a contracted Medicaid facility; and §19.2312, concerning surety bonds or letters of credit, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter.

The purpose of the amendment to §19.405 is to correct the references to the Code of Federal Regulations that require handling trust fund monthly benefits in Medicaid-certified facilities. The amendment to §19.2302 adds an applicable rule, 1 Texas Administrative Code (TAC) §371.212, Case Mix Classification System, as Medicaid-certified facilities must comply with the requirements of the Texas Health and Human Services Commission (HHSC) for utilization review. The amendment to §19.2312 makes it consistent with HHSC rules on the same subject and clarifies for facilities the types of reports they have to file before they can furnish a surety bond or a letter of credit upon a change of ownership or termination of a contract.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is to ensure the accuracy of information available to the public and enhance the public's ability to locate desired information referenced in the rules. The rules will clarify where facilities are to mail their cost reports and ensure consistency between DHS and HHSC rules as they relate to vendor hold and HHSC Rate Analysis nursing facility reporting requirements. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the amendments impose no additional costs to the facilities and they are already subject to these requirements under HHSC rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Marcia Bowen at (512) 438- 2118 in DHS's Long-Term Care Regulatory Policy section. Written comments on the proposal may be submitted to Supervisor, Rules Unit-161, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

These rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to the Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Texas Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003).

At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.405

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§19.405. Additional Requirements for Trust Funds in Medicaid-certified Facilities.

(a) - (n) (No change.)

(o) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI Supplemental [~~Supplementary~~] Security Income (SSI) benefit to which the recipient

is entitled should be paid through a representative payee, the provisions in 20 Code of Federal Regulations (CFR), §§404.2001-404.2065 [~~§§404.1601- 404.1610~~], for Old Age, Survivors, and Disability Insurance benefits and 20 CFR, §§416.601-416.665 [~~§§419.601-419.690~~], for SSI benefits apply.

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

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

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

TRD-200404016
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2302, §19.2312

The amendments are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§19.2302. Requirements for a Contracted Medicaid Facility.

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

(c) Each NF must comply with the Texas Health and Human Services Commission's (HHSC's) utilization review requirements as provided in 1 TAC §371.212 (relating to Case Mix Classification System) [~~the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 371, Medicaid Fraud and Abuse Program Integrity~~], §371.213 (relating to Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (Commission)), and §371.214 (relating to Texas Index for Level of Effort (TILE) Assessments).

(d)-(p) (No change.)

§19.2312. Surety Bonds or Letters of Credit.

(a) (No change.)

(b) At its sole option, the Texas Department of Human Services (DHS) may allow the prior owner to obtain a surety bond or an irrevocable letter of credit (collateral) and release the vendor payments on hold. Money owed DHS by the prior owner for any reason will be recovered through the surety bond or the letter of credit. Usually, the surety bond equals the average monthly vendor payments paid to the facility. Facilities terminating a contract for long-term care services may furnish a surety bond or letter of credit only if:

(1) all required long-term care facility cost reports have been filed with the Texas Health and Human Services Commission (HHSC) Rate Analysis Department;

(2) all required long-term care facility staffing and compensation reports have been filed with HHSC's Rate Analysis Department; and

(3) funds identified for recoupment from 1 TAC §355.308(n) or (o) or both (relating to Direct Care Staff Rate Component) have been repaid to HHSC or its designee [~~DHS~~].

(c) If an acceptable surety bond or letter of credit is presented to DHS, the vendor payments may be released. Facilities must ensure that this bond or irrevocable letter of credit is in a format acceptable to DHS, and does not include requirements that DHS, as a condition of receiving payment, either:

(1) return the original bond or letter; or

(2) submit to any draft requirement of an irrevocable letter of credit or surety bond, in addition to DHS's letter demanding payment.

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

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

TRD-200404017
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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CHAPTER 20. COST DETERMINATION PROCESS

40 TAC §§20.101 - 20.112

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

The Texas Department of Human Services (DHS) proposes to repeal its Cost Determination Process chapter (Chapter 20), consisting of §§20.101-20.112, concerning the cost determination process for providers of contracted client services. The purpose of the repeals is to remove the rules from DHS's rule base. They are duplicated in the rules of the Texas Health and Human Services Commission (HHSC) at 1 Texas Administrative Code Chapter 355 and will no longer be needed in DHS's rule base after the agency's transformation into the Department of Aging and Disability Services--mandated by House Bill 2292, 78th Legislature, Regular Session (2003)--takes place on September 1, 2004.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed repeals are in effect, there are no fiscal implications for state or local government as a result of repealing the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of repealing the sections is that only one set of rules will exist at HHSC for all rate determination matters, rather than having a duplicate set of rules in DHS's and HHSC's rule bases. There

is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of repealing the sections, because the repeals affect duplicative rules and impose no additional requirements for provider agencies. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 491- 1359 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit-193, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to these repeals. The changes these repeals make do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding these repeals.

The repeals are proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001-22.040.

§20.101. Introduction.

§20.102. General Principles of Allowable and Unallowable Costs.

§20.103. Specifications for Allowable and Unallowable Costs.

§20.104. Revenues.

§20.105. General Reporting and Documentation Requirements, Methods, and Procedures.

§20.106. Basic Objectives and Criteria for Audit and Desk Review of Cost Reports.

§20.107. Notification of Exclusions and Adjustments.

§20.108. Determination of Inflation Indices.

§20.109. Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs.

§20.110. Informal Reviews and Formal Appeals.

§20.111. Administrative Contract Violations.

§20.112. Attendant Compensation Rate Enhancement

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

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

TRD-200404011
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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CHAPTER 41. VENDOR FISCAL INTERMEDIARY PAYMENTS

40 TAC §41.114

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

The Texas Department of Human Services (DHS) proposes to repeal §41.114, concerning payment rates for the consumer directed services payment option, in its Vendor Fiscal Intermediary Payments chapter. The purpose of the repeal is to remove the rule from DHS's rule base. It is duplicated in the rules of the Texas Health and Human Services Commission (HHSC) at 1 Texas Administrative Code Chapter 355 and will no longer be needed in DHS's rule base after the agency's transformation into the Department of Aging and Disability Services-- mandated by House Bill 2292, 78th Legislature, Regular Session (2003)--takes place on September 1, 2004.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed repeal is in effect, there are no fiscal implications for state or local government as a result of repealing the section.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the section is that only one set of rules will exist at HHSC for all rate determination matters, rather than having a duplicate set of rules in DHS's and HHSC's rule bases. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of repealing the section, because the repeal affects duplicative rules and imposes no additional requirements. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by the repeal.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 491- 1359 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit-193, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to this repeal. The change this repeal makes does not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding the repeal.

The repeal is proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.0001-22.040.

§41.114. Consumer Directed Services Payment Option.

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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Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
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CHAPTER 47. CONTRACTING TO PROVIDE PRIMARY HOME CARE
SUBCHAPTER F. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §47.5902

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

The Texas Department of Human Services (DHS) proposes to repeal §47.5902, concerning reimbursement methodology for primary home care, in its Contracting to Provide Primary Home Care chapter. The purpose of the repeal is to remove the rule from DHS's rule base. It is duplicated in the rules of the Texas Health and Human Services Commission (HHSC) at 1 Texas Administrative Code Chapter 355 and will no longer be needed in DHS's rule base after the agency's transformation into the Department of Aging and Disability Services-- mandated by House Bill 2292, 78th Legislature, Regular Session (2003)--takes place on September 1, 2004.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed repeal is in effect, there are no fiscal implications for state or local government as a result of repealing the section.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the section is that only one set of rules will exist at HHSC for all rate determination matters, rather than having a duplicate set of rules in DHS's and HHSC's rule bases. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of repealing the section, because the repeal affects duplicative rules and impose no additional requirements on provider agencies. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by the repeal.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 491- 1359 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit-193, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to this repeal. The change this repeal makes does not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding the repeal.

The repeal is proposed under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.0001-22.040.

§47.5902. Reimbursement Methodology for Primary Home Care.

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

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

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Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER H. ELIGIBILITY

40 TAC §§48.2911 - 48.2915, 48.2918, 48.2920, 48.2921, 48.2928

The Texas Department of Human Services (DHS) proposes to amend §§48.2911, concerning family care; 48.2912, concerning congregate and home-delivered meals; 48.2913, concerning adult foster care; 48.2914, concerning special services to persons with disabilities; 48.2918, concerning eligibility for primary home care; 48.2920, concerning residential care; 48.2921, concerning emergency care; and 48.2928, concerning emergency response services; and proposes new §48.2915, concerning day activity and health services, in its Community Care for Aged and Disabled chapter.

The primary purpose of the amendments is to replace rule language referring to specific functional eligibility scores on DHS's current community care assessment instrument (Form 2060) with language that more generally explains how DHS determines functional eligibility, in anticipation of the implementation of a new assessment instrument. Pursuant to Rider 31 of DHS's appropriations in the 2004-2005 General Appropriations Act, DHS is developing a new community care assessment instrument that will replace the current Form 2060; therefore, references to the current Form 2060 must be deleted to eliminate possible conflict with the new form and its scoring system. Additionally, the amendments to §48.2911 and §48.2918 remove obsolete language; update the terminology regarding client status from "Priority 1" to "priority;" and add state schools, state hospitals, jails, and prisons to the list of settings in which family care, primary home care, and community attendant care services cannot be provided. These additions are not changes, but rather clarify existing policy. The amendment to §48.2918 also replaces the requirement for a physician's diagnosis to substantiate the client's medical condition with a requirement for a signed and dated practitioner's statement that the client has a current medical need for assistance with personal care tasks and other activities of daily living, and eliminates prior approval of medical need for primary home care by the department regional nurse. The latter changes to §48.2918 make the eligibility rule consistent with the provider agency rules in DHS's Chapter 47 (Contracting to Provide Primary Home Care).

New §48.2915 places the Day Activity and Health Services (DAHS) eligibility rule, currently in DHS's Chapter 98 (§98.201), with the other eligibility rules in Chapter 48. The new rule retains the eligibility criteria in §98.201 and adds functional need criteria to the program's eligibility requirements. The purpose of this

addition is to help ensure that program resources are used for individuals in the greatest need of services. The new rule also stipulates that clients receiving DAHS on the effective date of the rule may continue to receive services until DHS assesses the client's level of functional need.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the sections. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections are in effect is an estimated reduction in cost of $1,565,813 in fiscal year (FY) 2005; $1,650,444 in FY 2006; $1,708,276 in FY 2007; $1,766,109 in FY 2008; and $1,823,921 in FY 2009.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that program eligibility requirements will be more clearly understandable, and limited program resources will be preserved for individuals in the greatest need of services. There may be an indirect adverse effect on businesses as a result of enforcing or administering the sections because some businesses that currently provide DAHS may lose Medicaid clients; however, the impact should not disproportionately affect small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Marilyn Eaton at (512) 438- 2936 in DHS's Long Term Care Services. Written comments on the proposal may be submitted to Supervisor, Rules Unit-179, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

These eligibility rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to the Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003).

At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. In addition, the statutory reorganization mandates the transfer to HHSC of the policy, rulemaking, and operational authority, within an eligibility services division, for eligibility determinations for all health and human services programs. These changes may result in the migration of these rules from one title of the Texas Administrative Code to another or other changes.

The amendments and new section are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section affect the Human Resources Code, §§22.0001- 22.040 and §§32.001-32.067.

§48.2911. Family Care.

(a) To be eligible for family care, the applicant/client must:

(1) meet the income and resource guidelines established by the department in §§48.2902, 48.2903, 48.2922, and 48.2923 of this title (relating to Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources);

(2) meet the minimum functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding; and

(3) be ineligible to receive attendant care services funded through Medicaid. [~~Family care applicants/clients are eligible for services if they score at least 24 on the client needs assessment questionnaire.~~]

(b) If eligible, an applicant/client may receive one or more of the following services:

(1) personal care;[~~,~~]

(2) household tasks;[~~,~~]

(3) meal preparation;[~~,~~] and

(4) escort. [~~Beginning July 1, 1992, the applicant/client is eligible for no more than 50 hours of family care services a week (effective May 1, 1993, 42 hours a week for a Priority 1 family care applicant/client).~~]

(c) [~~(b)~~] Family care services are provided in a client's residence. A client is not eligible to receive family care services while living in:

(1) a hospital;

(2) a skilled nursing facility;

(3) an intermediate care facility;

(4) an assisted living facility [~~a personal care home (institution)~~];

(5) a foster care setting; [~~or~~]

(6) a jail or prison;

(7) a state school;

(8) a state hospital; or

(9) [~~(6)~~] any other setting where sources outside the family care program are available to provide care.

(d) [~~(c)~~] The applicant/client must require at least six hours of family care per week to be eligible, unless the applicant/client[~~. An applicant/client requiring fewer than six hours per week may be eligible if he~~]:

(1) requires [~~scores 30 or above and~~] family care [~~is essential~~] to provide respite to the caregiver [~~or to enable the applicant to remain in the community~~];

(2) lives in the same household as another individual receiving family care, community based alternatives personal assistance services, community attendant services, or primary home care;

(3) receives one or more of the following services (through the department or other resources):

(A) congregate or home-delivered meals;[~~,~~]

(B) assistance with activities of daily living from a home health aide;[~~,~~]

(C) day activity and health services;[~~,~~] or

(D) special services to persons with disabilities in adult day care;[~~, whether or not any of these services are purchased by the department; or~~]

(4) receives aid-and-attendance benefits from the Veterans Administration; [~~or~~]

(5) receives services through the department's In-home and Family Support Program; or[~~.~~]

(6) is determined, based upon the functional assessment, to be at high risk of institutionalization without family care.

[~~(d) To be eligible for family care, the individual must not be eligible to receive attendant care services funded through Medicaid.~~]

(e) The [~~Establishment of a priority level is made by the~~] community care case manager establishes a priority status for each client based on the functional assessment [~~and is based on an assessment of the client's circumstances and on discussions with the client and others actively involved with the client. A Priority 1 family care client is an individual who is dependent upon the services of the family care attendant for the performance of certain personal care tasks and whose health, safety, or well-being may be jeopardized if services on a normally scheduled service shift were not provided~~]. An individual is considered to have priority status [~~a Priority 1 family care client~~] if the following criteria are met:[~~.~~]

(1) The individual is completely unable to perform one or more of the following activities without hands-on assistance from another person:

(A) transferring himself into or out of bed or a chair or on or off a toilet;

(B) feeding himself;

(C) getting to or using the toilet; or

(D) preparing a meal.[~~; or~~]

[~~(E) taking self-administered prescribed medications.~~]

(2) During a normally scheduled service shift, no one is readily available [~~who is capable of providing, and who is willing~~] to provide [~~,~~] the needed assistance other than the family care attendant.

(3) The [~~DHS~~] community care case manager determines that there is a high likelihood the individual's health, safety, or well-being would be jeopardized if family care services were not provided on a single given shift.

(f) A client with priority status may receive no more than 42 hours of service per week.

(g) A client without priority status may receive no more than 50 hours of service per week.

§48.2912. Home-Delivered [~~Congregate and Home-delivered~~] Meals.

To be eligible for [~~congregate or~~] home-delivered meals, applicants and clients must meet the functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding [~~score at least 20 on the client needs assessment questionnaire~~].

§48.2913. Adult Foster Care.

To be eligible for adult foster care, applicants and clients must have the approval of the Community Care for Aged and Disabled unit supervisor and meet the functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding [~~Applicants/clients must score at least 18 on the client needs assessment questionnaire and have the approval of the CCAD unit supervisor, to be eligible for adult foster care. Individuals receiving adult foster care on July 1, 1986, continue to be eligible for services as long as they score nine on the client needs assessment questionnaire. If these grandfathered clients discontinue receiving services, they must meet an eligibility score of at least 18 in order to qualify for future services~~].

§48.2914. Special Services to Persons with Disabilities.

To be eligible for special services to persons with disabilities, clients must meet the functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding [~~score at least nine on the client needs assessment questionnaire~~]. Applicants may be admitted to the attendant services program only if their needs do not exceed the program's available services.

§48.2915. Day Activity and Health Services.

To be eligible for day activity and health services (DAHS), an applicant/client must:

(1) be Medicaid eligible or meet the income and resource guidelines established by the department in §§48.2902, 48.2903, 48.2922, and 48.2923 of this title (relating to Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources);

(2) meet the minimum functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding. Clients receiving services on the effective date of this rule may continue to receive services until the department assesses the client's level of functional need;

(3) have a medical diagnosis, a related functional disability, and physician's orders requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse; and

(4) have one or more of the following personal care or restorative needs that can be stabilized, maintained, or improved by participation in DAHS:

(A) Bathing, dressing, and grooming. The applicant/client may need help with bathing, dressing, and routine hair and skin care.

(B) Transfer and ambulation. The applicant/client may need help with transferring from chair or commode or walking about.

(C) Toileting. The applicant/client may need help with using a bedpan, urinal, or commode; emptying a catheter or ostomy bag; or managing incontinence of bowel or bladder. The applicant/client may require perineal care or bowel or bladder training.

(D) Feeding. The applicant/client may need feeding (for example, gastric, NG tube, feeding pump) or help with eating.

(E) Fluid intake. The applicant/client may need assistance in maintaining adequate fluid intake.

(F) Nutrition. The applicant/client may need therapeutic diet or texture modification for treatment or control of an existing condition.

(G) Medication. The applicant/client may require supervision or administration of ordered medications or injectables.

(H) Treatments. The applicant/client may require treatments that include:

(i) routine or frequent care for indwelling catheter;

(ii) measurement of weight related to monitoring a specific condition;

(iii) assistance or supervision of ostomy care based on individual needs;

(iv) taking and recording of vital signs to monitor an existing condition or medications being administered;

(v) periodic testing of blood or urine for sugar/acetone content or both;

(vi) assistance with skin care including application of lotions, observations, assessment, or treatment of skin conditions based on physician's orders for prevention and healing decubiti and chronic skin conditions; and

(vii) application of sterile dressings and elastic stockings and bandages.

(I) Restorative nursing procedures. The applicant/client requires assistance with range-of- motion exercises (active or passive) or proper positioning.

(J) Behavioral problems. The applicant/client may have behavioral problems that can be managed by facility staff.

§48.2918. [Eligibility for] Primary Home Care or Community Attendant Services.

(a) To be eligible [Applicants/clients] for primary home care or community attendant (CA) services, the [must meet all of the following eligibility criteria. The] applicant/client must:

(1) be eligible for Medicaid in a community setting [outside an institution] or be eligible under the provisions of the Social Security Act, §1929(b)(2)(B);

(2) meet the minimum functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding [score 24 or above on the client needs assessment questionnaire];

(3) have a medical need for assistance with personal care.

(A) The client's medical condition must be [substantiated by symptoms and a physician's diagnosis(es). The medical condition must be] the cause of the client's functional impairment in performing personal care tasks.

(B) Persons diagnosed with mental illness, mental retardation, or both, are not considered to have established medical need based solely on such diagnosis. The diagnoses [Although mental illness and mental retardation are not considered medical conditions, they] do not disqualify a client for eligibility as long as the client's functional impairment is related to a coexisting medical condition;

(4) have a signed and dated practitioner's statement that includes a statement that the client has a current medical need for assistance with personal care tasks and other activities of daily living [physician's order for primary home care]; and

(5) require at least six hours of service [primary home care] per week. An applicant/client requiring fewer than six hours of service per week may be eligible if the applicant/client [he meets at least one of the following criteria]:

(A) requires [scores at least 30 on the client needs assessment questionnaire and] primary home care or community attendant services [is essential] to provide respite care to the caregiver [or to enable the applicant/client to remain in the community];

(B) lives in the same household as another individual receiving [family care or] primary home care, community attendant services, family care, or community based alternatives personal assistance services;

(C) receives one or more of the following services (through the department or other resources):

(i) congregate or home-delivered meals;[,]

(ii) assistance with activities of daily living from a home health aide;[,]

(iii) day activity and health services;[,] or

(iv) special services to persons with disabilities in adult day care;[, whether or not any of these services are purchased by the department; or]

(D) receives aid-and-attendance benefits from the Veterans Administration;

(E) receives services through the department's In-home and Family Support Program; [or]

(F) receives services through the [Texas Department of Health's] Medically Dependent Children Program (MDCP); or[.]

(G) is determined, based upon the functional assessment, to be at high risk of institutionalization without primary home care or community attendant care services.

(b) To receive services, the applicant/client must reside in a place other than:

(1) a hospital;

(2) a skilled nursing facility;

(3) an intermediate care facility; [or]

(4) an assisted living facility;

(5) a foster care setting;

(6) a jail or prison;

(7) a state school;

(8) a state hospital; or

(9) [~~(4)~~] any other setting where [~~environment where family members or~~] sources outside the primary home care program are available to provide personal care.

(c) A client with priority status may receive no more than 42 hours of service per week. A client without priority status may receive no more than 50 hours of service per week [~~Beginning July 1, 1992, an eligible applicant or client cannot receive more than 50 hours of primary home care per week (effective May 1, 1993, 42 hours a week for a Priority 1 primary home care applicant or client)~~].

[~~(d) Applicants must have prior approval of medical need for primary home care from the department regional nurse. Only initial prior approval of medical need is required for applicants who have a medical condition causing functional impairment in personal care. Annual prior approval by the department regional nurse is required for clients who are eligible under the provisions of the Social Security Act, §1929(b).~~]

[~~(e) Services for eligible clients are authorized for 12 months, with the exception of time-limited services specified in subsection (d) of this section.~~]

(d) [~~(f)~~] The [~~Establishment of a priority level is made by the~~] community care case manager establishes a priority status for each client based on the functional assessment [~~based on an assessment of the client's circumstances and on discussions with the client and others actively involved with the client. A Priority 1 primary home care client is an individual who is dependent upon the services of the primary home care attendant for the performance of certain personal care tasks and whose health, safety, or well- being may be jeopardized if services on a normally scheduled service shift were not provided~~]. An individual is considered to have priority status [~~a Priority 1 primary home care client~~] if the following criteria are met:[~~.~~]

(1) The individual is completely unable to perform one or more of the following activities without hands-on assistance from another person:

(A) transferring himself into or out of bed or a chair or on off a toilet;

(B) feeding himself;

(C) getting to or using the toilet; or

(D) preparing a meal.[~~; or~~]

[~~(E) taking self-administered prescribed medications.~~]

(2) During a normally [~~normal~~] scheduled service shift, no one is readily available [~~who is capable of providing, and who is willing~~] to provide [~~,~~] the needed assistance other than the [~~primary home care~~] attendant.

(3) The [~~Texas Department of Human Services~~] community care case manager determines that there is a high likelihood the individual's health, safety, or well-being would be jeopardized if [~~primary home care~~] services were not provided on a single given shift.

§48.2920. Residential Care.

(a) Eligibility for residential care is based on the following criteria:

(1) (No change.)

(2) the applicant must meet the functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding [~~score at least 18 points on the client needs assessment questionnaire~~];

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

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

§48.2921. Emergency Care.

(a) Eligibility for emergency care is based on the following criteria.

(1) (No change.)

(2) The applicant:

(A) (No change.)

(B) meets the functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding [~~demonstrates a need for service by scoring at least 18 points on the client needs assessment questionnaire~~].

(3) (No change.)

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

§48.2928. Emergency Response Services.

To be eligible for emergency response services, a [~~A~~] client must:

(1) meet the functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding; and [~~score at least 20 on the client needs assessment questionnaire and~~]

(2) meet the following requirements [~~in paragraphs (1)-(5) of this section to be eligible for emergency response services~~]:

(A) [~~(1)~~] live [~~Live~~] alone, be alone routinely for eight or more hours each day, or live with an incapacitated individual who could not call for help or otherwise assist the client in an emergency;

(B) [~~(2)~~] be [~~Be~~] mentally alert enough to operate the equipment properly, in the judgment of the DHS caseworker;

(C) [~~(3)~~] have [~~Have~~] a telephone with a private line, if the system requires a private line to function properly;

(D) [~~(4)~~] be [~~Be~~] willing to sign a release statement that allows the responder to make a forced entry into the client's home if he is asked to respond to an activated alarm call and has no other means of entering the home to respond; and

(E) [~~(5)~~] live [~~Live~~] in a place other than a skilled institution, assisted living facility [~~personal care home~~], foster care setting, or any other setting where 24-hour [~~24 hour~~] supervision is available.

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

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

TRD-200404035
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §98.201, §98.204

The Texas Department of Human Services (DHS) proposes to amend §98.201, concerning eligibility requirements for participation, and §98.204, concerning facility-initiated referrals, in its Adult Day Care and Day Activity and Health Services Requirements chapter. The purpose of the amendment to §98.201 is to replace the eligibility requirements for individuals in the Day Activity and Health Services (DAHS) program with a reference to the new DAHS eligibility rule in DHS's Chapter 48 (Community Care for Aged and Disabled). The new rule concerning DAHS eligibility (§48.2915) is proposed elsewhere in this issue of the *Texas Register*. The amendment to §98.204 adds a condition under which a facility may not be reimbursed for services. In a facility-initiated referral, if an applicant for DAHS is determined ineligible for failure to meet the functional need criteria, the regional nurse cancels the facility- initiated approval and the facility is not reimbursed for services. The amendment is necessary because of the addition of a functional need requirement to the DAHS eligibility rule at 40 TAC §48.2915, proposed elsewhere in this issue of the *Texas Register*.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing §98.201 is that the eligibility requirements for DAHS will be located in Chapter 48 with the other community care program eligibility requirements and Chapter 98 will include an accurate reference to the rule. The public benefit anticipated as a result of enforcing §98.204 is that the provider rule will be consistent with the DAHS eligibility rule. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering §98.201 because the amendment concerns eligibility of individuals for DAHS and does not affect businesses. There may be an adverse economic effect on businesses as a result of enforcing or administering §98.204 because DAHS providers may choose to provide services to Medicaid applicants who are later found to be ineligible for services. If they are determined ineligible, the providers will not be paid for those prior services, but there is no requirement that they provide services before a determination of eligibility. This potential adverse impact should not disproportionately affect small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by this sections.

Questions about the content of this proposal may be directed to Marilyn Eaton at (512) 438- 2936 in DHS's Long Term Care Services. Written comments on the proposal may be submitted to Supervisor, Rules Unit-179, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make does not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding this proposal.

The rules are proposed by DHS, subject to the subsequent transfer of rulemaking authority to the Texas Health and Human Services Commission (HHSC). DHS is currently scheduled to transition sometime in 2004 into two successor agencies, the existing HHSC and a new agency, the Department of Aging and Disability Services (DADS).

This reorganization is mandated by House Bill 2292, 78th Legislature, Regular Session (2003).

At the inception of operations of DADS, the authority to adopt all rules for the operation and provision of health and human services by DADS will lie with HHSC. In addition, the statutory reorganization mandates the transfer to HHSC of the policy, rulemaking, and operational authority, within an eligibility services division, for eligibility determinations for all health and human services programs. These changes may result in the migration of this rule from one title of the Texas Administrative Code to another or other changes.

The amendments are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§98.201. Eligibility Requirements for Participation.

The client must meet eligibility requirements described in §48.2915 of this title (relating to Day Activity and Health Services).

~~[(a) Eligibility. The client must be Medicaid eligible (Title XIX Day Activity and Health Services (DAHS)) or meet social services block grant income eligibility guidelines and resource limits.]~~

~~[(b) Medical criteria for DAHS. To be eligible for DAHS, the applicant/client must have:]~~

~~[(1) a medical diagnosis and physician's orders requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse;]~~

~~[(2) a related functional disability; and]~~

~~[(3) one or more of the following personal care or restorative needs which can be stabilized, maintained, or improved by participation in DAHS:]~~

[(A) Bathing, dressing, and grooming. The applicant/client may need help with bathing, dressing, and routine hair and skin care.]

[(B) Transfer and ambulation. The applicant/client may need help with transferring from chair or commode or walking about.]

[(C) Toileting. The applicant/client may need help with using a bedpan, urinal, or commode; emptying a catheter or ostomy bag; or managing incontinence of bowel or bladder. The applicant/client may require perineal care or bowel or bladder training.]

[(D) Feeding. The applicant/client may need feeding (for example, gastric, ng tube, feeding pump) or help with eating.]

[(E) Fluid intake. The applicant/client may need assistance in maintaining adequate fluid intake.]

[(F) Nutrition. The applicant/client may need therapeutic diet or texture modification for treatment or control of an existing condition.]

[(G) Medication. The applicant/client may require supervision or administration of ordered medications or injectables.]

[(H) Treatments. The applicant/client may require treatments that include:]

[(i) catheter care--routine or frequent care for indwelling catheter;]

[(ii) weight--measurement of weight related to monitoring a specific condition;]

[(iii) ostomy care--assistance or supervision of ostomy care based on individual needs;]

[(iv) recording of vital signs--taking and recording of vital signs to monitor an existing condition or medications being administered;]

[(v) diabetic tests--periodic testing of blood or urine for sugar/acetone content or both;]

[(vi) skin care--assistance with skin care including application of lotions, observations, assessment, or treatment of skin conditions based on physician's orders for prevention and healing decubiti and chronic skin conditions; and]

[(vii) dressings--dressing based on the physician's orders and the application of sterile dressings and elastic stockings and bandages.]

[(I) Restorative nursing procedures. The applicant/client requires assistance with range-of- motion exercises (active or passive) or proper positioning.]

[(J) Behavioral problems. The applicant/client may have behavioral problems which can be managed by facility staff.]

[(c) Prior approval of DAHS services. An individual seeking initial prior approval for day activity and health services must have a physician's order for the service.] The physician providing the physician's order cannot be the facility owner or have a significant financial or contractual relationship with the facility.

§98.204. Facility-Initiated Referrals.

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

(d) If the facility fails to submit prior approval forms or additional documentation within required time frames, [or] if the additional documentation is not adequate, or if the applicant is determined ineligible by the DHS caseworker, the regional nurse cancels the facility-initiated prior approval and the facility is not reimbursed for services.

(e) (No change.)

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

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

TRD-200404036
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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SUBCHAPTER I. REIMBURSEMENT METHODOLOGY FOR DAY ACTIVITY AND HEALTH SERVICES (DAHS)

40 TAC §98.6907

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

The Texas Department of Human Services (DHS) proposes to repeal §98.6907, concerning reimbursement methodology for day activity and health services, in its Adult Day Care and Day Activity and Health Services Requirements chapter. The purpose of the repeal is to remove the rule from DHS's rule base. It is duplicated in the rules of the Texas Health and Human Services Commission's (HHSC) at 1 Texas Administrative Code Chapter 355 and will no longer be needed in DHS's rule base after the agency's transformation into the Department of Aging and Disability Services--mandated by House Bill 2292, 78th Legislature, Regular Session (2003)--takes place on September 1, 2004.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed repeal is in effect, there are no fiscal implications for state or local government as a result of repealing the section.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the section is that only one set of rules will exist at HHSC for all rate determination matters, rather than having a duplicate set of rules in DHS's and HHSC's rule bases. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of repealing the section, because the repeal affects duplicative rules and imposes no additional requirements on provider agencies. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated effect on local employment in geographic areas affected by the repeal.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 491- 1359 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit-193, 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 Government Code, §2007.003(b), DHS has determined that Chapter 2007 of the Government Code does not apply to this repeal. The change this repeal makes does not implicate a recognized interest in private real property. Accordingly, DHS is not required to complete a takings impact assessment regarding the repeal.

The repeal is proposed under the Human Resources Code, Chapters 22 and 103, which authorize DHS to administer public assistance programs, and to license and regulate adult day care facilities.

The repeal implements the Human Resources Code, §§22.0001-22.040 and §§103.001-103.011.

§98.6907. Reimbursement Methodology for Day Activity and Health Services.

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

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

TRD-200404014
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 1, 2004
For further information, please call: (512) 438-3734

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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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER G. LENDING POWERS

7 TAC §91.709

The Credit Union Department has withdrawn from consideration the proposed amendment to §91.709 which appeared in the January 2, 2004, issue of the *Texas Register* (29 TexReg 23).

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

TRD-200404068
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: June 21, 2004
For further information, please call: (512) 837-9236

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SUBCHAPTER H. INVESTMENTS

7 TAC §91.802

The Credit Union Department has withdrawn from consideration the proposed amendment to §91.802 which appeared in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2500).

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

TRD-200404072
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: June 21, 2004
For further information, please call: (512) 837-9236

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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 378. CONTINUING EDUCATION

22 TAC §378.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas State Board of Podiatric Medical Examiners has been automatically withdrawn. The amended section as proposed appeared in the December 12, 2003 issue of the *Texas Register* (28 TexReg 11074).

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

TRD-200404008

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER U. USE OF CREDIT INFORMATION OR CREDIT SCORES

28 TAC §5.9941

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Department of Insurance has been automatically withdrawn. The amended section as proposed appeared in the December 12, 2003 issue of the *Texas Register* (28 TexReg 11084).

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

TRD-200404009

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §§3.744, 3.747, 3.748, 3.753, 3.758

The Comptroller of Public Accounts has withdrawn from consideration proposed new §§3.744, 3.747, 3.748, 3.753, and 3.758 which appeared in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5304). The new rules will be re-filed to comply with Texas Register requirements for numbering sequence as follows; new §§3.434, 3.437, 3.438, 3.443, and 3.448. There is no change to the text of the rule.

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403882
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 15, 2004
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 20. COST DETERMINATION PROCESS

40 TAC §20.112

The Texas Department of Human Services has withdrawn from consideration the proposed amendment to §20.112 which appeared in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4134).

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

TRD-200404010
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: June 18, 2004
For further information, please call: (512) 438-3734

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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 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission adopts the repeals to §12.1, §12.3, §12.17, §12.27, §12.31, §12.33, §12.37, §12.39, §12.51, §12.55, §12.63, §12.65, §12.69, §12.71, §12.81, §12.89, §12.101, §12.103, §12.105, §12.111, §12.113, §12.115, §12.117, §12.121 and §12.123, the amendments to §12.5, §12.7, §12.9, §12.11, §12.13, §12.15, §12.19, §12.21, §12.23, §12.25, §12.29, §12.35, §12.53, §12.57, §12.59, §12.61, §12.67, §12.83, §12.85, §12.87, §12.119, and new §12.6 and §12.52.

The rules are adopted without changes to the text as published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2829) and will not be republished.

The repeal of §12.1 would repeal the rule defining "complainant" and "respondent." This rule is unnecessary because these definitions are set out in section 571.002(2) and 571.002(4) of the Government Code.

The repeal of §12.3 would repeal the rule relating to defining the scope of complaint proceedings before the Ethics Commission. This rule is unnecessary because it provides no guidance or clarification.

The repeal of §12.17 would repeal the rule relating to the agreed settlement of a complaint. This rule is unnecessary because section 571.121 of the Government Code gives the Ethics Commission authority to agree to the settlement of issues.

The repeal of §12.27 would repeal the rule relating to the extension of deadlines for action on a complaint. This rule is unnecessary because it duplicates section 571.136 of the Government Code.

The repeal of §12.31 would repeal the rule relating to the referral of a complaint to an administrative law judge. This rule is unnecessary because chapter 2003 and section 2001.058 of the Government Code govern the circumstances under which the Ethics Commission may refer a matter to an administrative law judge.

The repeal of §12.33 would repeal the rule relating to the application of the Administrative Procedure Act to complaint proceedings. This rule is invalid because it conflicts with section 571.139 of the Government Code, which provides that the Administrative Procedure Act applies only to the formal hearing stage of the complaint process.

The repeal of §12.37 would repeal the rule relating to the assessment of sanctions. This rule is unnecessary because it duplicates the content of sections 571.172, 571.173, 571.174, 571.175, 571.176, and 571.177 of the Government Code.

The repeal of §12.39 would repeal the rule relating to a criminal referral at the conclusion of a formal hearing. H.B. 1606, 78th Legislature, Regular Session, amended section 571.171 of the Government Code to set out the circumstances under which the Ethics Commission may make a referral to a prosecuting attorney. That amendment supersedes subsection (a) of this rule. Subsection (b) duplicates section 571.134 of the Government Code.

The repeal of §12.51 would repeal the rule relating to the filing date of a complaint. The file date is different for different purposes, which is clarified by rules §12.5(c) and §12.6.

The repeal of §12.55 would repeal the rule relating to the filing of a complaint that does not satisfy the statutory requirements. This rule is unnecessary because section 571.123 of the Government Code sets out the procedure for responding to a complaint that does not satisfy the statutory requirements.

The repeal of §12.63 would repeal the rule relating to the Ethics Commission's response to a complaint. This rule is inconsistent with section 571.123 of the Government Code, as amended by H.B. 1606, 78th Legislature, Regular Session, and with section 571.1241 of the Government Code, which was added by H.B. 1606, 78th Legislature, Regular Session.

The repeal of §12.65 would repeal the rule relating to notification of the status of a pending complaint. This provision is unnecessary because it duplicates section 571.1351(c) of the Government Code.

The repeal of §12.69 would repeal the rule relating to the Ethics Commission's acceptance of jurisdiction in a complaint. This rule is inconsistent with section 571.124 of the Government Code, as amended by H.B. 1606, 78th Legislature, Regular Session, and with section 571.1241 of the Government Code, which was added by H.B. 1606, 78th Legislature, Regular Session.

The repeal of §12.71 would repeal the rule relating to notification of the Ethics Commission's acceptance or refusal of jurisdiction. This rule is inconsistent with section 571.124 of the Government Code, as amended by H.B. 1606, 78th Legislature, Regular Session, and with section 571.1241 of the Government Code, which was added by H.B. 1606, 78th Legislature, Regular Session.

The repeal of §12.81 would repeal the rule relating to initial investigation procedures. This rule is inconsistent with section 571.124 of the Government Code, as amended by H.B. 1606, 78th Legislature, Regular Session, and with section 571.1241 of the Government Code, which was added by H.B. 1606, 78th Legislature, Regular Session.

The repeal of §12.89 would repeal the rule relating to the notice of the Ethics Commission's action at the end of the preliminary review process. This provision is inconsistent with section 571.126 of the Government Code, as amended by H.B. 1606, 78th Legislature, Regular Session.

The repeal of §12.101, §12.103, and §12.105 would repeal the rules relating to an informal hearing. This subchapter is unnecessary because H.B. 1606, 78th Legislature, Regular Session, eliminated the informal hearing from the complaint process.

The repeal of §12.111 would repeal the rule relating to the standard of proof at a formal hearing. H.B. 1606, 78th Legislature, Regular Session, amended section 571.129 of the Government Code to change the standard of proof at a formal hearing from "clear and convincing evidence" to a "preponderance of the evidence." That amendment supersedes this rule.

The repeal of §12.113 would repeal the rule relating to procedures in connection with a formal hearing. This rule is unnecessary because it duplicates section 571.131 of the Government Code.

The repeal of §12.115 would repeal the rule relating to the disclosure of information about subpoenaed witnesses. Subsection (a) duplicates section 571.130(b) of the Government Code.

The repeal of §12.117 would repeal the rule relating to certain requests to appear at a formal hearing. This rule is unnecessary because section 571.130 of the Government Code governs such requests.

The repeal of §12.121 would repeal the rule relating to the notice of a resolution of a formal hearing. This rule is unnecessary because it duplicates section 571.132 of the Government Code.

The repeal of §12.123 would repeal the rule relating to the availability of the Ethics Commission's decision and written report after a formal hearing. This provision is unnecessary because it duplicates section 571.132(c)(2) of the Government Code.

The amendment to §12.5 deletes the incorrect description of the Ethics Commission's authority. Moreover, it is not necessary to describe the Ethics Commission's authority in a rule because it is clearly set out in section 571.061 of the Government Code. Subsection (a)(2) of the current rule is unnecessary because it no longer covers any situation that is not covered by other parts of the rule. The rule makes clear that the rule applies to a matter initiated on the Ethics Commission's motion as well as to a complaint filed by a third party. The amendment defines "file date" for purposes of the Ethics Commission's authority to consider a complaint as the date the complainant relinquishes control of the complaint. (New §12.6 defines "file date" for purposes of the deadline for responding to a complaint.) Also, the amendment makes clear that a non-complying complaint does not toll the running of the statute of limitations.

The amendment to §12.7 deletes portions of the rule that are unnecessary because they duplicate section 571.140 of the Government Code. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.9 deletes the reference to §12.105, because the Ethics Commission has repealed §12.105. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.11 replaces the term "sworn complaint" with "complaint" to be consistent with chapter 571 of the Government Code.

The amendment to §12.13 replaces the term "sworn complaint" with "complaint" to be consistent with chapter 571 of the Government Code.

The amendment to §12.15 deletes current subsection (a) because it duplicates section 571.138 of the Government Code, which provides that a complainant is not a party to a complaint.

The amendment to §12.19 deletes current subsection (a)(3) because it adds nothing to current subsection (a)(1). The amendment also deletes current subsection (b) because §12.19 does not purport to limit any right other than the right to rely on an oral agreement. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.21 deletes a part of current subsection (a) that duplicates section 571.032 of the Government Code. The amendment also deletes a part of current subsection (b) that is inconsistent with current law. For purposes of section 571.1242 of the Government Code, notices to a respondent are effective when received. Also, the amendment deletes current subsection (d) because the five-day deadline is provided for in sections 571.123, 571.124, 571.1241, 571.126, and 571.132 of the Government Code.

The amendment to §12.23 makes the rule more precise.

The amendment to §12.25 clarifies the rule because, taken literally, the current rule would allow a respondent to revoke a waiver of a preliminary review hearing after later stages of the complaint process had been completed.

The amendment to §12.29 relates to statutory changes to the Ethics Commission's authority to issue subpoenas. H.B. 1606, 78th Legislature, Regular Session, amended section 571.137 of the Government Code, which sets out the Ethics Commission's authority to issue subpoenas in connection with a formal hearing.

The amendment to §12.35 deletes portions that are either unnecessary or duplicative of section 571.176 of the Government Code. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.53 makes clear that a matter initiated by the Ethics Commission is a complaint for all statutory purposes, not just for purposes of the Ethics Commission rules. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.57 deletes language that duplicates section 571.122 of the Government Code. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.59 makes the rule more precise than the current rule. To be consistent with chapter 571 of the Government Code, the term "complaint" replaces "sworn complaint."

The amendment to §12.61 deletes unnecessary language.

The amendment to §12.67 makes the amended rule more precise.

The amendment to §12.83 reflects the addition of section 571.1244 of the Government Code by H.B. 1606, 78th Legislature, Regular Session, which requires the Ethics Commission to adopt procedures for the conduct of preliminary reviews and preliminary review hearings. The amendment deletes current subsection (b) because it is inconsistent with section 571.1242 of the Government Code, which was added by H.B. 1606, 78th Legislature, Regular Session.

The amendment to §12.85 reflects changes made necessary by section 571.1242 of the Government Code, which was added by H.B. 1606, 78th Legislature, Regular Session.

The amendment to §12.87 deletes provisions that are unnecessary because they duplicate section 571.126 of the Government Code. The amendment also deletes the reference to an informal hearing, which is no longer part of the complaint process. The amendment provides for a resolution in case the Ethics Commission is deadlocked after a preliminary review hearing.

The amendment to §12.119 deletes language that duplicates section 571.132 of the Government Code. The amendment also prescribes the resolution after a formal hearing if the Ethics Commission is unable to reach either the five votes required to find that a violation has not occurred or the six votes needed to find a violation. Chapter 571 of the Government Code does not address this situation.

The new §12.6 defines the file date for purposes of section 571.123 of the Government Code.

The new §12.52 clarifies what constitutes a response for purposes of section 571.1242 of the Government Code and sets out the consequences for failure to respond.

The following comment was received regarding the adoption of the amendment to §12.5. Fred Lewis with Campaigns For People objected to subsection (c) as too harsh. His specific concern was that the statute of limitations provision should not prevent a complainant from filing technical problems with a complaint. The Commission considers comments from all parties but was satisfied with the rule as proposed. No change was made as a result of this comment.

The following comment was received regarding the adoption of the amendment to §12.23. Fred Lewis with Campaigns For People suggested that the two instances of the word "may" in this rule should be changed to "shall." The Commission considers comments from all parties but was satisfied with the rule as proposed. No changes were made as a result of this comment.

The following comment was received regarding the adoption of the amendment to §12.59. Fred Lewis with Campaigns For People objected to the phrase "clearly and concisely" in subsection (a). Section 571.122(b) of the Government Code requires that information in a complaint be set out in "simple, concise, and direct statements." The Commission considers comments from all parties but was satisfied with the rule as proposed. No changes were made as a result of this comment.

The following comment was received regarding the adoption of the amendment to §12.87. Fred Lewis with Campaigns For People objected to this rule because he understood it to say that the executive director would dismiss a complaint if the commission found insufficient evidence of a violation after a preliminary review hearing. The procedure set out in the statute assumes the commission will be able to decide that there is credible evidence of a violation, that there is insufficient evidence of a violation, or that there is credible evidence of no violation. The purpose of the rule was to prescribe a resolution in a situation in which the commission is deadlocked and cannot make any determination. The Commission considers comments from all parties but was satisfied with the rule as proposed. No changes were made as a result of this comment.

No comments were received regarding adoption of the other sections.

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.1, 12.3, 12.17, 12.27, 12.31, 12.33, 12.37, 12.39

The repeal of §12.1, §12.3, §12.17, §12.27, §12.31, §12.33, §12.37, and §12.39 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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 June 15, 2004.

TRD-200403942
Sarah Woelk
General Counsel
Texas Ethics Commission
Effective date: July 5, 2004
Proposal publication date: March 19, 2004
For further information, please call: (512) 463-5800

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.51, 12.55, 12.63, 12.65, 12.69, 12.71

The repeal of §12.51, §12.55, §12.63, §12.65, §12.69, and §12.71 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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 June 15, 2004.

TRD-200403944
Sarah Woelk
General Counsel
Texas Ethics Commission
Effective date: July 5, 2004
Proposal publication date: March 19, 2004
For further information, please call: (512) 463-5800

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81, §12.89

The repeal of §12.81 and §12.89 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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.

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Sarah Woelk
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For further information, please call: (512) 463-5800

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SUBCHAPTER D. INFORMAL HEARING

1 TAC §§12.101, 12.103, 12.105

The repeal of §12.101, §12.103, and §12.105 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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.

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Sarah Woelk
General Counsel
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For further information, please call: (512) 463-5800

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SUBCHAPTER E. FORMAL HEARING

1 TAC §§12.111, 12.113, 12.115, 12.117, 12.121, 12.123

The repeal of §12.111, §12.113, §12.115, §12.117, §12.121, and §12.123 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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.

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Sarah Woelk
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.29, 12.35

The amendments to §12.5, §12.7, §12.9, §12.11, §12.13, §12.15, §12.19, §12.21, §12.23, §12.25, §12.29, §12.35, and new §12.6 are adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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.

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Sarah Woelk
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.52, 12.53, 12.57, 12.59, 12.61, 12.67

The new §12.52 and the amendments to §12.53, §12.57, §12.59, §12.61, and §12.67 are adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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.

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Sarah Woelk
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §§12.83, 12.85, 12.87

The amendments to §12.83, §12.85, and §12.87 are adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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.

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TRD-200403950

Sarah Woelk
General Counsel
Texas Ethics Commission
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Proposal publication date: March 19, 2004
For further information, please call: (512) 463-5800

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SUBCHAPTER E. FORMAL HEARING

1 TAC §12.119

The amendment to §12.119 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the Ethics Commission to adopt rules concerning the laws administered and enforced by the Ethics 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 June 15, 2004.

TRD-200403951
Sarah Woelk
General Counsel
Texas Ethics Commission
Effective date: July 5, 2004
Proposal publication date: March 19, 2004
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.761

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §355.761, concerning reimbursement methodology for Institutions for Mental Diseases (IMD), in its Medicaid Reimbursement Rates chapter to specify that reimbursement is determined bi-annually and that the reimbursement period is based on state fiscal year and that the prospective reimbursement rate is compared to the Support, Maintenance and Treatment (SMT) rate. The amendments are adopted with a minor change to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 2999). The text of the rule will be republished. The adopted amendments will be effective September 1, 2004.

No comments were received from the public, but one correction was made as a result of a staff comment. The commenter noted that although the text of the proposed rule describes a process that is intended to result in a rate determination every two years, the term "biannually" was incorrectly used in the first sentence of the rule. In order to be internally consistent HHSC is replacing the term "biannually" with "biennially" in the adopted rule.

The amendment is adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.761. Reimbursement Methodology for Institutions for Mental Diseases (IMD).

(a) The Health and Human Services Commission (HHSC) determines IMD reimbursement biennially. A statewide prospective reimbursement will be available to all eligible IMD providers for reimbursable IMD services. This reimbursement is inclusive of all costs allowable under Medicare payment principles.

(b) Initial reimbursement period. The initial reimbursement period is defined as November 16, 1994-April 30, 1996. The reimbursement for this period is determined from Medicare cost reports for state-operated hospitals, which provided IMD services between September 1, 1993, and August 31, 1994. The Medicare cost reports are reviewed by HHSC to assure that the costs used for calculating each hospital's average per diem cost for IMD services are allowable under Medicare payment principles and are only those costs incurred by the hospital for care and treatment provided to persons 65 years and older and occupying a Medicare-certified bed. Using these Medicare cost reports, each hospital's average per diem cost for IMD services is calculated. HHSC adjusts each hospital's average per diem cost for IMD services to the initial reimbursement period by applying a cost-of-living index. The cost-of-living index used is the Centers for Medicare and Medicaid Services (CMS) Market Basket Forecast Excluded Hospital Input Price Index (as reported in the Dallas Regional Medical Services Letter Number 95-015). Due to the length of the initial reimbursement period, the percentages by which the average per diem costs are adjusted are prorated by taking 1/12 of the forecast for calendar year 1994 plus 2/12 of the forecast for calendar year 1995 plus 4/12 of the forecast for calendar year 1996. After adjusting the average per diem cost for each hospital, the average per diem costs for all of the hospitals are arrayed from high to low. The median (50th percentile) average per diem cost is selected as the prospective reimbursement for the initial reimbursement period. If the 50th percentile falls between IMD providers, then the immediately higher average per diem cost will be selected as the reimbursement.

(c) The reimbursement period begins on September 1 and ends on August 31 of the following year.

(1) Annually, each IMD provider is required to submit to HHSC a copy of its Medicare cost report for its most recent fiscal year ending prior to September 1. Cost reports must be received by HHSC no later than 90 days following the end of the IMD provider's fiscal year. Each IMD provider is required to identify in its cost report as a subunit (IMD unit) those Medicare-certified units on which reimbursable IMD services were provided. The Medicare cost reports are reviewed by HHSC to assure that the costs to be used for calculating each IMD provider's average per diem cost for IMD services are allowable under Medicare payment principles and are only those costs incurred for care and treatment provided to persons 65 years of age and older and occupying a Medicare-certified bed.

(2) Upon completion of the reviews of cost reports, and prior to calculating average per diem costs for each IMD provider, cost

reports and prior payment histories are reviewed. To ensure the integrity of the data and avoid bias in the resulting reimbursement due to low volume and other inefficiencies, cost reports of IMD providers will be eliminated from the database for any one of the following reasons:

(A) being in operation fewer than 90 calendar days during the previous cost reporting period;

(B) having an occupancy rate on its IMD units of less than 90% for 50% or more of the days covered during the previous cost reporting period; or

(C) individually accounting for fewer than 5.0% of the total days of care reimbursed by Medicaid as IMD services during the previous cost reporting period.

(3) Using the Medicare cost reports in the database, HHSC calculates for each IMD provider an average per diem cost for IMD services. Each IMD provider's average per diem cost is adjusted to the future reimbursement period by applying a cost-of-living index. The cost-of-living index used is the Centers for Medicare and Medicaid Services (CMS) Market Basket Forecast Excluded Hospital Input Price Index (as reported to the States in the Dallas Regional Medical Services Letter for the federal fiscal quarter ending in December of the year preceding the next reimbursement period). The percentage used for adjustments to each IMD provider's average per diem cost is prorated, using 1/3 of the forecast for the calendar year in which the reimbursement period begins (September through December) plus 2/3 of the forecast for the next calendar year (January through August).

(4) After adjusting the average per diem cost for each IMD provider, the average per diem costs of all IMD providers remaining in the database are arrayed from high to low. The median (50th percentile) average per diem cost is selected as the prospective reimbursement for the future reimbursement period. If the 50th percentile falls between IMD providers, then the immediately higher average per diem cost will be selected as the reimbursement. The prospective reimbursement rate is compared to the Support, Maintenance and Treatment (SMT) rate. All IMD providers will be paid the lower of the prospective rate or SMT rate for each day during the next reimbursement period that IMD services are provided to an eligible individual.

(d) Financial Audits. Financial audits are performed periodically on all IMD providers. IMD providers have the right to appeal exclusions and adjustments to cost reports according to TDMHMR's informal reviews and administrative hearings process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404007
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

4 TAC §17.52, §17.55

The Texas Department of Agriculture (the department) adopts amendments to §17.52 and §17.55, concerning the department's GO TEXAN membership program rules, without changes to the proposed text as published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4631). The amendments to §17.52 and §17.55 are adopted to make the sections consistent with the current practices established as a result of the department's updating of its registration processing systems and to make the program application process more efficient. The amendments to §17.52 change the date when a statement setting forth fees will be mailed by the department to existing program members, change the due date for registration fees, and change the department's policy for late payment of fees. The amendment to §17.55 provides that an applicant must remit the required registration fee with the application, rather than 30 days after notification of approval.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §12.0175, which authorizes the department to establish by rule programs to promote and market agricultural products and other products, grown, processed or produced in the state and to charge a membership fee for participation in such programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2004.

TRD-200403975
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 7, 2004
Proposal publication date: May 14, 2004
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER E. INTEREST CHARGES ON LOANS

7 TAC §1.501

The Finance Commission of Texas (commission) adopts an amendment to §1.501, concerning maximum interest charges on loans. The amendment is adopted without changes to the proposal as published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4043).

The purpose of the amendment is to implement technical corrections to §1.501. The correction in §1.501(c)(2)(C) changes the word "Subchaper" to "Subchapter."

The commission received no written comments on the proposal.

The amendment is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provision (as currently in effect) affected by the adopted amendment is Texas Finance Code §341.403.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404025
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: July 8, 2004
Proposal publication date: April 30, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER F. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §1.605

The Finance Commission of Texas (commission) adopts an amendment to §1.605, concerning payday loans. The amendment is adopted without changes to the proposal as published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4044).

The purpose of the amendment is to implement technical corrections to §1.605. The correction in §1.605(f)(1) changes the word "relatin" to "relating."

The commission received no written comments on the proposal.

The amendment is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provision (as currently in effect) affected by the adopted amendment is Texas Finance Code §341.403.

This agency 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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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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Proposal publication date: April 30, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER I. INSURANCE

7 TAC §1.801

The Finance Commission of Texas (commission) adopts an amendment to §1.801, providing definitions pertaining to gap waiver agreement allowed by Senate Bill (SB) 1429. SB 1429 was adopted during the 78th Legislature and authorized the sale of gap waiver agreements in connection with a Chapter 342 loan that contains an interest charge computed under §342.201(a) or (d). The amendment is adopted with changes to the proposal as published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4044).

Section 1.801(7) and (8) define terms used in 7 TAC §1.814. This amendment defines a gap waiver agreement and specifies the elements that may be contained in a gap waiver agreement. The amendment also identifies charges by the lender that are excluded from the calculation of net unpaid balance. These exclusions are necessary because the amount of the gap waiver fee is based upon the amount financed and the assumption that all the payments will be made as scheduled. Additionally, the exclusions let parties know what charges are covered by the fee and the charges for which each party is responsible. The new definitions also address the conditions that may result in a constructive total loss. This definition is necessary to acknowledge and provide for situations where the cost to repair a vehicle may exceed the coverage under the gap waiver agreement, but the vehicle may not otherwise be rendered a total loss.

The commission received one written comments on the proposal from Larry Diehl of Consumer Credit Insurance Association.

The commenter suggested a modification to the proposed rule to add a phrase that acknowledges a gap waiver may reduce, but not eliminate, the unpaid balance. The agency reviewed the comment and agrees with the commenter. The agency has modified the rule accordingly.

Senate Bill 1429 amended Chapter 342 of the Finance Code to allow for a gap waiver agreement. This amendment implements the gap waiver agreement. This amendment is also adopted under §11.308 of the Texas Finance Code.

The statutory provision (as currently in effect) affected by the proposed amendment is Texas Finance Code §342.4021.

§1.801. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the meanings as defined in Chapter 342. The following words and terms, shall have the following meanings unless the context clearly indicates otherwise.

(1) Personal property insurance--coverage to insure tangible personal property offered as security for a loan made under Chapter 342.

(2) Property insurance--coverage to insure either an interest in real estate or tangible personal property offered as security for a loan made under Chapter 342.

(3) Single-interest insurance--a form of property insurance that protects only the lender's interest in the property.

(4) Credit insurance--includes credit life insurance, credit accident and health insurance, and involuntary unemployment insurance.

(5) Total personal property loss--the loss of all items of personal property listed as security for a loan and insured by a particular insurance policy.

(6) Partial personal property loss--any loss other than a total personal property loss.

(7) Gap Waiver Agreement--an agreement that eliminates or reduces the deficiency when the proceeds from the borrower's insurance policy do not cover the unpaid net balance after the vehicle has suffered a total loss or constructive total loss. The unpaid net balance on the loan does not include:

(A) Delinquent payments (any outstanding payment that is more than 10 days past due);

(B) Late charges;

(C) Unearned interest;

(D) Unearned insurance premiums;

(E) Fees added after the date of the loan;

(F) Any portion of the borrower's basic comprehensive and collision policy deductible that exceeds $1,000.

(8) Constructive Total Loss--a loss where the cost to repair or replace the motor vehicle covered under the gap waiver agreement would exceed an amount equal to the actual cash value of the motor vehicle minus any salvage value. The actual cash value will be determined as of the date of loss. The actual cash value will be based on the "retail value" in the National Automobile Dealer's Association (NADA) or its equivalent, official used car guide. The licensee will consider the mileage, condition, and optional equipment of the motor vehicle when using the NADA, or its equivalent, official used car guide.

This agency 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-200404027
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: July 8, 2004
Proposal publication date: April 30, 2004
For further information, please call: (512) 936-7640

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7 TAC §1.814

The Finance Commission of Texas (commission) adopts new 7 TAC §1.814, relating to procedures for gap waiver agreements as authorized by Senate Bill (SB) 1429. SB 1429 was adopted during the 78th Legislature and allowed the sale of gap waiver agreements in connection with a Chapter 342 loan that contains an interest charge computed under §342.201(d). The rule is adopted with changes to the proposal as published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4045).

In 2003, the 78th Texas Legislature amended Chapter 342 of the Texas Finance Code (Senate Bill 1429) to permit the assessment, imposition, and collection of "debt cancellation agreement" fees, "debt suspension" fees, and "gap waiver agreement" fees on regulated loans, given certain limitations and restrictions. The intent of this legislation was to conform Texas usury statutes to current practices of national banks rectifying the perceived disparity between state and national banks by removing the state law prohibition on engaging in debt cancellation, debt suspension, and gap waiver agreements. Specifically, the Texas Legislature added §342.4021 to the Texas Finance Code.

On June 20, 2003, Governor Perry signed the bill into law and included the following Signature Message on Senate Bill 1429: "...By way of this message, I am directing the Department of Banking, Savings and Loan Department, Office of Consumer Credit Commissioner and the Credit Union Department to be diligent and aggressive in assuring that consumer protections are in place and that all Texas lenders conduct themselves properly in our quest for a truly competitive market."

One of the principal consumer protections in the law was that the amount charged for the "gap waiver" fee must be reasonable; the rule establishes the maximum reasonable fee accompanied by certain limitations that may be addressed within a gap waiver agreement.

Section 1.814(a) explains the disclosure requirements of a gap waiver agreement.

Section 1.814(b) clarifies the provisions that are permissible in a gap waiver agreement.

Section 1.814(c) discusses the content and timing requirements providing a certificate of coverage to the borrower.

Section 1.814(d) explains the allowable fees that can be charged for a gap waiver as well as the financing of that fee.

Section 1.814(e) discusses the refund of unearned gap waiver agreement fee. It explains the refunding and calculation methods and provides that a borrower may not receive a complete refund for the gap waiver fee if the gap agreement is cancelled within 60 days from the date of the loan and a settlement has occurred within that timeframe.

Section 1.814(f) explains that a licensee has 60 days to comply with the payment terms of a gap waiver agreement after a complete claim form has been received by the lender.

Section 1.814(g) delineates the allowable methods of calculating the settlement amount.

Section 1.814(h) discusses the proper calculations of insurance and interest refunds on prepaid gap waiver agreement settlements after a total loss or total constructive loss.

Section 1.814(i) delineates the practices that are prohibited by licensees providing gap waiver agreements.

The commission received one written comments on the proposal from Larry Diehl of Consumer Credit Insurance Association.

The commenter recommended that §1.814(a)(1) should state that disclosures must be given when presenting the terms or before the borrower purchases the agreement. The commenter believes this change would cover a contemporaneous offer and disclosure. The commission disagrees with this comment in that the commission believes it is in direct conflict with §342.4021(d). The statutory provision requires delivery of the disclosure before the offer. The commission declines to modify subsection (a)(1).

Next the commenter recommends a modification to subsection (b)(3)(B) that would remove the necessity of a felony conviction in order to exclude a fraudulent or illegal act from coverage on a gap waiver agreement. The commission considered this suggestion by reviewing typical GAP insurance policy provisions. The commission found that the felony conviction requirement is a standard provision. The commission believes that it should act consistently with the approved policy forms covering similar risks. The commission declines to modify subsection (b)(3)(B).

In §1.814(c) the commenter recommends that the requirement to include the borrower's telephone number on the certificate of coverage be revised. The commenter points out that requiring this information is unnecessary and could create additional costs for programming. The commission agrees with the comment and modifies the rule to remove the requirement for the borrower's telephone number, but also modifies the rule to require the contact information for the claims administrator rather than the lender on the certificate of coverage.

The commenter further expresses concern relating to the fundamental methodology or standards used to establish maximum rates in subsection (d). The commenter questions if the commission could find a commonality between the published rates and the rates issued by the Texas Department of Insurance (TDI). Agency staff consulted TDI in the development of the rule. One of the primary concerns associated with the passage of SB 1429 was the need and desire for coordination and cooperation among the financial regulatory agencies, including the Texas Department of Insurance and the Office of Consumer Credit Commissioner. In developing the rule, the commission carefully considered the methodology and standards used by TDI in regulating similar products and patterned the gap waiver structure and compensation of the rule consistently with the conditions and provisions of these similar products. The commission believes the rule is appropriately drafted and declines to modify subsection (d). Agency staff will continue to monitor the rate structures for similar products regulated by TDI.

Senate Bill 1429 amended Chapter 342 of the Finance Code to allow for a gap waiver agreement. This rule implements the gap waiver agreement. This rule is also adopted under Texas Finance Code, §11.308.

The statutory provision (as currently in effect) affected by the adopted new rule is Texas Finance Code, §342.4021.

§1.814. Gap Waiver Agreement.

(a) Disclosure Required by §342.4021(d).

(1) A lender must provide the borrower with the gap waiver agreement disclosure before presenting the borrower with the terms of the gap waiver agreement. The disclosure must not be in the loan agreement and must state that the borrower is not required to purchase the gap waiver agreement in order to obtain the loan. A lender may request that the borrower authenticate the gap waiver agreement disclosure acknowledging applicant's timely receipt of the disclosure. A licensee may rely upon verifiable procedure to show that the gap waiver agreement disclosure was provided to an applicant.

(2) Multiple Applicants. In the case of multiple applicants, it is only necessary for the licensee to deliver the gap waiver agreement disclosure to one applicant.

(b) Authorized Gap Waiver Agreement Provisions. The gap waiver agreement may include a provision that:

(1) limits the calculation of the unpaid net balance;

(2) limits the scope of the gap waiver agreement to loans which require the borrower to make a balloon payment between 24 and 48 months or to loans which are repayable in 48 months or more;

(3) excludes loss or damage as a result of:

(A) An act occurring prior to the date of the loan;

(B) Any dishonest, fraudulent, criminal, or illegal act resulting in a felony conviction of the borrower;

(C) A mechanical or electrical breakdown or failure of the motor vehicle;

(D) Conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(E) Confiscation; and

(F) The operation, use, or maintenance of the motor vehicle in any race, speed contest, or other contest.

(4) requires the borrower to notify the licensee of any potential loss under the gap waiver agreement; or

(5) requests the borrower to provide or complete the following documents:

(A) A gap waiver agreement claim form;

(B) Proof of loss and settlement check from the borrower's basic comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(C) Verification of the borrower's primary insurance deductible; and

(D) A copy of the police report, if any, filed in connection with the total loss to the motor vehicle.

(c) Certificate of Coverage. If a borrower purchases a gap waiver agreement, the licensee must provide the borrower, within a reasonable amount of time not to exceed 10 days from the date of the loan, a certificate or similar form that clearly sets forth:

(1) the name of the borrower and the name, address, and telephone number of the place where claims are administered;

(2) the coverage amount and term of the gap waiver agreement;

(3) the cost of the gap waiver agreement; and

(4) the terms, including the limitations, exclusions and restrictions.

(d) Premium or Rate for Gap Waiver Agreement. A licensee may charge a reasonable gap waiver agreement fee that does not exceed the rates contained in the chart in Exhibit 1. The amount of the fee is based upon the amount financed. The fee for the gap waiver agreement can be adjusted to the nearest whole dollar. The fee may be included in the amount financed and a finance charge may be charged on the fee. Figure: 7 TAC §1.814(d)

(e) Refund of Unearned Gap Waiver Agreement Fee.

(1) Refunding Method. Upon termination of a gap waiver agreement prior to the scheduled maturity date of a loan, the licensee shall provide the borrower a refund or credit calculated using the pro rata method. The refund must be given upon prepayment of the loan or if the lender demands payment in full of the unpaid balance. The pro rata method of making refunds involves computing a factor to apply to the total premium to determine the unearned portion. The factor is

determined by dividing the term remaining on the loan by the total loan term.

(2) The refund credit for the gap waiver agreement can be rounded to the nearest whole dollar.

(3) A refund credit is not required if the amount of the refund credit is less than $1.

(4) If the borrower cancels the gap waiver agreement within sixty days from the date of the loan, the licensee will refund the entire gap waiver agreement fee. A borrower may not cancel the gap waiver agreement and then receive any benefits under the agreement.

(f) Prompt Payment of Claims. A licensee must comply with the payment terms of the gap waiver agreement within 60 days of receiving a completed gap waiver agreement claim form. If the licensee has all of the information that a borrower would provide in the completion of a gap waiver agreement claim form, the licensee must comply with the payment terms of the gap waiver agreement within 60 days of receipt of all of the information.

(g) Calculation of Settlement Amount. The calculation of the settlement amount will be calculated under one of the following methods:

(1) If the loan uses the scheduled installment earnings method, the licensee will calculate the settlement amount by adding the remaining original scheduled installments together and then subtracting any refunds due as of the date of total loss or constructive total loss.

(2) If the loan uses the true daily earnings method, the licensee will calculate the settlement amount by determining the scheduled principal balance due of the date of total loss or constructive total loss.

(h) Prepayment of Loan by Gap Waiver Agreement. If the gap waiver agreement is triggered by the total loss or the constructive total loss of the vehicle all refunds should be calculated as of the date of loss.

(1) Insurance Refunds. Examples of refunds include credit life, credit accident and health insurance premium, credit involuntary unemployment insurance premium, single-interest insurance premium, and personal property insurance premium.

(2) Interest Refund. If the loan uses the scheduled installment earnings method, the interest refund should be calculated as of the date of loss. If the loan uses the true daily earnings method, the licensee should not earn any interest after the date of loss.

(i) Prohibited Practices. A licensee cannot offer a gap waiver agreement if:

(1) the loan is unsecured, secured by personal property other than a motor vehicle, or real property;

(2) the interest charge on the loan is calculated under §342.201(a) and (e) of the Texas Finance Code;

(3) the loan is already protected by gap insurance;

(4) the licensee has not provided the disclosure required by §342.4021(d) of the Texas Finance Code;

(5) the purchase of the gap waiver agreement is required for the borrower to obtain the extension of credit;

(6) the original term of the loan is less than 48 months, unless the loan contracts for a balloon payment; and

(7) the agreement includes any exclusions or limitations other than those listed in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404028
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: July 8, 2004
Proposal publication date: April 30, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

7 TAC §§1.1206, 1.1207, 1.1216, 1.1217, 1.1226, 1.1227, 1.1236, 1.1237, 1.1246, 1.1247

The Finance Commission of Texas (commission) adopts amendments to Chapter 1, Subchapter Q, §§1.1206, 1.1207, 1.1216, 1.1217, 1.1226, 1.1227, 1.1236, 1.1237, 1.1246, and 1.1247, concerning model clauses and permissible changes. The amendments are adopted without changes to the proposal as published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4047).

The purpose of the amendments is to make technical changes to increase the maximum permissible dishonored check fee from $25 to $30 as enacted by the 78th Legislature, Regular Session. Also, the amendments are to implement a technical correction to change the zip code from "78750" to "78705" in §1.1217(a)(7) and (8).

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provision (as currently in effect) affected by the adopted amendments is Texas Finance Code §341.403.

This agency 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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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1004

The Credit Union Commission adopts amendments to §91.1004 relating to conversion of charter without changes to the text published in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2507).

The amendments add a new subsection (d) which imposes a new requirement on a converting credit union to provide its members with written notice of its intent to convert. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. In addition, a converting credit union would be required to disclose specific reasons for the conversion, the costs of the conversion, as well as any changes or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished. A new subsection (e) was also added which clarifies that the corporate existence of a converting credit union continues in its successor and that each member shall receive a share or deposit account in the converted institution equal in amount to the value of accounts held in the former credit union. These amendments will help credit union members to make informed decisions when voting on a conversion.

One comment in support of the amendments was received from the Texas Credit Union League.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance.

The specific sections affected by the amendments are Texas Finance Code, §§122.201, 122.202, and 122.203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404066
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 11, 2004
Proposal publication date: March 12, 2004
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.5

The Texas Residential Construction Commission (the "commission") adopts a new section at Title 10, Part 7, Chapter 300, §300.5 regarding the establishment of statutorily mandated task forces pursuant to provisions of the Property Code Chapters 430 and 436 and in accordance with Government Code Chapter 2110, regarding advisory committees. The new section is adopted without changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4365). The new section is adopted to implement provisions of House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01) and specifically provisions of Chapter 430, Property Code, and in accordance with Government Code Chapter 2110, regarding advisory committees.

Section 300.5, relating to Task Forces, provides for the commission's appointment of members to three separate task forces for purposes of obtaining advice in areas of mold reduction and remediation, rain harvesting and water recycling, and residential arbitrators and arbitration. The section further provides for the composition, responsibilities, meeting requirements and reporting requirements for each task force.

No comments were received regarding the adoption of this section.

The purpose of the new section is to establish statutorily mandated task forces to advise the commission in areas of mold reduction and remediation, rain harvesting and water recycling, and residential arbitrators and arbitration. The section further provides for the composition, responsibilities, meeting requirements and reporting requirements for each task force.

The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; Property Code §430.003, which provides for the establishment of a task force concerning mold reduction and remediation; Property Code §430.004, which provides for the establishment of a task force to develop design recommendations for rain harvesting and water recycling; Property Code §436.004, which provides for the establishment of a task force concerning residential arbitrators and arbitration; and Gov't Code Chapter 2110, which relates to agency advisory committees.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code §§408.001, 430.003, 430.004, and 436.004 and Gov't Code Chapter 2110.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404038
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: July 11, 2004
Proposal publication date: May 7, 2004
For further information, please call: (512) 463-9638

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CHAPTER 301. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS

10 TAC §301.1

The Texas Residential Construction Commission (the "commission") adopts a new section at Title 10, Part 7, Chapter 301, §301.1, concerning definitions to be used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act, Title 16, Property Code.

The commission is adopting this section to assist those who use the commission's rules by providing terminology that will enable users to better understand and use the sections adopted.

The new section is adopted with changes to the proposed text as published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 269).

Written comments were received regarding this adoption. All written comments were due by February 9, 2004. Written comments were submitted by Jay Dyer of the Texas Association of Builders ("TAB") and John Cobarruvias of Homeowners Against Deficient Dwellings ("HADD"). No party requested a hearing pursuant to the Administrative Procedure Act, Government Code §2001.029.

In a letter dated February 5, 2004, TAB submitted a number of proposed changes to the proposed text in its written comments. TAB proposed that the reference to the Texas Residential Construction Act ("the Act") in the "builder" definition should be deleted to increase readability. The purpose of the definitions section is to provide guidance to rule-users in reading the agency rules, not to repeat statutory definitions. Offering the introductory statutory reference to which TAB objects assists by directing rule-users to the full definition if the user determines that would be of further help. However, because the section definition is not as comprehensive as the statutory definition, TAB's comment raises a question as to whether the inclusion of the statutory reference causes more confusion than it alleviates. For that reason, the commission has deleted cross-references to statutory definitions throughout the section when the inclusion of the reference creates more confusion than it alleviates.

TAB also suggested that the "builder" definition should be further modified to delete the phrase "when required by the context" because it believes that the rule should track the language of the statute. For the reasons stated above, the commission has rephrased the "builder" definition to read "when required by the context of the rule" to make clear that the definitions in the rule are for the purposes of utilizing the agency's rules. TAB also suggested that the builder definition should include statutory exclusion found in §401.003(c) of the Act. The commission does not agree that the statutory exclusionary language is necessary to understand the commission's rules and therefore declines to add the suggested language. The exclusionary language regarding licensed tradesmen in the statutory definition of "builder" is a matter for public education but is not required to understand the commission's rules.

TAB commented that definitions for the terms "building and performance standards" and "construction defect," should not provide references to the respective provisions of the Act, but instead should quote the exact language of the statute. For the reason stated above, the commission does not agree to quote the statutory definition of either term. Therefore, the commission declines to adopt the definition suggested by TAB. Similarly, "construction defect" is a term defined by statute; the rule is not adopted to repeat verbatim terms defined elsewhere, but to offer direction to rule-users. However, in reviewing the proposed definition of "building and performance standards," it became apparent that the proposed definition was too limited. Currently, "building and performance standards" include not only those to be adopted by the commission but also those that are applicable to residential construction prior to the commission's adoption of standards. For that reason, the commission revised the definition to encompass all home building standards that may apply to a house or duplex subject to the state-sponsored inspection and dispute resolution process.

TAB commented that the definition of the term "home" should be revised to replace the term "residential dwelling" with "house." The International Residential Code (IRC) refers to "one and two family dwellings" and refers to "dwelling units." House Bill 730 requires the commission to adopt standards equivalent to the IRC for residential construction. Accordingly, the commission believes that the definition of home should include the IRC terminology "dwelling unit" and has revised the definition, accordingly.

TAB commented that the definition "improvement to the interior of an existing home when the cost of the work exceeds $20,000" should be modified to change the plural "modifications" to the singular "modification." TBA suggested that the term "alteration" should be added to demonstrate that a fixture need not be added for the Act to apply. TBA further suggested that the phrase "to the builder" should be added to the second sentence. The commission agrees that these suggestions help clarify the definition and has revised the definition to encompass those suggestions, although without accepting them verbatim.

TAB commented that the definition of the term "living space" at should be revised to add the term "residential" and delete the phrases "embodying walls, floor and ceilings that are similar to the rest of the home." The commission accepts the suggestion that the term "enclosed area" is sufficient to encompass the elements of the enclosure. For the sake of brevity, the commission has revised the definition consistent with TAB's suggestions.

TAB commented that the reference to the Act found in the definition of the term "statutory warranty" should be replaced with the Act's specific provisions. The definition would then be supplemented with a separate definition for "statutory warranty of habitability." The statute actually refers to the legal requirement that home construction comply with the building and performance standards applicable to the construction. Therefore, the commission has revised the definition to delete the reference to the statute, but also to more accurately reflect the use of the term in the rules. The commission does not intend to address the warranty of habitability in this rule at this time.

TAB commented that the definition of the term "state inspector" should be supplemented with a definition for the "state-sponsored inspection and dispute resolution process." The commission declines the suggestion to include this supplemental definition because the term is self-explanatory and an entire chapter of rules is dedicated to the discussion of the process described by the term.

TAB commented that the definition of the term "third-party inspector" should be revised to delineate the services that a third-party inspector would perform. The commission modified the definition of "third-party inspector" to capture TAB's comment.

Finally, TAB commented that the term "an improvement to the interior of the home when the cost paid for the work exceeds $20,000" should be rephrased to read "an improvement to the interior of an existing home when the cost of the work exceeds

$20,000." The suggestion is well-taken and the phrase has been modified accordingly.

In an electronic message dated January 19, 2004, HADD commented that the definitions of "builder", "material improvement" and "transaction governed by the Act" should include the specific exclusion "foundation repair or any repair of an existing structure such as siding replacement." The commission does not find that the addition will improve the definitions and declines to adopt the language suggested.

HADD commented that the last clause "an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period" should be deleted. Since the clause tracks the language found in §401.004 of the Act, the commission will not modify the definition as a result of HADD's comment.

Finally, HADD commented that a definition is needed for the term "structural defect." The commission declines to adopt a definition for that term at this time; however, the commission will consider the issue raised by HADD's comment when adopting building and performance standards.

In addition to written public comments received concerning definitions, the commission held informal public meetings around the state between January and March of 2004 and received comments on a variety of issues pending before the commission, including rule comments. During those informal meetings, Roy Hickman of Aiken Construction commented that a definition for the term "foundation failure" was needed. The commission declines to create a definition for this term at this time; however, the commission will consider the issue raised by Mr. Aiken's comment when adopting building and performance standards.

All comments regarding this section, 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 section is adopted to implement new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 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.

The newly adopted section was previously adopted and published as an emergency section in the January 9, 2004 issue in the Emergency Rules section of the *Texas Register* (29 TexReg 257).

The statutory provisions affected by the adoption of this section are those set forth in Property Code Chapter 408 and House Bill 730, 78th Legislature, R.S., ch. 458 §101.

§301.1. Definitions.

The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) Accrual or accrued--when a homeowner first discovers a condition in the home that is a potential construction defect.

(2) Act--the Texas Residential Construction Commission Act, Title 16, Property Code.

(3) Affiliate--a person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person.

(4) Builder--

(A) any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(i) a new home;

(ii) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(iii) an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(B) When required by the context of the rule, the term may include:

(i) an owner, officer, director, shareholder, partner, affiliate or employee of the builder;

(ii) a risk retention group governed by §21.54, Insurance Code, that insures all or any part of builder's liability for the cost to repair a residential construction defect; and

(iii) a third-party warranty company and its administrator.

(5) Building and performance standards--those standards that apply to home construction built pursuant to a transaction governed by the Act.

(6) Commission--the Texas Residential Construction Commission.

(7) Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(8) Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(9) Home--the real property, improvements and appurtenances thereto for a single-family residential dwelling unit or duplex.

(10) ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(11) Improvement to the interior of an existing home when the cost of the work exceeds $20,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $20,000 to be paid by a homeowner to a single builder.

(12) Living space--the enclosed area in a home that is suitable for year-round residential use.

(13) Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(14) Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(15) Person--an individual, partnership, company, corporation, association, or any other legal entity, however organized.

(16) State inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process.

(17) Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the number of years as set in statute, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and

(C) ten years for major structural components of the home.

(18) Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(19) Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost of the work exceeds $20,000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404005
Susan Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-9638

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CHAPTER 302. FEES

10 TAC §302.2

The Texas Residential Construction Commission (the "commission") adopts a new section at Title 10, Part 7, Chapter 302, §302.2 regarding fees for providing copies of public information pursuant to provisions of the Texas Government Code Chapter 552. The new section is adopted without changes to the proposed text as published in the May 7, 2004 issue of the *Texas Register* (29 TexReg 4366) and will not be republished.

Section 302.2, relating to Fees for Public Information, provides that the commission will determine the fees for providing copies of public information in accordance with the rules adopted by the Texas Building and Procurement Commission.

No comments were received regarding the adoption of this rule.

The new rule is adopted to notify the public that the agency will charge fees for copies of public information consistent with the rules adopted by the Texas Building and Procurement Commission on the subject.

The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Government Code §552.262, which requires that governmental bodies use the rules adopted by the Texas Building and Procurement Commission to determine charges for making copies of public information.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code, §408.001 and Government Code §552.262.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: July 8, 2004
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For further information, please call: (512) 463-9638

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CHAPTER 303. REGISTRATION
SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §§303.200 - 303.210

The Texas Residential Construction Commission (the "commission") adopts new sections at Title 10, Part 7, Chapter 303, Subchapter C, §§303.202 - 303.210, regarding the registration and qualification of third-party inspectors who take part in the state-sponsored inspection and dispute resolution process described in Title 16, Property Code, with changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register*

(29 TexReg 4367) and adopts §§303.200 and 303.201 without changes to the proposed text. Sections 303.202 - 303.210 are republished with changes to the proposed text. Sections 303.200 and 303.201 will not be republished.

The sections are adopted to comply with new legislation, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), hereinafter referred to as the "Act." The new sections are adopted under Chapter 427, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides, in part, that third-party inspectors who take part in the state-sponsored inspection and dispute resolution process must be registered with the state and must meet certain statutory qualifications to serve in that capacity.

Section 303.200 states the commission will register two types of inspectors to serve as neutral third parties in the state-sponsored inspection and dispute resolution process.

Section 303.201 provides that the commission will conduct background checks on individuals who apply under this subchapter to serve as third-party inspectors.

Section 303.202 provides that individuals seeking to register as third-party inspectors must submit a completed application on a commission-prescribed form and the appropriate fee and must meet the qualifications required under the Act for the type of inspections they wish to perform and provide evidence of their qualifications.

Section 303.203 states that the commission shall utilize information gleaned from the application and the individual's background check to determine if an individual is fit to carry out the duties of serving as a third-party inspector under the Act. It further lists certain factors that the commission will review in determining the fitness of individuals applying to serve as third-party inspectors who have a criminal history.

Section 303.204 provides that after an individual has been approved to serve as a third-party inspector, the commission will promptly notify the individual and provide a certificate of registration, which shall be effective for one year from the date on the certificate.

Section 303.205 addresses the procedure and requirements for denying an application for registration.

Section 303.206 provides the process and requirements for appealing the denial of an application under §303.205.

Section 303.207 addresses the statutorily-required commission-developed training program for third-party inspectors and the requirement that registered third-party inspectors complete the commission-developed training prior to participation in the state-sponsored inspection and dispute resolution process.

Section 303.208 provides that registered third-party inspectors notify the commission in writing of material changes in the information provided as a part of the application within thirty (30) days of the change. It further provides that a material change includes, but is not limited to, a change of address or a change in criminal history as a result of a previously unadjudicated or undisclosed criminal charge other than traffic tickets or Class C misdemeanors that are not crimes involving moral turpitude.

Section 303.209 addresses the renewal of third-party inspector registration.

Section 303.210 provides that the commission shall revoke a registration approved under this subchapter if the commission determines that the registrant is no longer qualified or fit to serve. Further, the commission may revoke a registration if the registrant fails to timely disclose to the commission a relationship that could reasonably be considered to create a conflict of interest or impair the inspector's neutrality in serving as a third-party inspector under the Act.

Written comments were received via electronic transmission from John Cobarruvias of Homeowners Against Deficient Dwellings ("HADD") on May 28, 2004. HADD commented that §303.202(c)(1) should be revised to require that a third-party inspector possess five or more years experience as an inspector in residential construction instead of five or more years of experience working in the field of residential construction. The stated minimum requirements are set forth in §427.001 of the Act. Therefore, the commission declines to accept the suggested change. HADD further commented that §§303.202(c)(3) and 303.202(d)(3) should be modified to require that third-party inspectors must also attest that they did not receive more than 10% of their gross income from providing inspection services for home builders or from working for a builder or the building industry, instead of receipt of no more than 10% of income from fees for expert witness services. Again, the rule's language duplicates §427.001 of the Act. Accordingly, the commission declines to accept the suggested modification to the rule.

HADD commented that §303.202(d)(2) should be revised to require that a third-party inspector appointed to structural matters must possess at least ten (10) years experience as an engineer in residential construction. This rule is in accordance with §427.001 of the Act, which provides that in structural matters the third party inspector will be an engineer or an architect with a minimum of ten (10) years experience in residential construction. Since the current rule is similar to the suggested revision, the commission finds that further modification is unnecessary.

Written comments were received from the Texas Association of Builders ("TAB") on May 27, 2004, regarding the adoption of these rules. TAB commented that §§303.202(c)(3) and 303.202(d)(3) should be revised so that the language would be identical. The commission agrees that for purposes of consistency §303.202(c)(3) should be revised. Accordingly, the text was modified. TAB also commented that in subsections in which the term "registered inspectors" appears, the rules should be revised to replace the term with "third-party inspectors." The commission agrees and the replacements were made to §§303.203, 303.204 and 303.208.

TAB commented that §303.207 should be modified so that it is clear that the commission-developed training would only apply to structural third-party inspectors. The commission has decided to require training for all registered third-party inspectors, not just structural inspectors. Therefore, the commission declines to accept the modification.

In addition to the written comments received regarding the proposed rule text, the commission received comments on the emergency third-party inspector rules published in the January 23, 2004, issue of *Texas Register* (29 TexReg 573). HADD commented that §303.202(d)(2) should be revised to require that a third-party inspector who may be appointed by the commission to a dispute involving a structural matter should possess ten years experience as a "licensed" engineer in residential construction. Glen Davis of Eagle Inspection also provided written comment regarding the qualifications of a structural third-party inspector. Mr. Davis suggested that the rule be revised to require that a third-party inspector who is appointed

by the commission to inspect a home on a structural matter should be a structural engineer currently licensed by the Texas Board of Professional Engineers. Mr. Davis further suggested that architects be excluded because most architects do not have the same knowledge to make a forensic determination of a structural defect that structural engineers possess. The language in §303.202(d)(2) tracks the language of §427.001 of the Act, which also includes the use of architects. Therefore, the commission declines to accept either of the suggested revisions.

Mike Cothran of MLC Real Estate Inspectors commented that he had reservations about the emergency third-party inspector rules with regard to the time required of each inspector in the state-sponsored inspection and dispute resolution process, the reporting requirements, the evidence-gathering process, liability issues for the inspector, the geographical area limits of service, recusal requirements, and the fee schedule. Although Mr. Cothran's comments were broad in scope, the commission has considered the comments thoroughly and has made revisions to ensure clarity in its rules. Some of Mr. Cothran's other concerns have been addressed during the development of the commission's third-party inspector training course.

TAB also provided written comments concerning the emergency third-party inspector rules. TAB commented that §303.202(c)(3) and (d)(3) should be revised for readability and to include exclusionary language concerning the ten percent (10%) of gross income derived from witness services. TAB also commented on §303.205, pertaining to denial of registration, and suggested revisions for purposes of readability. The commission agreed with these comments and made the revisions as found in the proposed text published in the May 7, 2004 issue of the *Texas Register* in an effort to improve the readability of the rule text.

TAB also commented that §303.209 should be revised to replace the term "shall" with "may" because renewal is not a mandatory requirement. The commission agreed that to the extent a person chooses not to continue to act as a third-party inspector that person is not required to renew a certificate of registration. The proposed rule was revised accordingly.

Additionally, the commission held several 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 concerning third-party inspector rules that were adopted under emergency rulemaking action. All comments regarding the emergency rules and the proposed rules, including any not specifically referenced herein, were fully considered by the commission. The commission has also made other minor modifications to the proposed rule text for the purposes of clarifying its intent, correcting typographical errors and improving style and readability.

The new sections are adopted to implement new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 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 Chapter 427 provides for the registration and qualification of persons who will participate in the state-sponsored inspection and dispute resolution process as third-party inspectors.

The statutory provisions affected by the adopted sections are those set forth in Title 16, Property Code, specifically Section 408.001 and Chapter 427 and in House Bill 730, 78th Legislature, R.S., ch. 458, §1.01.

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

§303.202. Application.

(a) An individual applying for registration to serve as a third-party inspector for appointment in the state-sponsored inspection and dispute resolution process must submit a completed application on a commission-prescribed form and the appropriate fee.

(b) An individual may submit an application for registration with the commission to serve as both a workmanship and materials inspector and a structural inspector. An individual seeking to serve as both a workmanship and materials inspector and a structural inspector must meet the qualifications of each position.

(c) An individual applying for registration as a third-party inspector for issues related to workmanship and materials shall:

(1) provide credible documentation that the individual has acquired a minimum of five years of experience working in the field of residential construction;

(2) provide documentation that the individual has a current ICC certification as a residential combination inspector;

(3) attest that the individual has not received more than ten percent of the individual's gross income from providing expert witness services, including retainer fees accepted for the purpose of providing testimony, evidence or consultation in connection with a pending or threatened legal action. For purposes of calculating ten percent of the individual's gross income, the individual should multiply the amount of gross income reported on the last federal income tax return filed by that individual by ten percent. Fees for expert witness services, including providing testimony or evidence in a legal action, received by the individual as a result of having served in the capacity of a registered third-party inspector may be excluded from the amount of gross income when calculating the percentage of gross income received from providing expert witness services under this subsection; and

(4) provide any other information that the commission has deemed necessary to assess the individual's qualifications and fitness to serve as a third-party inspector.

(d) An individual applying for registration as a third-party inspector for issues involving a structural matter shall:

(1) provide documentation that the individual is a state-licensed professional engineer or a state-licensed architect;

(2) provide documentation that the individual has acquired a minimum of ten (10) years of experience working in the field of residential construction;

(3) attest that the individual has not received more than ten percent of the individual's gross income from providing expert witness services, including retainer fees accepted for the purpose of providing testimony, evidence or consultation in connection with a pending or threatened legal action. For purposes of calculating ten percent of the individual's gross income, the individual should multiply the amount of gross income reported on the last federal income tax return filed by that individual by ten percent. Fees for expert witness services, including providing testimony or evidence in a legal action, received by the individual as a result of having served in the capacity of a registered third-party inspector may be excluded from the amount of gross income when calculating the percentage of gross income received for providing expert witness services under this subsection; and

(4) provide any other information that the commission has deemed necessary to assess the individual's qualifications and fitness to serve as a third-party inspector.

§303.203. Determination of Qualifications and Fitness.

(a) The commission shall review each application to determine if the individual is qualified to serve as the type of third-party inspector for which the individual has submitted an application and shall utilize all the information received as a result of the application to determine whether the individual is fit to perform the duties of a third-party inspector, including the results of the criminal background check.

(b) In reviewing an application to determine if an individual is fit to carry out the duties of a third-party inspector under this subchapter, the commission shall consider, among other things, whether the individual has a criminal history and if so:

(1) the nature and seriousness of any crimes for which the individual has a prior conviction or convictions, including whether a prior conviction is for a crime involving moral turpitude;

(2) the extent to which service as a registered third-party inspector might offer the individual an opportunity to engage in further criminal activity of a same or similar nature as that for which the individual has a prior conviction;

(3) the extent and nature of the individual's past criminal activity;

(4) the age of the individual when any criminal activity occurred;

(5) the remoteness in time between the submission of the application and the date of the individual's last criminal conviction;

(6) the individual's overall work history in relation to the dates of any criminal convictions;

(7) documentation of the individual'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 documentation of the individual's fitness to serve as a third-party inspector, as requested by the commission.

(c) An individual applying for registration must provide the commission with any information deemed necessary to determine whether the individual is qualified and fit to serve as a third-party inspector in a timely manner in order to complete the application process. Failure to comply with a commission request for information will result in a denial of the application.

§303.204. Notice of Approved Registration.

(a) The commission shall notify individuals of any approved registration under this subchapter no later than fifteen days of receipt of a completed application and the appropriate fee.

(b) The commission shall provide registered third-party inspectors with a certificate of registration, which shall remain effective for at least one year from the effective date shown on the certificate, unless otherwise revoked or suspended.

§303.205. Denial of Registration.

(a) The commission shall deny a certificate of registration or a renewal of registration if the commission determines that the individual is unqualified or unfit to perform the duties of a third-party inspector.

(b) If the commission denies a certificate of registration or a renewal of registration, the commission shall provide written notice to the individual via certified mail, return receipt requested, not later than the 15th day after the commission receives the completed application for registration or renewal and the appropriate fee.

(c) The commission shall state the reason(s) for denial of a certificate of registration in its written notice to the individual and provide notice of the opportunity for appeal.

§303.206. Appeal of Denial.

(a) An individual who receives a notice of denial under §303.205 may appeal the decision to the Executive Director by submitting a written request for reconsideration not later than thirty (30) days from receipt of the notice of denial.

(b) The decision of the Executive Director is a final agency decision not subject to further administrative appeal.

§303.207. Training.

(a) The commission shall develop an initial training program for all registered third-party inspectors.

(b) Registered third-party inspectors must complete the commission-developed training prior to participation in the state-sponsored inspection and dispute resolution process.

§303.208. Material Change in Information.

(a) A registered third-party inspector 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 days of the change.

(b) A material change includes, but is not limited to, a change of address or contact information, revocation of a professional certificate or license or a criminal charge, including any Class C misdemeanor charge for a crime involving moral turpitude, made or adjudicated against a registered third-party inspector, since the date of that inspector's last application on file with the commission.

§303.209. Renewal.

(a) A registered third-party inspector may apply annually to renew the third-party inspector's registration.

(b) A registered third-party inspector who seeks to renew a previously granted certificate of registration shall file an application for renewal on a commission-prescribed application and submit the appropriate fee.

(c) Applications for renewal shall be reviewed as provided under §303.203 of this subchapter to determine whether the individual continues to be qualified and fit to serve as a third-party inspector.

§303.210. Revocation of Registration.

(a) After notice and opportunity to be heard, the commission shall revoke the certificate of registration of any registered third-party inspector who is determined to be unqualified or unfit to continue serving as a third-party inspector.

(b) The commission may revoke a certificate of registration approved under this subchapter if:

(1) the commission determines that a third-party inspector knowingly failed to timely disclose to the commission a financial or personal relationship with a party to a dispute to which the third-party inspector has been appointed under the state-sponsored inspection and dispute resolution process; and

(2) that the relationship could reasonably be considered by the other party to the dispute to create an incurable conflict of interest for the third-party inspector or otherwise substantially impair the third-party inspector's ability to serve as a neutral third-party inspector in the dispute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan Durso
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Texas Residential Construction Commission
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CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §§313.1 - 313.26

The Texas Residential Construction Commission (the "commission") adopts new sections at Title 10, Part 7, Chapter 313, §§313.1 - 313.26 regarding the state-sponsored inspection and dispute resolution process (SIRP) as provided for in Title 16, Property Code and in Property Code Chapter 27, as amended by House Bill 730 (Act effective Sept. 1, 2003, 78th Leg. R.S., ch. 458, §101). The sections are adopted with changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4369) as to §§313.1 - 313.26.

The new sections are adopted to comply with new legislation including House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01) and new Chapter 426, Property Code, which provides, in part, for an informal inspection and dispute resolution process to assist homeowners and builders in resolving post-construction disputes for alleged construction defects discovered after September 1, 2003.

Section 313.1 states the applicability of the state-sponsored inspection and dispute resolution process (SIRP) to post-construction disputes regarding alleged construction defects.

Section 313.2 describes the notice and opportunity to inspect required as a prerequisite to making a request to initiate the SIRP.

Section 313.3 provides information on a builder's obligations and potential liability as a result of receipt of notice of a request alleging a threat to health or safety.

Section 313.4 describes the relevant time periods for a timely request for the SIRP.

Section 313.5 describes the process for making a request to participate in the SIRP.

Section 313.6 describes the information that must be included in a request to initiate the SIRP.

Section 313.7 provides information on the required notice of the initiation of the SIRP to other interested parties.

Section 313.8 provides information regarding the required fees for inspection.

Section 313.9 describes the commission's initial review of the request.

Section 313.10 describes the builder's continuing right to inspect the affected home.

Section 313.11 describes the appointment process for the third-party inspector.

Section 313.12 describes the process by which a party to a dispute can object to the appointment of a third-party inspector.

Section 313.13 describes the process for conducting a home inspection.

Section 313.14 describes the third-party inspector's report.

Section 313.15 describes the requirements and procedures for requesting an extension of time.

Section 313.16 describes the form of the third-party inspector's report.

Section 313.17 provides for the delivery of the third-party inspector's report to the commission and to the parties to the dispute.

Section 313.18 provides for the reimbursement of inspection fees and costs under certain circumstances.

Section 313.19 provides for the time to appeal the third-party inspector's report.

Section 313.20 describes the appeals process.

Section 313.21 provides for an offer of repair.

Section 313.22 provides a procedure for responding to the offer of repair.

Section 313.23 provides for a supplemental offer of repair if the original offer is rejected.

Section 313.24 provides that an offer not accepted is deemed rejected after a period of twenty-five days.

Section 313.25 describes the procedures for repair and inspection that follow acceptance of an offer of repair.

Section 313.26 provides for the establishment and payment of fees to third-party inspectors who are subpoenaed to provide expert witness services.

Written comments were received from Homeowners Against Deficient Dwellings ("HADD") and the Texas Association of Builders ("TAB") regarding this adoption. HADD, an association with over 25 members, also filed a written request for a public hearing for comment on the SIRP rules. As the result of HADD's request, a public hearing was held at commission headquarters in Austin, Texas, on May 26, 2004. HADD provided testimony that was memorialized in its written comments. HADD commented that SIRP is too lengthy a process and too complex for a homeowner to use without the assistance of an attorney. HADD indicated that a lawsuit in small claims court would be a speedier alternative. The commission has not exceeded the statutory time periods for any step in the process and, therefore, cannot modify any rules to shorten the process any further. In addition, in response to public comment, commission made changes to the adopted rules to enhance readability.

At the public hearing, HADD also commented that in §313.1(a)(3) it was unclear whether an alleged construction defect was discovered on or after September 1, 2003, in a eight-year old home, would the home be eligible for SIRP. The commission finds that the rules describe the SIRP as whole and that by reading §§313.1 and 313.4, the rules provide sufficient information for a lay person to determine that a defect

discovered after September 1, 2003 in an eight-year old home is eligible for the SIRP. The commission has made every effort to improve the readability of the rules while preserving the statutory requirements.

HADD further commented that in §313.6(a)(7) should be stricken as too complex. The commission agreed that revision was needed for improved readability and has modified the provision accordingly. HADD also commented that §313.8(b) should be modified so that a homeowner should never be required to pay an inspection fee. The language of the rule reflects the language in §426.004 of the Act which provides that the party who submits the request for SIRP shall pay the inspection fee. Therefore, the commission declines to modify the rule. However, the commission is aware that the inspection fee may cause a burden for some requestors and §313.8(d) provides a process whereby a requestor may request a waiver or reduction of the inspection fee.

HADD commented that §313.7 should be modified so that the commission, and not the requestor, should be required to notify all interested parties of the request for SIRP. Section 428.001(d) of the Act requires that the requestor provide notice of the request by certified mail, return receipt requested. HADD further commented that §313.10 should be stricken because it allows the builder excess time to address the issue. The builder's right to inspect the home is required under §428.002 of the Act and the rule tracks the language under the Act. Therefore, the commission declines to accept these suggestions.

HADD commented that §313.11 should be modified to reduce the period of time for appointing a third-party inspector from 15 days to five days. Similar to the above responses, this provision tracks the language of §428.003 of the Act. Therefore, the commission declines to accept the suggested modification. HADD commented that clarification was needed because §§313.13 and 313.14 appear to be inconsistent. Section 313.13(c) requires the third-party inspector to gather information relevant to the inspection. Section 313.14(c) provides that the third-party inspector will base his or her findings on applicable warranty and building and performance standards. The commission does not find an inconsistency with these rule, but rather, finds that §313.13 provides for the implementation of §313.14. Therefore, no modification was made. HADD further commented that the 45-day period for filing the third-party inspector's report in §313.14(b) is too lengthy and should be reduced to 21 days. Section 428.004 of the Act provides that the third-party inspector be permitted up to 60 days to issue the recommendations as a result of a structural inspection. The rule incorporates the total sixty-day period permitted by statute for structural inspections, so the commission declines to make the suggested modification.

HADD commented that the builder's offer to repair in §313.21(c) should not include any language in which the builder partially pays for the repair. The language in the rule tracks §27.004 of the Property Code which provides that in a claim subject to the SIRP a builder may offer to settle the dispute at the builder's partial or total expense. Therefore, the commission declines to accept the suggested change.

HADD also commented that this subsection should be amended to require that the offer must include the sentence, "The repair complies with the inspector's recommendation." Since the SIRP calls for a second inspection by the third-party inspector after the repairs are made to ensure the repairs comply with the recommendations, the commission has determined that this suggested language is unnecessary.

Cynthia Grant commented at the public hearing that the SIRP was too complex to understand. As discussed above, the commission has modified the proposed rules to enhance readability and comprehension but to retain the statutory requirements. All time periods within the rules are mandated by statute and therefore will not be modified.

Cathy Bretz also commented at the public hearing that all records gathered in the SIRP should be available to the public. Although public access is not addressed under the rules of this chapter, the documents and other tangible items gathered in the inspection process are subject to the provisions of the Texas Public Information Act ("TPIA"). Therefore, the commission finds it unnecessary to include those provisions within these rules. Ms. Bretz concurred with HADD and Ms. Grant that the process was too time-consuming and complicated. The commission has addressed this issue in the discussion above.

Finally, Leslie Bice commented that §313.10 should be amended so that a builder is not provided with a right of inspection because the builder has generally inspected the alleged defect before the requestor initiated the SIRP. As mentioned above, the right of inspection is statutorily required. Therefore, the commission declines the suggested modification. Ms. Bice also commented that deadlines should be implemented in the repair process. The rules relating to the SIRP incorporate all time limits referenced in Chapter 27 of the Texas Property Code, the Texas Residential Construction Liability Act. These time limits include Section 27.004(b) which requires a builder to repair a construction defect not later than forty-five (45) days after receipt of a homeowner acceptance of the builder's offer to repair. Therefore, the commission declines further modification on the timelines included in the rules.

In a letter dated May 27, 2004, TAB submitted its written comments for the commission's consideration. TAB commented that the defined term "SIRP" in §313.1(a) should be moved to the Chapter 301, pertaining to Definitions. The Commission agrees that the defined term could be appropriately placed in Chapter 301. However, to ensure ease of use for the reader, the definition has been provided at the beginning of this chapter. Accordingly, the commission declines to modify the rule as suggested.

TAB commented the defined term "SIRP" in the title of §313.2 should be deleted and moved to Chapter 301. For reasons expressed above, the Commission declines to accept the suggestion. TAB further commented that §313.2(a) should be rephrased to make the rule more "user-friendly." The commission agreed that the revision was needed to enhance readability and has revised the rule accordingly. TAB also commented that the second sentence in §313.3 should be deleted to make the rule more consistent with the Act and to avoid any interpretation that the commission was offering legal advice. The language of the rule closely tracks §428.005 of the Act and the rules are intended to provide guidance to those who interact with the commission and those who are registered with the commission. The commission believes in cases where there is an imminent threat to health safety, the affected parties should be aware of the possible consequences if the builder fails to act within a reasonable time. Therefore, the commission declines to accept the suggested change.

TAB also commented in its May 27, 2004 letter that §313.4(2) should be deleted because §313.4(1) is sufficient. The rule tracks the language of §§426.001 and 426.006 of the Act. Section 313.4(2) encompasses the Statute of Repose that limits SIRP eligibility to ten years for structural defects. Consequently,

the commission declines to accept the proposed deletion. Next, TAB commented that language should be added to §313.5(b) to establish that a builder will reimburse the homeowner the cost of the home registration fee, if the home registration was the builder's responsibility and the builder failed to do so. The commission agrees and has modified the rule accordingly.

TAB commented that §313.6(a)(2) should be modified to add the phrase "if the request was initiated by the homeowner" in order to clarify that this provision only applies to homeowner-initiated SIRP requests. The commission agrees that the 30-day notice requirement under this subsection pertains only to a homeowner who files a request for SIRP and the commission agrees that suggested language would add clarity to the rule. Accordingly, the rule has been revised.

TAB further commented that §313.6(a)(3) should be deleted because there is no reference to this in the Act and the builder's response should be irrelevant to the commission. The commission disagrees with this opinion. Section 428.001(b) of the Act provides, in part when referring to the SIRP request, for [the inclusion of] "evidence that depicts the nature and cause of each alleged construction defect and the nature and extent of repairs." The homeowner's inclusion of the builder's response or a description of the builder's response may assist the commission in determining the eligibility of the homeowner's SIRP request or assist the inspector in determining the nature of the alleged defect or the availability of a possible repair remedy. Therefore, the commission declines to modify the rule. TAB also commented that §313.6(a)(4) should include the phase "that are subject of the request" for the sake of clarity and completeness. The commission agrees and has modified the rule accordingly. TAB further commented that the phase "and who have prepared any written materials regarding their inspection" in §313.6(a)(6) should be deleted because, as written, it is inconsistent with the Act. The commission agrees that the phrase could be result in unintended results and is unnecessary. Therefore, the commission has deleted the phrase. Finally, TAB commented §313.6(a)(7) should be revised to make the rule more "user-friendly." The commission agreed that revision was needed for the sake of clarity and has made the change to the rule.

TAB commented that it was concerned with the determinations made by the commission under §313.9(a) and suggested the deletion of subsection (a). To ensure cost-effective delivery of service to the public, it is necessary for the commission to determine whether a request for SIRP is complete and otherwise eligible for SIRP before the appointment of a third-party inspector. Therefore, the commission finds this provision is necessary and declines the suggestion. TAB further commented that §313.9(c) should contain a time limit for a requestor to supplement an incomplete request. The suggestion was for a period of 30 days after receipt of the commission notification of an incomplete application. TAB's comments address an issue of internal agency procedure and the statutory limitations on making a request to initiate the SIRP. The commission declines to restrict the requestor on completing the application beyond the statutory limitations.

TAB commented the word "written" should be inserted in §313.10(c) to clarify the rule. The commission agrees that the word would further clarify the rule and had made the inclusion in the rule. TAB commented that §313.13(f) should be deleted or revised to clarify that disclosure requirements pertain equally to both parties in the SIRP. The commission agrees and rule has been revised for clarity.

TAB commented that §313.14(b)(2) should be revised so that language would be more consistent with the Act. The commission agrees and unnecessary language was deleted. TAB commented that §313.18 is vague and the commission should specify the circumstances wherein the commission will order the reimbursement of a party's fees and costs. The language of this rule tracks the §428.004(d) of the Act which grants the commission discretionary authority to order reimbursement of inspection fees and expenses if the third-party inspector finds in favor of the SIRP requestor. The commission declines to delineate each circumstance wherein reimbursement will be ordered so that commission may retain its flexibility and evaluate each circumstance on a case-by-case basis.

Finally, TAB commented that §§313.21 - 313.24 should be deleted because these are provisions of the Texas Residential Construction Liability Act in Property Code Chapter 27 and therefore the commission lacks the authority to adopt these rules. The commission disagrees with this comment because the language tracks Property Code §24.004 which specifically refers to Title 16 of the Property Code, Subtitle D, the SIRP. Therefore, the commission is within its authority to adopt rules to implement the SIRP. Further, as previously discussed, the commission's rules are intended to offer guidance to users. The commission finds that ease of use is enhanced by the placement of all requirements and procedures for SIRP within one chapter. As a result, the commission declines to delete the provisions as suggested by TAB.

HADD, TAB, Sarah Senterfitt, and Gerard Duhon, P.E., previously submitted written comments in response to the commission's Strawman Proposal on the SIRP and the emergency SIRP rules published in the January 23, 2003 issue of *Texas Register* (29 TexReg 574). Those comments were considered and many suggestions were incorporated into the proposed text published on May 7, 2004.

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 new legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code, Chapter 426 and Chapter 27 as amended. 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. Property Code Chapter 426 provides for the implementation of the SIRP and Property Code Chapter 27 includes statutory requirements that affect users of the SIRP.

The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code Chapters 408, 426, Property Code Chapter 27 and House Bill 730, 78th Legislature, R.S.

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

§313.1. Purpose.

(a) The state-sponsored inspection and dispute resolution process (SIRP) described in this chapter applies to a dispute that:

(1) is between a homeowner and a builder;

(2) arises from a transaction governed by the Act;

(3) is a result of alleged construction defect(s) that were discovered on or after September 1, 2003; and

(4) is the basis for a claim other than a claim solely for personal injury, survival, wrongful death or damage to goods.

(b) The commission shall provide any person who files a request with a copy of the commission's policies and procedures relating to investigation and resolution of a request.

§313.2. Prerequisite to State-sponsored Inspection and Dispute Resolution Process (SIRP).

(a) Before a homeowner may file a request to initiate the SIRP, a homeowner must give the builder a 30-day written notice of any claimed construction defect(s).

(b) After notice has been provided to the builder as required in §313.2 (a), the homeowner must also provide the builder, or its designated consultants, a reasonable opportunity to inspect the affected home if the builder requests such an opportunity.

(c) If a homeowner contacts the commission to initiate the SIRP before the homeowner has provided the builder with the required written notice and the inspection opportunity, the homeowner will be provided with the requirements and the procedures for filing a request to initiate the SIRP, and instructions on the procedure to initiate the SIRP if the dispute remains unresolved.

§313.3. Notice of Defect Alleging Threat to Health or Safety.

A builder who receives written notice of an alleged construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If a builder fails to cure the defect in a reasonable time, the homeowner may have the defect cured and recover from the builder the homeowner's reasonable costs to cure the defect, reasonable attorney's fees, expenses associated with curing the defect, and other damages not inconsistent with the Act.

§313.4. Timely Filing a Request to Initiate the SIRP.

To participate in SIRP, a person must file a request to initiate the SIRP:

(1) on or before the second anniversary of the date of the discovery of the alleged construction defect(s), but not later than the thirtieth day after the expiration date of any warranty period applicable to the alleged construction defects(s); and

(2) on or before the tenth anniversary of

(A) the date of the initial transfer of title from the builder to the initial owner of the affected home, or

(B) if the transaction that is the subject of the dispute did not involve a title transfer, the date the construction commenced or the date on which the agreement describing the transaction was signed, whichever was earlier.

§313.5. Filing a Request to Initiate the SIRP.

(a) Either the homeowner or the builder may initiate the SIRP by filing a request with the commission.

(b) If the affected home is not registered with the commission at the time the request is filed, the requesting party must also register the home with the commission by submitting a commission-prescribed home registration form and the appropriate fee. A builder who failed to register the affected home in accordance with Chapter 303, Registration of Homes, shall reimburse the homeowner the cost of the home registration fee.

(c) When a person contacts the commission to initiate the SIRP, the commission will provide the person with information necessary to file a request, information on the applicable fees for a third-party inspection, the registration status of the affected home and instructions to register an unregistered home, if applicable.

§313.6. Information Required for the Request.

(a) The request shall be submitted on a commission-prescribed form and must include:

(1) a description of the transaction giving rise to the dispute, including,

(A) the date on which the title transferred from the builder to the initial homeowner, if the transaction giving rise to the dispute was for new home construction on the builder's property; or

(B) the date on which the agreement describing the transaction was signed or work commenced, whichever is earlier, if the transaction giving rise to the dispute did not involve a title transfer, including new home construction on the homeowner's property, a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(2) credible documentation that establishes that the homeowner provided the builder with or that the builder received written notice of the alleged construction defect(s) at least thirty days prior to filing the request if the request was initiated by the homeowner;

(3) a general description of the builder's response to the homeowner's notice of alleged construction defect(s) provided pursuant to §313.2(a) of this chapter, and a copy of the written response, if any;

(4) a reasonably detailed description of the alleged construction defect(s) included in request;

(5) an itemized list of all out-of-pocket expenses and engineering or consulting fees incurred by the requestor in connection with the alleged construction defect(s);

(6) a list of the names and addresses of all professionals or other persons, known to the requestor, who have inspected the alleged construction defect(s) on behalf of the requestor; and

(7) any documents or other tangible things that depict the nature and cause of the alleged construction defect(s) and that depict the nature and extent of repairs necessary to remedy the construction defect(s), including, expert reports, photographs, and videotapes, if these documents and tangible things are either within the requestor's physical possession or if the requestor has the right to obtain the document or tangible thing from a third party, such as an agent or a representative of the requestor.

(8) The following are excluded from the provisions of subsections (a)(6) and (a)(7) of this section:

(A) any documents or tangible things that were prepared or developed in anticipation of litigation, for trial or for an arbitration proceeding by the requestor's attorneys or by the attorneys' representatives or agents for the requestor;

(B) any documents or tangible things that reflect communications between a requestor and the requestor's attorneys or the attorneys' representatives or agents on behalf of the requestor and that were made in anticipation of litigation, for trial or for an arbitration proceeding; or

(C) the name of any person who inspected the home on behalf of the requestor in connection with the construction defect(s) alleged in the request before the SIRP request was submitted to the commission, so long as the requestor will not call upon this person as an

expert witness or use any of the materials prepared by this person during either the SIRP or any action between the builder and the homeowner that arises out of an alleged construction defect that is the subject of the request.

(b) With regard to information provided under subsection (a)(6) and (a)(7), a requestor who fails to submit the name of any person who inspected the home on behalf of the requestor prior to the filing of a SIRP request in connection with the alleged construction defect(s) may be prohibited from designating that person as an expert witness and from using any materials prepared by such person in the SIRP or any action arising out of any alleged construction defect(s) that is the subject of the request.

§313.7. Notice of the Request.

(a) The requestor shall send a copy of the request and all information submitted along with the request, by certified mail, return receipt requested, to all other interested parties to the dispute.

(b) A copy of the request and submitted information mailed to other interested parties must also be mailed to counsel for any interested party represented by counsel, if known to the requestor.

§313.8. Inspection fee.

(a) The commission will establish a fee that is commensurate with the scope of the requested inspection and the type of construction defect(s) alleged.

(b) The commission shall publish the established fee on its website and make it available to the public in writing.

(c) The request to initiate the SIRP must include the appropriate inspection fee.

(d) A requestor who is able to show financial need may submit a request for a reduction or waiver of the inspection fee.

(1) The request for a reduction or waiver of the inspection fee must include a sworn affidavit of inability to pay fees on a commission-prescribed form at the time the request to initiate an SIRP is filed.

(2) The Executive Director shall review any request for a fee reduction or waiver and the supporting affidavit to determine whether to approve or deny the request.

(3) The Executive Director's decision on a request for fee reduction or waiver is a final agency decision and is not subject to further administrative appeal.

§313.9. Initial Request Review.

(a) Upon receipt of a request to initiate the SIRP, the commission shall review the request to determine if the request contains information alleging or otherwise demonstrating:

(1) that the dispute arises from a transaction governed by the Act;

(2) that the request is complete and includes the required attachments and the payment of the appropriate fees;

(3) that the affected home is registered with the commission;

(4) that the alleged construction defect(s) were discovered on or after September 1, 2003;

(5) that the request is timely under §313.4 of this chapter; and

(6) that the request involves a dispute between a homeowner and a builder regarding alleged construction defect(s) giving rise to a claim that is not:

(A) solely for personal injury, survival, wrongful death; or

(B) solely for damage to goods not including damage to the home; or

(C) for an alleged violation of §27.01, Business & Commerce Code, regarding Fraud in Real Estate and Stock Transactions; or

(D) based solely on a builder's wrongful abandonment of an improvement project before completion; or

(E) for an alleged violation of Property Code, Chapter 162, regarding Construction Payments, Loan Receipts, and Misapplication of Trust Funds.

(b) If the commission determines that the request is not complete or that the claim is not eligible for the SIRP, the commission shall notify the requestor in writing and specify the reason(s) the request is not complete or ineligible for the SIRP.

(c) A requestor who has submitted an incomplete request will be provided an opportunity to supplement the request to cure its deficiencies.

(d) If the commission determines that the claim is ineligible for the SIRP, the commission will return all materials submitted by the requestor and will refund any paid inspection fee.

§313.10. Builder's Continuing Right to Inspect.

(a) In addition to the right to inspect under §313.2(b) of this chapter upon the written request, at any time after a request to initiate the SIRP has been filed with the commission and prior to the conclusion of the SIRP, a builder shall be given a reasonable opportunity to inspect the affected home, or to have the home inspected, to determine the nature and cause of the alleged construction defect(s) and the nature and extent of repairs necessary to remedy the alleged construction defect(s).

(b) The builder may take reasonable steps during an inspection to document the alleged construction defect(s) and the condition of the home.

(c) If the homeowner delays the inspection for more than five days after receipt of the builder's written request to inspect the home under this subsection, any period for subsequent action to be taken by the builder or a registered third-party inspector as prescribed by this chapter shall be extended by one day for each day the inspection is delayed.

§313.11. Appointment of Third-Party Inspector.

(a) No later than fifteen days after the commission has determined that the request to initiate SIRP is complete and that the dispute is eligible for the SIRP, the commission shall appoint a third-party inspector to conduct an inspection and shall notify the requestor and respondent of the appointment in writing.

(1) Written notification under this subsection will be provided by the most expedient and effective means available to both parties, including facsimile or electronic transmission.

(2) The commission, in its sole discretion, shall determine the most expedient and effective means available to both parties for transmission of the written notice of the appointment.

(b) The commission shall appoint a qualified third-party inspector from the list of registered third-party inspectors maintained by the commission. The inspector appointed shall be the next available inspector on the list of qualified inspectors in the affected home's geographic region.

§313.12. Objection to the Third-Party Inspector Appointed.

(a) Each party shall have one opportunity to object to the appointed third-party inspector, with or without cause. The objection must be submitted to the commission in writing, by mail, facsimile or electronic transmission within two business days of receipt of notice of the appointment.

(b) Failure to timely notify the commission of a party's objection to the appointed third-party inspector waives the party's right to object, unless the party is able to establish that newly-acquired material information has been found regarding a conflict of interest that could not have reasonably been discovered prior to the expiration of the objection period.

(c) Following receipt of a party's objection, the commission shall appoint the next available third-party inspector from the list of registered third-party inspectors, and shall notify the interested parties of the new appointment as provided under §313.11 of this chapter.

§313.13. Home Inspection.

(a) If the commission does not receive a timely written objection to the appointed third-party inspector, the commission shall contact the third-party inspector with information regarding the dispute, including the names of the interested parties and their counsel, if any. Unless the third-party inspector advises the commission of a conflict of interest with either of the parties to the dispute, the commission shall forward to the appointed third-party inspector a copy of the SIRP request and all documentation submitted with the request.

(b) As soon as practicable but no later than two (2) business days after receipt of the SIRP request, the appointed third-party inspector shall contact the homeowner to arrange a mutually convenient time to inspect the affected home. The third-party inspector shall notify the builder and the homeowner of the date and time of the inspection. The homeowner and builder, including any of their consultants or representatives, may be present at the inspection.

(c) The third-party inspector shall gather all information and other data that the third-party inspector, in the inspector's sole professional judgment, deems relevant to the inspection and shall gather it by any reasonable means including taking photographs and measurements and interviewing the homeowner, the builder, and any consultants present. An interview under this subsection may take place outside the presence of others not aligned with the party subject to the interview, if the third-party inspector in the inspector's sole discretion deems it preferable for the orderly conduct of the inspection.

(d) The third-party inspector may suspend the inspection if a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner.

(e) The third-party inspector shall not engage or employ the services of any testing company or any consultant.

(f) Except as otherwise provided under §313.6(a)(8), the builder shall submit to the third-party inspector any documentation or tangible things created or generated as a result of having received a notice of alleged construction defect(s) under §313.2 of this chapter for consideration in the third-party inspector's report to the commission.

§313.14. The Third-Party Inspector's Report.

(a) If the alleged construction defect(s) described in the request do not include a structural matter, the third-party inspector shall submit a report with recommendations to the commission as soon as practicable after the inspection, but not later than the 12th day after the date the third-party inspector receives the SIRP request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(b) If the alleged construction defect(s) described in the request involve a structural matter:

(1) the third-party inspector shall inspect the home as soon as practicable after receipt of the request from the commission, but not later than the 12th day after the date the third-party inspector receives the request and the requestor's submitted materials from the commission; and

(2) the third-party inspector shall submit a report after the inspection with recommendations to the commission as soon as practicable, but not later than the 45th day after the date the third-party inspector receives the request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(c) The third-party inspector's report shall set forth the inspector's findings based on applicable warranty and building and performance standards and shall include the inspector's recommendation for repairs, if any. Third-party inspectors shall consider a range of repair or remediation options to address the alleged construction defect(s).

(d) A third-party inspector's report shall not include a recommendation for payment of monetary damages, a price for the recommended repairs, or a determination of the value of any loss allegedly suffered by the homeowner.

§313.15. Extension of Time.

(a) A third-party inspector who conducts a structural inspection may request from the Executive Director an extension of time for a period of no longer than five days for any deadline imposed on the third-party inspector under §313.14 of this chapter.

(b) A party to a dispute involving a claim related to an alleged structural defect may request an extension of time from the Executive Director for any deadline imposed on the third-party inspector under §313.14 of this chapter.

(c) The Executive Director shall grant an extension of time requested under subsection (a) of this section upon a showing of that the cause for the delay was not reasonably foreseeable by the third-party inspector when the appointment was made.

(d) The Executive Director shall grant an extension under subsection (b) of this section as follows:

(1) for a period of no longer than five days without regard to cause if the parties to the dispute agree to the extension in writing; or

(2) upon a showing of good cause by the requesting party if the request is made for an extension of greater than five days; or

(3) upon a showing of good cause by the requesting party if the other party to the dispute does not agree to an extension.

(e) The Executive Director's decision on whether to grant or deny an extension of time requested under this section is a final agency decision not subject to further administrative appeal.

§313.16. Form of Third-party Inspector's Report.

The third-party inspector's report shall be submitted to the commission on a commission-prescribed form.

§313.17. Delivery of the Third-party Inspector's Report.

The third-party inspector shall submit his report to the commission and the commission shall promptly transmit the report to the homeowner and the builder.

§313.18. Reimbursement of Fees and Costs.

If the third-party inspector's findings support all or a portion of the allegations of the requesting party, the commission may order the other

party to reimburse all or part of the fees or costs of inspection paid by the requestor.

§313.19. Time to Appeal of the Third-party Inspector's Report.

(a) A homeowner or builder may appeal the third-party inspector's report and recommendation(s) on or before the 15th day after receipt of the report.

(b) A party to the dispute may request an extension of time to file a notice of appeal of the third-party inspector's report.

(1) Upon a showing of good cause for an extension of time to file a notice of appeal, the Executive Director may extend the deadline by no more than five days.

(2) The Executive Director's determination of good cause to grant or deny an extension of time under this subsection is a final agency decision and is not subject to further administrative appeal.

§313.20. Appeal Process.

(a) If a homeowner or builder appeals the findings or recommendations in a third-party inspector's report, the Executive Director shall refer the appeal to a three-person panel of state inspectors. If the request involves a structural matter, one the panel members shall be a licensed professional engineer.

(b) The appellate panel shall conduct a review of the third-party inspector's report and the written documents and tangible things considered by the third-party inspector in making the findings and recommendations, including but not limited to materials submitted with the request, any information or data gathered by the third-party inspector and documentation or tangible things provided to the third-party inspector by one of the parties during the SIRP and prior to the issuance of the report.

(c) The appellate panel shall make written findings of fact and shall recommend approval, rejection or modifications to the findings and recommendations of the third-party inspector or shall recommend that the matter be remanded to the third-party inspector for further action as directed by the appellate panel.

(d) The appellate panel shall file a written report of its findings and recommendations with the Executive Director not later than the 25th day after the notice of appeal is filed with the commission.

(e) The Executive Director shall transmit the appellate panel's rulings to the parties to the appeal not later than the fifth day after receipt of the appellate panel's rulings.

(f) A ruling by an appellate panel under this section is a final agency decision not subject to further administrative appeal.

§313.21. Offer to Repair.

(a) Not later than the 15th day after the commission has transmitted the third-party inspector's report to the parties, or if the third-party inspector's report has been appealed, not later than the 15th date following the date that the appellate panel's ruling has been transmitted to the parties, a builder may make a written offer of settlement to the homeowner to repair the alleged construction defect(s).

(b) The offer must be sent by certified mail, return receipt requested, to the homeowner at the homeowner's last known address or the homeowner's attorney, if the homeowner is represented by counsel.

(c) The offer may include either an agreement by the builder to repair or to have repaired by an independent contractor, partially or totally at the builder's expense, or at a reduced rate to the homeowner, any construction defect(s) included in the SIRP request.

(d) The offer shall include in reasonable detail the repairs to be made and shall provide that the repairs will be made within forty-five days after the date the builder receives written notice of the homeowner's acceptance of the offer, except as delayed by the homeowner or by the occurrence of events beyond the builder's control.

§313.22. Response to Offer to Repair.

(a) If the homeowner considers the builder's offer to repair under §313.21 of this chapter to be unreasonable, the homeowner shall notify the builder, in writing, on or before the 25th day after the date the homeowner receives the offer, and shall provide, in detail, any reason(s) the homeowner finds the offer to be unreasonable.

(b) If the homeowner accepts the builder's offer to repair under §313.21 of this chapter, the homeowner shall notify the builder of the acceptance, in writing, as soon as practicable, but not later than the 25th day after the date the homeowner receives the offer.

§313.23. Supplemental Written Offer to Repair.

Not later than the tenth day after the date the builder receives a written response from the homeowner under §313.22 of this chapter, the builder may make a supplemental written offer of settlement. The builder shall send any such supplemental written offer by certified mail, return receipt requested, to the homeowner, or if the homeowner is represented by counsel, to the homeowner's attorney.

§313.24. Offer Rejected.

An offer of repair made under this chapter that is not accepted in writing by the 25th day after the date of receipt, is deemed rejected.

§313.25. Procedures Following Acceptance of Offer of Repair.

(a) If a homeowner accepts a builder's offer to repair under this chapter, the builder, upon completion of the repairs, shall engage, at the builder's expense, the third-party inspector who issued the report and recommendation under §313.14 to inspect the repairs and to determine whether the home, as repaired, complies with the applicable statutory warranty and building and performance standards.

(b) Following the third-party inspector's post-repair inspection, the builder shall have a reasonable period, not to exceed fifteen days, to address any minor cosmetic deficiencies necessary to fully complete the repairs.

§313.26. Third-Party Inspectors as Witnesses.

(a) If a commission-appointed third-party inspector who has conducted an inspection pursuant to this chapter is subpoenaed by a party to the dispute that was the subject of the inspection to provide testimony by deposition, in court or in any alternative form of dispute resolution proceeding, or to provide other expert witness services, the party who caused the subpoena to be issued must pay to the third-party inspector a reasonable fee and related expenses for the services requested.

(b) The commission shall establish reasonable fees for witness services performed by a registered third-party inspector who is subpoenaed to provide services as described in subsection (a) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404003
Susan Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-9638

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER F. ARCHITECT'S SEAL

22 TAC §1.102

The Texas Board of Architectural Examiners adopts an amendment to §1.102 of Title 22, Chapter 1, Subchapter F, pertaining to the architect's seal, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3736). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

Section 1.102 states that a registrant must use a seal which will be visible if the sealed document is copied and also provides a description of the required design of an architect's seal. As amended, the section clarifies that an architect may affix a seal, signature, and date of signature by electronic means or by any other means as long as the affixation creates a clear and legible image on any reproduction of the document.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 15, 2004.

TRD-200403891
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: July 5, 2004
Proposal publication date: April 16, 2004
For further information, please call: (512) 305-8535

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.141

The Texas Board of Architectural Examiners adopts an amendment to §1.141 for Title 22, Chapter 1, Subchapter H, pertaining to the Board's authority to promulgate rules necessary for the regulation of professional practices and enforcement of statutory provisions, the Board's authority to take different types of disciplinary action against a registrant or an applicant, and the factors the Board will consider in determining an appropriate sanction for misconduct. The proposal to amend this rule was published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3736). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The amendment to §1.141 adds "refuse to renew" to the list of potential disciplinary sanctions that may be imposed against a registrant.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.751 of Tex. Occupations Code Annotated ch. 1051, which lists "refuse to renew" as a disciplinary sanction available to the Board, and 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8535

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22 TAC §1.148

The Texas Board of Architectural Examiners adopts an amendment to §1.148 for Title 22, Chapter 1, Subchapter H, pertaining to the potential consequences of a architect registrant's or applicant's unauthorized practice in another jurisdiction, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3737). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

This section sets forth the implications of disciplinary action by another jurisdiction and the consequences of an architect's failure to renew a certificate of registration prior to its expiration. The amendment adds "refusal to renew" a certificate of registration to the list of sanctions imposed by another jurisdiction that could affect an architect or an applicant for registration as an architect. The amendment also adds "refusal to renew" a certificate of registration to the list of sanctions that the Board could impose upon a registrant for conduct which was the subject of disciplinary action by another jurisdiction.

As a result of the amendment, the rule will be consistent with statutory language, which recently was amended by adding references to the "refusal to renew" a certificate of registration as a disciplinary sanction.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §1.151

The Texas Board of Architectural Examiners adopts an amendment to §1.151 for Title 22, Chapter 1, Subchapter H, pertaining to the effect of enforcement proceedings on an application for architectural registration, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3737). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section sets forth that the Board may hold, without denial or approval, an application for registration if enforcement proceedings have been commenced against the applicant; how an "enforcement proceeding" is initiated; the sanctions that may be imposed against an applicant who is found to have falsified information provided to the Board, violated any of the restrictions of the Act, violated any similar restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board; and makes it possible for the Board to take action against an applicant for any act or omission if the same conduct would be a ground for disciplinary action against a registrant.

The amendment to this section substitutes the word "denial" for "rejection" in order to be consistent with current statutory language and also describes certain conditions that must be satisfied before the Board may approve the registration application of a person whose application previously was denied. As amended, the section requires such a person to demonstrate that he or she has taken reasonable steps to correct the misconduct or deficiency for which the application was denied, demonstrate that approval of the application is not inconsistent with the Board's duty to ensure that registrants are qualified for registration, and pay all fees and costs incurred by the Board as a result of any proceeding that led to the denial of the previous application.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.403 of Tex. Occupations Code Annotated ch. 1051, which specifies certain requirements that must be satisfied before the Board may approve a registration application for a person who previously applied for registration and was denied registration privileges, and 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.

This agency 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 I. DISCIPLINARY ACTION

22 TAC §1.167

The Texas Board of Architectural Examiners adopts an amendment to §1.167 for Title 22, Chapter 1, Subchapter I, pertaining to the publication of disciplinary action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3738). The section is being adopted with changes.

The section describes the circumstances under which the Board publicizes disciplinary action. The amendment to §1.167 implements a statutory directive that the Board adopt rules to provide for the publication of all disciplinary orders and sanctions. Changes to §1.167 as proposed replace the word "may" with the word "shall" to make the section consistent with the mandate imposed by the statute.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.402 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to provide for the publication of all disciplinary orders and sanctions.

§1.167. Publication of Disciplinary Action.

(a) The Board shall cause to be published in the Board's official newsletter, on the Board's Web site, in a newspaper, or in another publication the name of any person who is the subject of disciplinary action by the Board. The publication may include a narrative summary of the facts giving rise to disciplinary action and a description of the action taken.

(b) In addition to other types of disciplinary action that shall be publicized pursuant to this section, the Board shall publicize the revocation or cancellation of a certificate of registration after its surrender in lieu of potential disciplinary action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8535

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22 TAC §1.173

The Texas Board of Architectural Examiners adopts an amendment to §1.173 for Title 22, Chapter 1, Subchapter I, pertaining

to disciplinary action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3739). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section describes the possible consequences of violations by nonregistrants as well as the procedure for imposing penalties against nonregistrants. As amended, the section describes the process for issuing a cease and desist order pursuant to statutory language recently enacted by the Texas Legislature.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.504 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with authority to issue cease and desist orders, and 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §§1.174 - 1.178

The Texas Board of Architectural Examiners adopts new §§1.174, 1.175, 1.176, 1.177, and 1.178 for Title 22, Chapter 1, Subchapter I, pertaining to Disciplinary Action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3740). Sections 1.174, 1.176, and 1.177 are adopted with changes. Sections 1.175 and 1.178 are being adopted without changes and the text will not be republished in the *Texas Register*.

New §1.174 provides specific guidelines to govern the processing of complaints addressed by the agency. Pursuant to legislation enacted by the 78th Legislature, Regular Session, the Board is required to adopt rules regarding the steps in the complaint process. The new section describes the information that must be submitted with a complaint, the procedure for conducting a preliminary evaluation of a complaint, the process for complaints that survive the preliminary evaluation period and proceed to a formal investigation, the process to be followed during an investigation, the process for dismissing a complaint, the process for taking action when the information and evidence gathered during an investigation are sufficient to prove that a violation has occurred, and the process for requesting reconsideration of a complaint that has been dismissed. Changes to §1.174 as proposed delete the requirement that a complaint include the time of the alleged violation; change "initiate an investigation" to "act on the matter" in subsection (b); delete "make reasonable efforts to" from subsection (d); change "At the conclusion of" to "after" in subsection (e); revise the criteria for the issuance of a warning to a respondent for the respondent's first violation of the laws enforced by the Board; and add "if known" to subsection (j)(1). Other changes to the proposed section clarify the discretion the agency has in contacting parties during the preliminary evaluation of a complaint and allow the agency to send notice to parties that a case is being dismissed in lieu of requiring the agency to make such notice by letter.

New §1.175 establishes a requirement that formal hearing proceedings may not begin in a case involving allegations of recklessness, gross incompetence, or dishonesty unless a licensee has reviewed the allegations and determined that the respondent's conduct did not satisfy the requisite standard of care. The rule ensures that more serious allegations of misconduct are reviewed by a person with expertise in the subjects that are at issue in the disciplinary action. The section is adopted as proposed without changes.

New §1.176 establishes a process for issuing subpoenas for the production of witness testimony, documents, or other evidence in connection with alleged violations of statutory provisions and rules enforced by the Board. The section is being adopted with changes. The changes to 1.176, as proposed, specify that the Executive Director or the Chairman of the Board may issue a subpoena.

New §1.177 establishes specific guidelines for determining the appropriate amount of an administrative penalty imposed by the Board. Pursuant to legislation enacted by the 78th Legislature, Regular Session, the Board is required to adopt an administrative penalty schedule. This rule satisfies the new legislative requirement. Changes to §1.177 as proposed revise the criteria for determining whether a respondent's violation of the law is a minor, moderate, or major violation. The revision specifies conduct as minor if the respondent demonstrates that the respondent was unaware that the conduct was prohibited and was unaware that there was a reasonable likelihood of the harm resulting from the conduct, in addition to demonstrating that the respondent provided a satisfactory remedy that alleviated any harm or threat to the health or safety of the public. As proposed, the rule did not require the respondent to demonstrate these factors as part of the Board's documentation whether a violation is minor. The adopted rule specifies that a moderate violation results from a "knowing" disregard of standards of practice applied by reasonable persons under the same or similar circumstances. The proposed rule listed a "conscious" disregard for the standards applied under the circumstances as a moderate violation. The rule revises the proposed criteria of a major violation as posing a "serious," in lieu of a "major," threat to the health or safety of the public. The proposed rule listed the respondent's sanction history as a factor in determining whether the respondent's conduct is a minor, moderate, or major violation. The proposed rule is changed by including consideration of whether the respondent previously received a written warning or notice from the Board regarding the law's restrictions as a factor in the respondent's sanction history for determining whether the violation was minor or moderate. The maximum administrative penalties that may be imposed for a minor and moderate violation are increased as follows: from $250 to $350 for a minor violation and from $1,000 to $1,200 for a moderate violation. The administrative penalty that may be imposed for a major violation is not less than $1201 and not more than $5,000. As proposed, the minimum penalty for a major violation was $1,001. The changes to the proposed rule also allow the Board to suspend the guidelines if the facts of

a case are unique. The proposed rule referred only to "unusual" facts.

New §1.178 implements a statutory provision enacted by the 78th Legislature, Regular Session, to require that a person whose registration has been suspended or revoked must, prior to reinstatement of the certificate, demonstrate that reasonable steps have been taken to correct the misconduct, demonstrate that reinstatement is not inconsistent with the Board's duty to protect the public, and pay all costs incurred by the Board during the revocation or suspension. The Board adopted the rule as proposed without changes.

The board conducted a public hearing on proposed §1.177, relating to the administrative penalty schedule, on May 17, 2004. The board received no public comment on the section at the hearing. The board received no other comments pertaining to the proposal to adopt these sections.

The new sections are adopted pursuant to Section 1051.252 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt rules regarding the Board's complaint process; Section 1051.204 of Tex. Occupations Code Annotated ch. 1051, which authorizes the Board to issue subpoenas; Section 1051.452 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt an administrative penalty schedule to govern the amounts of all administrative penalties imposed by the Board; Section 1051.403 of Tex. Occupations Code Annotated ch. 1051, which specifies certain requirements that must be satisfied before the Board may reinstate a registration; and 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.

§1.174. Complaint Process.

(a) A person may file a complaint by submitting the following information to the Board:

(1) the name of and contact information for the complainant unless evidence regarding a possible violation was submitted anonymously;

(2) the name of the person against whom the complaint is filed;

(3) the address, telephone number, Web site, or other contact information for the person against whom the complaint is filed, if available;

(4) the date and location of the alleged violation that is the subject of the complaint;

(5) a description of each alleged violation; and

(6) the name, address, and telephone number for any known witness who can provide information regarding the alleged violation.

(b) A complaint should be submitted on the complaint form that may be obtained by accessing the form on the Board's Web site or by contacting the Board's staff. If a completed complaint form is not submitted, the Board's staff will not be able to initiate an investigation unless the Board's staff receives information sufficient to establish probable cause to believe an actionable violation might have occurred.

(c) Once a complaint has been received, the Board's enforcement staff shall:

(1) provide the complainant and respondent with copies of the Board's policies and procedures regarding complaint investigation and resolution;

(2) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:

(A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for the Board's staff to believe an actionable violation might have occurred;

(B) Disciplinary History: whether there has been previous enforcement activity involving the person against whom the complaint has been filed; and

(C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;

(3) notify the complainant and respondent of the status of the investigation at least quarterly unless providing notice would jeopardize an investigation; and

(4) maintain a complaint file that includes at least:

(A) the name of the person who filed the complaint unless the complaint was filed anonymously;

(B) the date the complaint was received by the Board's staff;

(C) a description of the subject matter of the complaint;

(D) the name of each person contacted in relation to the complaint;

(E) a summary of the results of the review and investigation of the complaint; and

(F) an explanation for the reason the complaint was dismissed if the complaint was dismissed without action other than the investigation of the complaint.

(d) During the preliminary evaluation period, the Board's staff may contact the complainant, the respondent, and any known witness concerning the complaint.

(e) After the preliminary evaluation period, the Board's staff shall take steps to dismiss the complaint or proceed with an investigation of the allegation(s) against the respondent. A complaint may be referred to another government agency if it appears that the other agency might have jurisdiction over the issue(s) raised in the complaint.

(f) If the Board's staff proceeds with an investigation, the staff shall:

(1) investigate the complaint according to the priority level assigned to the complaint;

(2) notify the complainant and respondent that, as a result of the staff's preliminary evaluation of the complaint, the staff has determined that the Board has jurisdiction over the allegations(s) described in the complaint and has decided to proceed with an investigation of the allegation(s) against the respondent; and

(3) gather sufficient information and evidence to determine whether a violation of a statutory provision or rule enforced by the Board has occurred.

(g) The Board's staff may conduct an investigation regardless of whether a complaint form was received as described in subsection (a) of this section.

(h) If the information and evidence gathered during an investigation are insufficient to prove that a violation has occurred, the Board's staff shall:

(1) dismiss the complaint;

(2) send notices to the complainant and respondent regarding the dismissal;

(3) if warranted, include in the respondent's notice a recommendation or warning regarding the respondent's future conduct; and

(4) if a complaint is determined to be unfounded, state in the respondent's notice that no violation was found.

(i) If the information and evidence gathered during an investigation are sufficient to prove that a violation has occurred, the Board's staff shall:

(1) seek to resolve the matter pursuant to section 1.165 or section 1.173 of this subchapter; or

(2) issue a warning to the respondent if the violation is the respondent's first violation and:

(A) the respondent has not received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent;

(B) the respondent provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public; and

(C) the guidelines for determining an appropriate penalty for the violation recommend an administrative penalty or a reprimand as an appropriate sanction for the violation.

(j) Before a proposed settlement agreement may be approved by the Board:

(1) the complainant, if known, must be notified of the terms of the agreement and the date, time, and location of the meeting during which the Board will consider the agreement; and

(2) the terms of the agreement must be reviewed by legal counsel for the Board to ensure that all legal requirements have been satisfied.

(k) If a complaint is dismissed, the complainant may submit to the Executive Director a written request for reconsideration. The written request must explain why the complaint should not have been dismissed.

§1.176. Subpoenas and Depositions.

(a) On a showing of good cause and on deposit of a sum reasonably estimated to cover the costs of issuing and serving the subpoena and the costs described in subsection (e) of this section, the Executive Director or the Chairman may issue a subpoena to require the attendance of a witness for examination under oath or the production of a record, document, or other evidence relevant to the investigation of, or a disciplinary proceeding related to, an alleged violation of a statutory provision or rule enforced by the Board.

(b) A subpoena must:

(1) be issued in the name of the State of Texas;

(2) be signed by the Executive Director or the Chairman;

(3) be addressed to a sheriff, constable, or other party authorized by the Texas Rules of Civil Procedure to serve a subpoena;

(4) state the time and place at which the witness is required to appear, the name of the person at whose instance the subpoena has been issued, and the date of the subpoena's issuance;

(5) include a specific description of any record, document, or other evidence covered by the subpoena; and

(6) be served by delivering a copy of the subpoena to the party named in the subpoena.

(c) A subpoena may be executed and returned at any time. The person serving the subpoena shall make due return thereof, showing the time and manner of service or showing that service was accepted by the witness by a written memorandum signed by the witness and attached to the subpoena.

(d) A deposition shall be taken in the manner prescribed for depositions in the Administrative Procedure Act (APA).

(e) A witness or deponent who is not a party to an enforcement proceeding and who is subpoenaed or otherwise compelled by the Board to attend any hearing or proceeding to provide testimony, give a deposition, or produce a record, document, or other evidence shall be entitled to receive:

(1) payment for mileage and reimbursement for transportation, meal, and lodging expenses as required by the APA for going to and returning from the place of the hearing or the place where the deposition is taken if the place is more than 25 miles from the person's place of residence; and

(2) a witness fee as required by the APA for each day or part of a day the person is necessarily present as a witness or deponent.

(f) Expenses and fees described in subsection (e) of this section shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the Executive Director.

(g) Payment for mileage and reimbursement for transportation, meal, and lodging expenses for a witness whose presence is required by a subpoena issued by the Executive Director or the Chairman shall be at the same rate as is paid to a state employee traveling on state business.

§1.177. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to determine the amount of the administrative penalty:

(1) The Board shall consider the following factors to determine whether the violation is minor, moderate, or major:

(A) Seriousness of misconduct and efforts to correct the ground for sanction:

(i) Minor--the respondent has demonstrated that he/she was unaware that his/her conduct was prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the conduct or the respondent has demonstrated that there were significant extenuating circumstances or intervening causes for the violation; and the respondent has demonstrated that he/she provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public.

(ii) Moderate--the violation shows that the respondent knowingly disregarded a standard or practice normally followed by a reasonably prudent person under the same or similar circumstances.

(iii) Major--this is a violation of an order of the Board or a violation that demonstrates gross negligence or recklessness; or the conduct posed a serious threat to the health or safety of the public; or, after being notified of the alleged violation and the harm or threat to the health or safety of the public, the respondent intentionally refused or failed to provide an available remedy to alleviate or eliminate the harm or threat to the health or safety of the public.

(B) Economic damage to property:

(i) Minor--there was no apparent economic damage to property.

(ii) Moderate--economic damage to property did not exceed $1,000, or damage exceeding $1,000 was reasonably unforeseeable.

(iii) Major--economic damage to property exceeded $1,000.

(C) Sanction history:

(i) Minor--this is the first time an administrative penalty or other sanction has been imposed against the respondent, and the respondent has not previously received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent.

(ii) Moderate--this is the second time an administrative penalty or other sanction has been imposed against the respondent; or the respondent previously was subject to an order of the Board through which the Board could have imposed an administrative penalty; or the respondent previously received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent.

(iii) Major--this is at least the third time an administrative penalty or other sanction has been imposed against the respondent or the respondent has been subject to an order of the Board through which the Board could have imposed an administrative penalty.

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) Minor violations--if the violation is minor in every category described in subsection (1) of this section, an administrative penalty of $350 shall be imposed.

(B) Moderate violations--if the violation is moderate in any category described in subsection (1) of this section, an administrative penalty of not less than $351 and not more than $1,200 shall be imposed.

(C) Major violations--if the violation is major in any category described in subsection (1) of this section or if the Board determines that the facts of the case indicate a higher penalty is necessary in order to deter similar misconduct in the future, an administrative penalty of not less than $1,201 and not more than $5,000 shall be imposed.

(3) In order to determine the appropriate amount in a penalty range described in subsection (2) of this section, the Board shall consider the factors described in subsection (1) of this section.

(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in 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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SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §§1.211 - 1.214

The Texas Board of Architectural Examiners adopts amendments to §§1.211, 1.212, 1.213, and 1.214 for Title 22, Chapter 1, Subchapter K, pertaining to the conditions under which the services of a registered architect are required, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3743). The amendment to §1.212 is being adopted with changes. The amendments to §§1.211, 1.213, and 1.214 are being adopted without changes and the text will not be republished in the *Texas Register*.

Section 1.211 sets forth the conditions under which an architect is required to prepare plans, specifications, addenda, change orders, and supplementary instructions for privately-owned new or altered buildings constructed in Texas. As amended, §1.211 restates and clarifies the general requirement that an architect must prepare the architectural plans and specifications for certain privately owned buildings and also adds definitions for the terms "multifamily dwelling," "commercial building," and "warehouse that has limited public access." The change to §1.212, as proposed, adds "building" before "construction costs" in subsection (a) and subsection (b)(1) in order to make it clear that other costs related to the project do not affect the $50,000 and $100,000 thresholds.

Section 1.212 sets forth the conditions under which an architect is required to prepare plans, specifications, addenda, change orders, and supplementary instructions for publicly-owned new or altered buildings constructed in Texas. As amended, §1.212 restates and clarifies the general requirement that an architect must prepare the architectural plans and specifications for certain public buildings.

Section 1.213 describes the requirement that a registered architect must prepare the architectural plans, specifications, addenda, change orders, and supplementary instructions for any alteration or addition to an existing building involving structural changes which require the professional services of a registered professional engineer or which involve exitway changes affecting the building's egress by more than 50 building occupants. As amended, §1.213 restates and clarifies the statutory exemption for architectural projects that do not involve substantial structural or exitway changes.

Section 1.214 implements a statutory requirement that a registered architect must prepare the architectural plans, specifications, addenda, change orders, and supplementary instructions for institutional residential facilities. As amended, §1.214 restates and clarifies the requirement that an architect must prepare the architectural plans and specifications for the construction or modification of a building to be used as an institutional

residential facility. The adoption also restates the definition of the term "institutional residential facility" as a building to be occupied on a 24-hour basis by persons who are receiving custodial care from the proprietor or operator of the building. The adopted amendments clarify the circumstances in which an architect must prepare architectural plans and specifications.

The board received the following comments from the public concerning the proposal to adopt this section: Comment: Two building officials commented that the definition of the term "multifamily dwelling" in §1.211 would seem to include townhouses which would be inconsistent with the International Building Code, which designates townhouses as single family dwellings. Response: The Board carefully considered this issue and determined that its responsibility to protect the public would not be served if dwellings that do not have space between them and are separated only by walls or partitions were not considered multifamily dwellings for purposes of the Architectural Practice Act. Comment: One comment inquired about the list of conditions in §1.212(b) under which the architectural plans and specifications for the alteration or addition to a public building must be prepared by an architect or under an architect's supervision and control. The comment opined it was unclear whether all three of the conditions must exist in order for the requirement to apply. The commentator suggested the insertion of the word "and" between each of the three listed conditions. Response: When more than two items are listed in any of the Board's rules, the word "and" appears between the last two listed items and is implied with regard to all other listed items. This is a common statutory drafting style. Inserting the word "and" between each item in this rule would be inconsistent with the Board's other rules. This inconsistency could cause confusion about the meaning of this rule or other rules that would be structured differently.

The amendments to these sections are adopted pursuant to Section 1051.606 of Tex. Occupations Code Annotated ch. 1051, which describes the exemptions to the architectural practice act, and 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.

§1.212. Publicly Owned Buildings.

(a) An architectural plan or specification for a new building constructed and owned by a public entity where the total projected building construction costs at the commencement of construction exceed $100,000 shall be prepared by an Architect or under the Supervision and Control of an Architect if the building is intended for any of the following uses:

(1) education: the use of a building at any time for instructional purposes;

(2) assembly: the use of a building for the gathering together of persons for purposes such as civic, social, or religious functions or for recreation, food or drink consumption, or awaiting transportation; or

(3) office occupancy: the use of a building for business, professional, or service transactions or activities.

(b) An architectural plan or specification for an alteration or addition to an existing building owned by a public entity shall be prepared by an Architect or under the Supervision and Control of an Architect if:

(1) the total projected building construction costs at the commencement of construction exceed $50,000;

(2) the alteration or addition requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit; and

(3) the building is intended for any of the uses listed in subsection (a) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §1.216

The Texas Board of Architectural Examiners adopts an amendment to §1.216 for Title 22, Chapter 1, Subchapter K, pertaining to professional responsibilities of registered architects, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3744). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section requires an architect to report any course of action taken against the architect's advice which may violate applicable state or local building laws or regulations and which, in the architect's judgment, will have a material adverse effect on the safe use of the completed building. As amended, §1.216 substitutes "law or regulatory provision" for "laws or regulations" and capitalizes the term "architect" to denote it as a defined term. There were no changes to §1.216 as proposed.

As amended, §1.216 is more clearly stated and easier to understand.

The board received the following comments from the public concerning the proposal to adopt this section: Comment: One comment generally opposed capitalizing the word "architect" in the Board's rules. Response: Terms that are defined in the board's rules are capitalized in order to inform the reader that there is a definition for the term. The term "architect" is defined in the board's rules and therefore, it is appropriate for the term to be capitalized.

The amendment 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.

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22 TAC §1.217

The Texas Board of Architectural Examiners adopts new §1.217 for Title 22, Chapter 1, Subchapter K, pertaining to construction observation for architectural projects as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3745). The section is being adopted with changes.

Section 1.217 specifically describes the circumstances under which an architect must perform construction observation services for an architectural project. Changes to §1.217 as proposed specify that the term "construction observation" means the administration of the portion of the construction contract which is described and documented in the architectural plans and specifications. As proposed, the term "construction observation" was defined as generally referring to the administration of the architectural portion of a construction contract. Changes to the Section clarify that an architect's construction observation includes reviewing submittals by consultants. Changes to the Section also include a revision to one of the responsibilities of an architect listed as "construction observation" under the proposed section. As revised, the architect's obligation to notify the client of substantial deviations to the architectural plans and specifications specifically include those deviations which the architect would not otherwise be required to report under §1.216, as a violation of state or local laws or regulations. As proposed, it was unclear if the architect's responsibility to notify the client of deviations was greater than the notice requirement in §1.216. The change makes it clear that the notice requirement within the meaning of construction observation involves notice of substantial deviations from architectural plans and specifications that do not necessarily violate state or local laws and regulations. Changes also replace the term "owner" with the term "client" as those terms are used in the responsibilities listed as construction observation. The term "supervision and control" was added to allow people other than registered architects to perform construction observation services as long as they are properly overseen by registered architects. In subsection (3)(B), "any defect or deficiency" was changed to "defects and deficiencies" in order to clarify that an effort to identify all defects and deficiencies must be made.

The board received the following comments from the public concerning the proposal to adopt this section: Comment: One comment from the Texas Society of Architects expressed concern that defining the term "construction observation" as applying to "the architectural portion of the construction contract" is vague and difficult to interpret. The comment recommended the wording be changed to "the portion of the construction contract described and documented in the architectural plans and specifications." The Texas Society of Architects favored adoption of the rule. Response: The Board agrees with the recommended change and is adopting the rule with the recommended change.

The new 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.

§1.217. Construction Observation.

If, pursuant to Section 1.211, Section 1.212, or Section 1.214, an Architect must prepare or supervise and control the preparation of the architectural plans and specifications for a new building or the alteration of or an addition to an existing building, construction observation for the project shall be conducted by an Architect or by a person working under the Supervision and Control of an Architect. For purposes of this Subchapter, "construction observation" means the administration of the portion of the construction contract described and documented in the architectural plans and specifications, including the following:

(1) reviewing each shop drawing, sample, and other submittal by a contractor or consultant;

(2) preparing or reviewing each change to an architectural plan or specification;

(3) visiting the construction site at intervals appropriate to the stage of construction to:

(A) become generally familiar with and keep the client generally informed about the progress and quality of the portion of the construction completed;

(B) make a reasonable effort to identify defects and deficiencies in the construction;

(C) determine generally whether the construction is being performed in a manner indicating that the project, when fully completed, will be in accordance with the architectural plans and specifications; and

(4) in addition to any responsibilities under Section 1.216, notifying the client in writing of any substantial deviation from the architectural plans and specifications that may prevent the building from being occupied or utilized for its intended use.

This agency 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 L. HEARINGS--CONTESTED CASES

22 TAC §1.232

The Texas Board of Architectural Examiners adopts an amendment to §1.232 for Title 22, Chapter 1, Subchapter L, concerning the board's and the State Office of Administrative Hearings' responsibilities as they pertain to contested cases, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3746). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

This section generally describes the Board's procedures for addressing contested cases and ensuring that the procedures are consistent with governing law. As amended, the section clarifies that the administrative penalty guidelines appearing in a separate subchapter of the rules are to govern the imposition of all administrative penalties imposed by the Board or recommended by an administrative law judge. The section is also amended to authorize the Board to refuse to renew a respondent's certificate of registration in any case where revocation of the respondent's certificate of registration is an appropriate penalty for the respondent's conduct.

As amended, the section will ensure that the Board and any administrative law judge who presides over a contested case will apply the same guidelines for imposing all administrative penalties so that penalties will be imposed in a consistent manner.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.452 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt an administrative penalty schedule to govern the amounts of all administrative penalties imposed by the Board, Section 1051.751 of Tex. Occupations Code Annotated ch. 1051, which lists "refusal to renew" as a disciplinary sanction, and 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.

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER F. LANDSCAPE ARCHITECT'S SEAL

22 TAC §3.102, §3.103

The Texas Board of Architectural Examiners adopts an amendment to §3.102 and §3.103 for Title 22, Chapter 3, Subchapter F, pertaining to the Landscape Architect's Seal as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3747). Section 3.102 is being adopted with changes; §3.103 is being adopted without changes and the text will not be republished in the *Texas Register*.

Section 3.102 states that landscape architect must use a seal for affixation to issued documents which will be visible if the sealed document is copied. The section also specifies the required design of a landscape architect's seal. As amended, §3.102 clarifies that a landscape architect may affix a seal, signature, and date of signature by electronic means or by any other means as long as the affixation creates a clear and legible image on any reproduction of the document. The amended section also alters the design of the seal to correspond with statutory language regarding the design. The change to the section as proposed is a minor change to the circular borders and reduces the size of the wording printed on the new design of the seal.

Section 3.103 describes the requirements related to a landscape architect's use of his or her seal; lists construction documents which must be sealed, signed, and dated; describes the requirements for issuing documents for purposes other than regulatory approval, permitting, or construction; and describes the requirements related to the retention of sealed documents. The amendment to §3.103 replaces the phrase "architectural drawing and specification" with "landscape architectural drawing and specification" in the last sentence of subsection (a).

As a result of the amendment, the permissible means of affixing a seal and signature are explicitly stated, the requirements related to the design of the professional seal are consistent with statutory requirements, and a typographical error has been corrected.

The board received the following comments from the public concerning the proposal to adopt this amendment/new rule: Comment: One comment was received in opposition to modifications to the landscape architectural seal. The comment stated that changing the seal will impose a financial burden on landscape architects who will have to replace the seal they have been using. The comment also noted that the seal currently used by landscape architects contain the requisite elements that tie it to the official seal of the Board, such as the words "State of Texas" and the star, among other elements. The comment also inquired whether there would be a grandfather clause for the implementation of the new seal. Response: The Legislature mandated that the Board's seal and the professional seals of architects, landscape architects, and interior designers must all have the same design. The Board carefully considered the issue and decided that revising the seals of the landscape architects and interior designers, as well as the official seal of the Board would impact the fewest number of registrants. The Board decided to allow registrants ample opportunity to obtain new seals. No enforcement action will be taken for use of an obsolete seal until after January 1, 2006.

The amendment 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 amendment to Subsection 3.102(b) is proposed pursuant to Section 1052.056 of Tex. Occupations Code Annotated ch. 1052, which prescribes the requirements related to the design of a landscape architect's seal.

§3.102. Type and Design.

(a) On every document requiring a Landscape Architect's seal, the Landscape Architect shall affix or cause the affixation of a seal that will produce a clearly visible and legible image of the seal when the document is copied or reproduced. A Landscape Architect may not affix or authorize the affixation of an impression or embossing seal on a document requiring a seal unless the impression or embossing seal will produce a clearly visible and legible image of the seal when the document is copied or reproduced.

(b) The design of a Landscape Architect's seal shall be the same as the design of the sample seal shown in this Subsection except that the name of the Landscape Architect and the Landscape Architect's

registration number shall be substituted for the name and registration number shown on the sample seal. The diameter of the seal shall be no smaller than one and one-half (1.5) inches.
Figure: 22 TAC §3.102(b)

(c) A document regulated by this Subchapter may be issued electronically or in any other format selected by the Landscape Architect whose seal and signature are affixed to the document. A Landscape Architect's seal and signature and the date of signing may be affixed electronically or through any other means selected by the Landscape Architect as long as the seal, signature, and date will produce a clearly visible and legible image on any copy or reproduction of the document to which they are affixed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.141

The Texas Board of Architectural Examiners adopts an amendment to §3.141 for Title 22, Chapter 3, Subchapter H, the Board's authority to promulgate rules necessary for the regulation of professional practices and enforcement of statutory provisions, the Board's authority to take different types of disciplinary action against a registrant or an applicant, and the factors the Board will consider in determining an appropriate sanction for misconduct. The proposal to amend this rule was published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3748). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The amendment to section §3.141 adds "refuse to renew" to the list of potential disciplinary sanctions that may be imposed against a registrant.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1052.251 of Tex. Occupations Code Annotated ch. 1052, which adds "refuse to renew" as an additional disciplinary sanction available to the Board, and 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §3.148

The Texas Board of Architectural Examiners adopts an amendment §3.148 for Title 22, Chapter 3, Subchapter H, pertaining to the potential consequences of a landscape architect registrant's or applicant's unauthorized practice in another jurisdiction, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3749). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

This section sets forth the implications of disciplinary action by another jurisdiction and the consequences of a landscape architect's failure to renew a certificate of registration prior to its expiration. The amendment adds "refusal to renew" a certificate of registration to the list of sanctions imposed by another jurisdiction that could affect a landscape architect or an applicant for registration as a landscape architect. The amendment also adds "refusal to renew" a certificate of registration to the list of sanctions that the Board could impose upon a registrant for conduct which was the subject of disciplinary action by another jurisdiction.

As a result of the amendment, the rule will be consistent with statutory language, which recently was amended by adding references to the "refusal to renew" a certificate of registration as a disciplinary sanction.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §3.151

The Texas Board of Architectural Examiners adopts an amendment to §3.151 for Title 22, Chapter 3, Subchapter H, pertaining to the effect of enforcement proceedings on an application for landscape architectural registration, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3749). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

Section 3.151 sets forth that the Board may hold, without approval or denial, an application for registration if enforcement proceedings have been commenced against the applicant; how an "enforcement proceeding" is initiated; the sanctions that may be imposed against an applicant who is found to have falsified information provided to the Board, violated any of the restrictions of the Act, violated any similar restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board; and makes it possible for the Board to take action against an applicant for any act or omission if the same conduct would be a ground for disciplinary action against a registrant.

As amended, §3.151 substitutes the word "denial" for "rejection" in order to be consistent with current statutory language and also describes certain conditions that must be satisfied before the Board may approve the registration application of a person whose application previously was denied. As amended, the section requires such a person to demonstrate that he or she has taken reasonable steps to correct the misconduct or deficiency for which the application was denied, demonstrate that approval of the application is not inconsistent with the Board's duty to ensure that registrants are qualified for registration, and pay all fees and costs incurred by the Board as a result of any proceeding that led to the denial of the previous application.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.403 of Tex. Occupations Code Annotated ch. 1051, which specifies certain requirements that must be satisfied before the Board may approve a registration application for a person who previously applied for registration and was denied registration privileges, and 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.

This agency 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 I. DISCIPLINARY ACTIONS

22 TAC §3.167

The Texas Board of Architectural Examiners adopts an amendment to §3.167 for Title 22, Chapter 3, Subchapter I, pertaining to the publication of disciplinary action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3750). The section is being adopted with changes.

The section describes the circumstances under which the Board publicizes disciplinary action. The amendment to §3.167 implements a statutory directive that the Board adopt rules to provide for the publication of all disciplinary orders and sanctions. Changes to §3.167 as proposed replace the word "may" with the word "shall" to make the section consistent with the statutory mandate that the Board shall publicize disciplinary action.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.402 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to provide for the publication of all disciplinary orders and sanctions.

§3.167. Publication of Disciplinary Action.

(a) The Board shall cause to be published in the Board's official newsletter, on the Board's Web site, in a newspaper, or in another publication the name of any person who is the subject of disciplinary action by the Board. The publication may include a narrative summary of the facts giving rise to disciplinary action and a description of the action taken.

(b) In addition to other types of disciplinary action that shall be publicized pursuant to this section, the Board shall publicize the revocation or cancellation of a certificate of registration after its surrender in lieu of potential disciplinary action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §3.173

The Texas Board of Architectural Examiners adopts an amendment to §3.173 for Title 22, Chapter 3, Subchapter I, pertaining to disciplinary action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3751). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section describes the possible consequences of violations by nonregistrants as well as the procedure for imposing penalties against nonregistrants. As amended, the section describes the process for issuing a cease and desist order pursuant to statutory language recently enacted by the Texas Legislature.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.504 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with authority to issue cease and desist orders, and 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §§3.174 - 3.178

The Texas Board of Architectural Examiners adopts new §§3.174, 3.175, 3.176, 3.177, and 3.178 for Title 22, Chapter 3, Subchapter I, pertaining to Disciplinary Action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3751). Sections 3.174, 3.176, and 3.177 are being adopted with changes. Sections 3.175 and 3.178 are being adopted as proposed without changes and the text will not be published in the *Texas Register*.

New §3.174 provides specific guidelines to govern the processing of complaints addressed by the agency. Pursuant to legislation enacted by the 78th Legislature, Regular Session, the Board is required to adopt rules regarding the steps in the complaint process. The new section describes the information that must be submitted with a complaint, the procedure for conducting a preliminary evaluation of a complaint, the process for complaints that survive the preliminary evaluation period and proceed to a formal investigation, the process to be followed during an investigation, the process for dismissing a complaint, the process for taking action when the information and evidence gathered during an investigation are sufficient to prove that a violation has occurred, and the process for requesting reconsideration of a complaint that has been dismissed. Changes to §3.174 as proposed delete the requirement that a complaint include the time of the alleged violation; change "initiate an investigation" to "act on the matter" in subsection (b); delete "make reasonable efforts to" from subsection (d); change "At the conclusion of " to "after" in subsection (e); revise the criteria for the issuance of a warning to a respondent for the respondent's first violation of the laws enforced by the Board; and add "if known" to subsection (j)(1). Other changes to the proposed rule clarify the discretion the agency has in contacting parties during the preliminary evaluation of a complaint and allow the agency to send notice to parties that a case is being dismissed in lieu of requiring the agency to make such notice by letter.

New §3.175 establishes a requirement that formal hearing proceedings may not begin in a case involving allegations of recklessness, gross incompetence, or dishonesty unless a licensee has reviewed the allegations and determined that the respondent's conduct did not satisfy the requisite standard of care. The rule ensures that more serious allegations of misconduct are reviewed by a person with expertise in the subjects that are at issue in the disciplinary action. The section is adopted as proposed without changes.

New §3.176 establishes a process for issuing subpoenas for the production of witness testimony, documents, or other evidence in connection with alleged violations of statutory provisions and rules enforced by the Board. The section is being adopted with changes. The changes to §3.176, as proposed, specify that the Executive Director or the Chairman of the Board may issue a subpoena.

New §3.177 establishes specific guidelines for determining the appropriate amount of an administrative penalty imposed by the Board. Pursuant to legislation enacted by the 78th Legislature, Regular Session, the Board is required to adopt an administrative penalty schedule. This rule satisfies the new legislative requirement. Changes to §3.177 as proposed revise the criteria for determining whether a respondent's violation of the law is a minor, moderate, or major violation. The revision specifies conduct as minor if the respondent demonstrates that the respondent was unaware that the conduct was prohibited and was unaware that there was a reasonable likelihood of the harm resulting from the conduct, in addition to demonstrating that the respondent provided a satisfactory remedy that alleviated any harm or threat to the health or safety of the public. As proposed, the rule did not require the respondent to demonstrate these factors as part of the Board's documentation whether a violation is minor. The adopted rule specifies that a moderate violation results from a "knowing" disregard of standards of practice applied by reasonable persons under the same or similar circumstances. The proposed rule listed a "conscious" disregard for the standards applied under the circumstances as a moderate violation. The rule revises the proposed criteria of a major violation as posing a "serious," in lieu of a "major," threat to the health or safety of the public. The proposed rule listed the respondent's sanction history as a factor in determining whether the respondent's conduct is a minor, moderate, or major violation. The proposed rule is changed by including consideration of whether the respondent previously received a written warning or notice from the Board regarding the law's restrictions as a factor in the respondent's sanction history for determining whether the violation was minor or moderate. The maximum administrative penalties that may be imposed for a minor and moderate violation are increased as follows: from $250 to $350 for a minor violation and from $1,000 to $1,200 for a moderate violation. The administrative penalty that may be imposed for a major violation is not less than $1201 and not more than $5,000. As proposed, the minimum penalty for a major violation was $1,001. The changes to the proposed rule also allow the Board to suspend the guidelines if the facts of a case are unique. The proposed rule referred only to "unusual" facts.

New §3.178 implements a statutory provision enacted by the 78th Legislature, Regular Session, to require that a person whose registration has been suspended or revoked must, prior to reinstatement of the certificate, demonstrate that reasonable steps have been taken to correct the misconduct, demonstrate that reinstatement is not inconsistent with the Board's duty to protect the public, and pay all costs incurred by the Board during the revocation or suspension. The Board adopted the rule as proposed, without changes.

The board received no comments pertaining to the proposal to adopt this section.

The new sections are adopted pursuant to Section 1051.252 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt rules regarding the Board's complaint process; Section 1051.204 of Tex. Occupations Code Annotated ch.

1051, which authorizes the Board to issue subpoenas; Section 1051.452 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt an administrative penalty schedule to govern the amounts of all administrative penalties imposed by the Board; Section 1051.403 of Tex. Occupations Code Annotated ch. 1051, which specifies certain requirements that must be satisfied before the Board may reinstate a registration; and 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.

§3.174. Complaint Process.

(a) A person may file a complaint by submitting the following information to the Board:

(1) the name of and contact information for the complainant unless evidence regarding a possible violation was submitted anonymously;

(2) the name of the person against whom the complaint is filed;

(3) the address, telephone number, Web site, or other contact information for the person against whom the complaint is filed, if available;

(4) the date and location of the alleged violation that is the subject of the complaint;

(5) a description of each alleged violation; and

(6) the name, address, and telephone number for any known witness who can provide information regarding the alleged violation.

(b) A complaint should be submitted on the complaint form that may be obtained by accessing the form on the Board's Web site or by contacting the Board's staff. If a completed complaint form is not submitted, the Board's staff will not be able to initiate an investigation unless the Board's staff receives information sufficient to establish probable cause to believe an actionable violation might have occurred.

(c) Once a complaint has been received, the Board's enforcement staff shall:

(1) provide the complainant and respondent with copies of the Board's policies and procedures regarding complaint investigation and resolution;

(2) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:

(A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for the Board's staff to believe an actionable violation might have occurred;

(B) Disciplinary History: whether there has been previous enforcement activity involving the person against whom the complaint has been filed; and

(C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;

(3) notify the complainant and respondent of the status of the investigation at least quarterly unless providing notice would jeopardize an investigation; and

(4) maintain a complaint file that includes at least:

(A) the name of the person who filed the complaint unless the complaint was filed anonymously;

(B) the date the complaint was received by the Board's staff;

(C) a description of the subject matter of the complaint;

(D) the name of each person contacted in relation to the complaint;

(E) a summary of the results of the review and investigation of the complaint; and

(F) an explanation for the reason the complaint was dismissed if the complaint was dismissed without action other than the investigation of the complaint.

(d) During the preliminary evaluation period, the Board's staff may contact the complainant, the respondent, and any known witness concerning the complaint.

(e) After the preliminary evaluation period, the Board's staff shall take steps to dismiss the complaint or proceed with an investigation of the allegation(s) against the respondent. A complaint may be referred to another government agency if it appears that the other agency might have jurisdiction over the issue(s) raised in the complaint.

(f) If the Board's staff proceeds with an investigation, the staff shall:

(1) investigate the complaint according to the priority level assigned to the complaint;

(2) notify the complainant and respondent that, as a result of the staff's preliminary evaluation of the complaint, the staff has determined that the Board has jurisdiction over the allegations(s) described in the complaint and has decided to proceed with an investigation of the allegation(s) against the respondent; and

(3) gather sufficient information and evidence to determine whether a violation of a statutory provision or rule enforced by the Board has occurred.

(g) The Board's staff may conduct an investigation regardless of whether a complaint form was received as described in subsection (a) of this section.

(h) If the information and evidence gathered during an investigation are insufficient to prove that a violation has occurred, the Board's staff shall:

(1) dismiss the complaint;

(2) send notices to the complainant and respondent regarding the dismissal;

(3) if warranted, include in the respondent's notice a recommendation or warning regarding the respondent's future conduct; and

(4) if a complaint is determined to be unfounded, state in the respondent's notice that no violation was found.

(i) If the information and evidence gathered during an investigation are sufficient to prove that a violation has occurred, the Board's staff shall:

(1) seek to resolve the matter pursuant to section 3.165 or section 3.173 of this subchapter; or

(2) issue a warning to the respondent if the violation is the respondent's first violation and:

(A) the respondent has not received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent;

(B) the respondent provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public; and

(C) the guidelines for determining an appropriate penalty for the violation recommend an administrative penalty or a reprimand as an appropriate sanction for the violation.

(j) Before a proposed settlement agreement may be approved by the Board:

(1) the complainant, if known, must be notified of the terms of the agreement and the date, time, and location of the meeting during which the Board will consider the agreement; and

(2) the terms of the agreement must be reviewed by legal counsel for the Board to ensure that all legal requirements have been satisfied.

(k) If a complaint is dismissed, the complainant may submit to the Executive Director a written request for reconsideration. The written request must explain why the complaint should not have been dismissed.

§3.176. Subpoenas and Depositions.

(a) On a showing of good cause and on deposit of a sum reasonably estimated to cover the costs of issuing and serving the subpoena and the costs described in subsection (e) of this section, the Executive Director or the Chairman may issue a subpoena to require the attendance of a witness for examination under oath or the production of a record, document, or other evidence relevant to the investigation of, or a disciplinary proceeding related to, an alleged violation of a statutory provision or rule enforced by the Board.

(b) A subpoena must:

(1) be issued in the name of the State of Texas;

(2) be signed by the Executive Director or the Chairman;

(3) be addressed to a sheriff, constable, or other party authorized by the Texas Rules of Civil Procedure to serve a subpoena;

(4) state the time and place at which the witness is required to appear, the name of the person at whose instance the subpoena has been issued, and the date of the subpoena's issuance;

(5) include a specific description of any record, document, or other evidence covered by the subpoena; and

(6) be served by delivering a copy of the subpoena to the party named in the subpoena.

(c) A subpoena may be executed and returned at any time. The person serving the subpoena shall make due return thereof, showing the time and manner of service or showing that service was accepted by the witness by a written memorandum signed by the witness and attached to the subpoena.

(d) A deposition shall be taken in the manner prescribed for depositions in the Administrative Procedure Act (APA).

(e) A witness or deponent who is not a party to an enforcement proceeding and who is subpoenaed or otherwise compelled by the Board to attend any hearing or proceeding to provide testimony, give a deposition, or produce a record, document, or other evidence shall be entitled to receive:

(1) payment for mileage and reimbursement for transportation, meal, and lodging expenses as required by the APA for going to and returning from the place of the hearing or the place where the deposition is taken if the place is more than 25 miles from the person's place of residence; and

(2) a witness fee as required by the APA for each day or part of a day the person is necessarily present as a witness or deponent.

(f) Expenses and fees described in subsection (e) of this section shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the Executive Director.

(g) Payment for mileage and reimbursement for transportation, meal, and lodging expenses for a witness whose presence is required by a subpoena issued by the Executive Director or the Chairman shall be at the same rate as is paid to a state employee traveling on state business.

§3.177. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to determine the amount of the administrative penalty:

(1) The Board shall consider the following factors to determine whether the violation is minor, moderate, or major:

(A) Seriousness of misconduct and efforts to correct the ground for sanction:

(i) Minor--the respondent has demonstrated that he/she was unaware that his/her conduct was prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the conduct or the respondent has demonstrated that there were significant extenuating circumstances or intervening causes for the violation; and the respondent has demonstrated that he/she provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public.

(ii) Moderate--the violation shows that the respondent knowingly disregarded a standard or practice normally followed by a reasonably prudent person under the same or similar circumstances.

(iii) Major--this is a violation of an order of the Board or a violation that demonstrates gross negligence or recklessness; or the conduct posed a serious threat to the health or safety of the public; or, after being notified of the alleged violation and the harm or threat to the health or safety of the public, the respondent intentionally refused or failed to provide an available remedy to alleviate or eliminate the harm or threat to the health or safety of the public.

(B) Economic damage to property:

(i) Minor--there was no apparent economic damage to property.

(ii) Moderate--economic damage to property did not exceed $1,000, or damage exceeding $1,000 was reasonably unforeseeable.

(iii) Major--economic damage to property exceeded $1,000.

(C) Sanction history:

(i) Minor--this is the first time an administrative penalty or other sanction has been imposed against the respondent, and the respondent has not previously received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent.

(ii) Moderate--this is the second time an administrative penalty or other sanction has been imposed against the respondent; or the respondent previously was subject to an order of the Board through which the Board could have imposed an administrative

penalty; or the respondent previously received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent.

(iii) Major--this is at least the third time an administrative penalty or other sanction has been imposed against the respondent or the respondent has been subject to an order of the Board through which the Board could have imposed an administrative penalty.

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) Minor violations--if the violation is minor in every category described in subsection (1) of this section, an administrative penalty of $350 shall be imposed.

(B) Moderate violations--if the violation is moderate in any category described in subsection (1) of this section, an administrative penalty of not less than $351 and not more than $1,200 shall be imposed.

(C) Major violations--if the violation is major in any category described in subsection (1) of this section or if the Board determines that the facts of the case indicate a higher penalty is necessary in order to deter similar misconduct in the future, an administrative penalty of not less than $1,201 and not more than $5,000 shall be imposed.

(3) In order to determine the appropriate amount in a penalty range described in subsection (2) of this section, the Board shall consider the factors described in subsection (1) of this section.

(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in 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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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

The Texas Board of Architectural Examiners adopts an amendment to §3.232 for Title 22, Chapter 3, Subchapter K, concerning the board's and the State Office of Administrative Hearings' responsibilities as they pertain to contested cases, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3755). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

This section generally describes the Board's procedures for addressing contested cases and ensuring that the procedures are consistent with governing law. As amended, the section clarifies that the administrative penalty guidelines appearing in a separate subchapter of the rules are to govern the imposition of all administrative penalties imposed by the Board or recommended by an administrative law judge. The section is also amended to authorize the Board to refuse to renew a respondent's certificate of registration in any case where revocation of the respondent's certificate of registration is an appropriate penalty for the respondent's conduct.

As amended, the section will ensure that the Board and any administrative law judge who presides over a contested case will apply the same guidelines for imposing all administrative penalties so that penalties will be imposed in a consistent manner.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.452 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt an administrative penalty schedule to govern the amounts of all administrative penalties imposed by the Board, Section 1052.251 of Tex. Occupations Code Annotated ch. 1052, which lists "refusal to renew" a certificate of registration as a disciplinary sanction, and 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.

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER F. THE INTERIOR DESIGNER'S SEAL

22 TAC §5.112

The Texas Board of Architectural Examiners adopts an amendment to §5.112 for Title 22, Chapter 5, Subchapter F, pertaining to the interior designer's seal, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3756). Section 5.112 is being adopted with changes.

Section 5.112 states that an interior designer must use a seal for affixation to issued documents which will be visible if the sealed document is copied. The section also specifies the required design of an interior designer's seal. As amended, §5.112 clarifies that an interior designer may affix a seal, signature, and date of signature by electronic means or by any other means as long as the affixation creates a clear and legible image on any reproduction of the document. The amended section also alters the design of the seal to correspond with statutory language regarding the design. The change to the section as proposed is a minor change to the circular border and reduces the size of the wording printed on the seal.

As a result of the amendment, the permissible means of affixing a seal and signature are explicitly stated, and the requirements related to the design of the professional seal are consistent with statutory requirements.

The board received the following public comments pertaining to the proposal to adopt this section: Comment: One comment was received in opposition to modifications to the interior designer seal. The comment stated that changing the seal will impose a financial burden on interior designers who will have to replace the seal they have been using. The comment also noted that the seal currently used by interior designers contain the requisite elements that tie it to the official seal of the Board, such as the words "State of Texas" and the star, among other elements. The comment also inquired whether there would be a grandfather clause for the implementation of the new seal. Response: The Legislature mandated that the Board's seal and the professional seals of architects, landscape architects, and interior designers must all have the same design. The Board carefully considered the issue and decided that revising the seals of the landscape architects and interior designers, as well as the official seal of the Board would impact the fewest number of registrants. The Board decided to allow registrants ample opportunity to obtain new seals. No enforcement action will be taken for use of an obsolete seal until after January 1, 2006.

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 amendment to Subsection (b) is proposed pursuant to Section 1053.058 of Tex. Occupations Code Annotated ch. 1053, which prescribes the requirements related to the design of an interior designer's seal.

§5.112. Type and Design.

(a) On every document requiring an Interior Designer's seal, the Interior Designer shall affix or cause the affixation of a seal that will produce a clearly visible and legible image of the seal when the document is copied or reproduced. An Interior Designer may not affix or authorize the affixation of an impression or embossing seal on a document requiring a seal unless the impression or embossing seal will produce a clearly visible and legible image of the seal when the document is copied or reproduced.

(b) The design of an Interior Designer's seal shall be the same as the design of the sample seal shown in this Subsection except that the name of the Interior Designer and the Interior Designer's registration number shall be substituted for the name and registration number shown on the sample seal. The diameter of the seal shall be no smaller than one and one-half (1.5) inches.
Figure: 22 TAC §5.112(b)

(c) A document regulated by this Subchapter may be issued electronically or in any other format selected by the Interior Designer whose seal and signature are affixed to the document. An Interior Designer's seal and signature and the date of signing may be affixed electronically or through any other means selected by the Interior Designer as long as the seal, signature, and date will produce a clearly visible and legible image on any copy or reproduction of the document to which they are affixed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.151

The Texas Board of Architectural Examiners adopts an amendment to §5.151 for Title 22, Chapter 5, Subchapter H pertaining to the Board's authority to promulgate rules necessary for the regulation of professional practices of interior designers and enforcement of statutory provisions, the Board's authority to take different types of disciplinary action against a registrant or an applicant, and the factors the Board will consider in determining an appropriate sanction for misconduct. The proposal to amend this rule was published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3757). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section generally describes the Board's authority to promulgate rules necessary for the regulation of professional practices and enforcement of statutory provisions relating to interior designers, generally describes the Board's authority to take different types of disciplinary action against a registrant or an applicant, lists the factors the Board will consider in determining an appropriate sanction for misconduct, and states that registrants must adhere to relevant statutory provisions and rules even when providing services free of charge. As amended, "refuse to renew" is added to the list of potential disciplinary sanctions that may be imposed against a registrant.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is proposed pursuant to Section 1053.251 of Tex. Occupations Code Annotated ch. 1053, which adds "refuse to renew" as an additional disciplinary sanction available to the Board, and 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.

This agency 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-200403911
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §5.157

The Texas Board of Architectural Examiners adopts an amendment to §5.157 for Title 22, Chapter 5, Subchapter H, pertaining to the potential consequences of a registrant's or applicant's unauthorized practice in another jurisdiction as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3757). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

This section sets forth the implications of disciplinary action by another jurisdiction and the consequences of an interior designer's failure to renew a certificate of registration prior to its expiration. The amendment adds "refusal to renew" to the list of sanctions imposed by another jurisdiction that could affect an interior designer or an applicant for registration as an interior designer. The amendment also adds "refusal to renew" a certificate of registration to the list of sanctions that the Board could impose upon a registrant for conduct which was the subject of disciplinary action by another jurisdiction.

The amended rule is consistent with statutory language, which recently was amended by adding references to the "refusal to renew" a certificate of registration as a disciplinary sanction.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §5.160

The Texas Board of Architectural Examiners adopts an amendment to §5.160 for Title 22, Chapter 5, Subchapter H, pertaining to the effect of enforcement proceedings on an application for interior designer registration, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3758). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section sets forth that the Board may hold, without approval or denial, an application for registration if enforcement proceedings have been commenced against the applicant; how an "enforcement proceeding" is initiated; the sanctions that may be imposed against an applicant who is found to have falsified information provided to the Board, violated any of the restrictions of the Act, violated any similar restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board; and makes it possible for the Board to take action against an applicant for any act or omission if the same conduct would be a ground for disciplinary action against a registrant.

The amendment to section §5.160 substitutes the word "denial" for "rejection" in order to be consistent with current statutory language and also describes certain conditions that must be satisfied before the Board may approve the registration application of a person whose application previously was denied. As amended, the section requires such a person to demonstrate that he or she has taken reasonable steps to correct the misconduct or deficiency for which the application was denied, demonstrate that approval of the application is not inconsistent with the Board's duty to ensure that registrants are qualified for registration, and pays all fees and costs incurred by the Board as a result of any proceeding that led to the denial of the previous application.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.403 of Tex. Occupations Code Annotated ch. 1051, which specifies certain requirements that must be satisfied before the Board may approve a registration application for a person who previously applied for registration and was denied registration privileges, and 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.

This agency 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 I. DISCIPLINARY ACTION

22 TAC §5.177

The Texas Board of Architectural Examiners adopts an amendment to §5.177 for Title 22, Chapter 5, Subchapter I, pertaining to the publication of disciplinary action against interior designers, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3759). The section is being adopted with changes.

The section describes the circumstances under which the Board publicizes disciplinary action. The amendment to §5.177 implements a statutory directive that the Board adopt rules to provide for the publication of all disciplinary orders and sanctions. Changes to §5.177 as proposed replace the word "may" with the word "shall" to make the section consistent with the statutory mandate that the Board shall publicize disciplinary action.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.402 of Tex. Occupations Code Annotated ch. 1051, which directs the Texas Board of Architectural Examiners to adopt rules to provide for the publication of all disciplinary orders and sanctions.

§5.177. Publication of Disciplinary Action.

(a) The Board shall cause to be published in the Board's official newsletter, on the Board's Web site, in a newspaper, or in another publication the name of any person who is the subject of disciplinary action by the Board. The publication may include a narrative summary of the facts giving rise to disciplinary action and a description of the action taken.

(b) In addition to other types of disciplinary action that shall be publicized pursuant to this section, the Board shall publicize the revocation or cancellation of a certificate of registration after its surrender in lieu of potential disciplinary action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8535

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22 TAC §5.183

The Texas Board of Architectural Examiners adopts an amendment to §5.183 for Title 22, Chapter 5, Subchapter I, pertaining to disciplinary action, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3759). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

The section describes the possible consequences of violations by nonregistrants of laws relating to interior design as well as the procedure for imposing penalties against nonregistrants. As amended, the section describes the process for issuing a cease and desist order pursuant to statutory language recently enacted by the Texas Legislature.

The board received no comments from the public pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.504 of Tex. Occupations Code Annotated ch. 1051, which provides the Board with authority to issue cease and desist orders, and 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §§5.184 - 5.188

The Texas Board of Architectural Examiners adopts new §§5.184, 5.185, 5.186, 5.187, and 5.188 for Title 22, Chapter 5, Subchapter I, pertaining to Disciplinary Action as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3760). Sections 5.184, 5.186, and 5.187 are being adopted with changes. Sections 5.185 and 5.188 as proposed are adopted without changes and the text will not be published in the *Texas Register*.

New §5.184 provides specific guidelines to govern the processing of complaints addressed by the agency. Pursuant to legislation enacted by the 78th Legislature, Regular Session, the Board is required to adopt rules regarding the steps in the complaint process. The new section describes the information that must be submitted with a complaint, the procedure for conducting a preliminary evaluation of a complaint, the process for complaints that survive the preliminary evaluation period and proceed to a formal investigation, the process to be followed during an investigation, the process for dismissing a complaint, the process for taking action when the information and evidence gathered during an investigation are sufficient to prove that a violation has occurred, and the process for requesting reconsideration of a complaint that has been dismissed. Changes to §5.184 as proposed delete the requirement that a complaint include the time of the alleged violation; change "initiate an investigation" to "act on the matter" in subsection (b); delete "make reasonable efforts to" from subsection (d); change "At the conclusion of " to "after" in subsection (e); revise the criteria for the issuance of a warning to a respondent for the respondent's first violation of the laws enforced by the Board; and add "if known" to subsection (j)(1). Other changes to the proposed rule clarify the discretion the agency has in contacting parties during the preliminary evaluation of a complaint and allow the agency to send notice to parties that a case is being dismissed in lieu of requiring the agency to make such notice by letter.

New §5.185 establishes a requirement that formal hearing proceedings may not begin in a case involving allegations of recklessness, gross incompetence, or dishonesty unless a licensee has reviewed the allegations and has determined that the respondent's conduct did not satisfy the requisite standard of care. The section ensures that more serious allegations of misconduct are reviewed by a person with expertise in the areas that are the subject matter of the disciplinary action. The section is adopted as proposed without changes.

New §5.186 establishes a process for issuing subpoenas for the production of witness testimony, documents, or other evidence in connection with alleged violations of statutory provisions and rules enforced by the Board. The section is being adopted with changes. The changes to §5.186, as proposed, specify that the Executive Director or the Chairman of the Board may issue a subpoena.

New §5.187 establishes specific guidelines for determining the appropriate amount of an administrative penalty imposed by the

Board. Pursuant to legislation enacted by the 78th Legislature, Regular Session, the Board is required to adopt an administrative penalty schedule. This rule satisfies the new legislative requirement. Changes to §5.187 as proposed revise the criteria for determining whether a respondent's violation of the law is a minor, moderate, or major violation. The revision specifies conduct as minor if the respondent demonstrates that the respondent was unaware that the conduct was prohibited and was unaware that there was a reasonable likelihood of the harm resulting from the conduct, in addition to demonstrating that the respondent provided a satisfactory remedy that alleviated any harm or threat to the health or safety of the public. As proposed, the rule did not require the respondent to demonstrate these factors as part of the Board's documentation whether a violation is minor. The adopted section specifies that a moderate violation results from a knowing disregard of standards of practice applied by reasonable persons under the same or similar circumstances. The proposed rule listed a conscious disregard for the standards applied under the circumstances as a moderate violation. The rule revises the proposed criteria of a major violation as posing a "serious," in lieu of a "major," threat to the health or safety of the public. The proposed rule listed the respondent's sanction history as a factor in determining whether the respondent's conduct is a minor, moderate, or major violation. The proposed rule is changed by including consideration of whether the respondent previously received a written warning or notice from the Board regarding the law's restrictions as a factor in the respondent's sanction history for determining whether the violation was minor or moderate. The maximum administrative penalties that may be imposed for a minor and moderate violation are increased as follows: from $250 to $350 for a minor violation and from $1,000 to $1,200 for a moderate violation. The administrative penalty that may be imposed for a major violation is not less than $1,201 and not more than $5,000. As proposed, the minimum penalty for a major violation was $1,001. The changes to the proposed rule also allow the Board to suspend the guidelines if the facts of a case are unique. The proposed rule referred only to "unusual" facts.

New §5.188 implements a statutory provision enacted by the 78th Legislature, Regular Session, to require a person whose registration has been suspended or revoked, in order to obtain reinstatement of the certificate, to demonstrate that reasonable steps have been taken to correct the misconduct, demonstrate that reinstatement is not inconsistent with the Board's duty to protect the public, and pay all costs incurred by the Board during the revocation or suspension. The Board adopted the rule as proposed, without changes.

The board conducted a public hearing on proposed §5.187, relating to the administrative penalty schedule, on May 17, 2004. The board received no public comment on the section at the hearing. The board received no other comments pertaining to the proposal to adopt these sections.

The new sections are proposed pursuant to Section 1051.252 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt rules regarding the Board's complaint process; Section 1051.204 of Tex. Occupations Code Annotated ch. 1051, which authorizes the Board to issue subpoenas; Section 1051.452 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt an administrative penalty schedule to govern the amounts of all administrative penalties imposed by the Board; Section 1051.403 of Tex. Occupations Code Annotated ch. 1051, which specifies certain requirements that must be satisfied before the Board may reinstate a registration; and 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.

§5.184. Complaint Process.

(a) A person may file a complaint by submitting the following information to the Board:

(1) the name of and contact information for the complainant unless evidence regarding a possible violation was submitted anonymously;

(2) the name of the person against whom the complaint is filed;

(3) the address, telephone number, Web site, or other contact information for the person against whom the complaint is filed, if available;

(4) the date and location of the alleged violation that is the subject of the complaint;

(5) a description of each alleged violation; and

(6) the name, address, and telephone number for any known witness who can provide information regarding the alleged violation.

(b) A complaint should be submitted on the complaint form that may be obtained by accessing the form on the Board's Web site or by contacting the Board's staff. If a completed complaint form is not submitted, the Board's staff will not be able to initiate an investigation unless the Board's staff receives information sufficient to establish probable cause to believe an actionable violation might have occurred.

(c) Once a complaint has been received, the Board's enforcement staff shall:

(1) provide the complainant and respondent with copies of the Board's policies and procedures regarding complaint investigation and resolution;

(2) conduct a preliminary evaluation of the complaint within thirty (30) days to determine:

(A) Jurisdiction: whether the complaint provides information sufficient to establish probable cause for the Board's staff to believe an actionable violation might have occurred;

(B) Disciplinary History: whether there has been previous enforcement activity involving the person against whom the complaint has been filed; and

(C) Priority Level: the seriousness of the complaint relative to other pending enforcement matters;

(3) notify the complainant and respondent of the status of the investigation at least quarterly unless providing notice would jeopardize an investigation; and

(4) maintain a complaint file that includes at least:

(A) the name of the person who filed the complaint unless the complaint was filed anonymously;

(B) the date the complaint was received by the Board's staff;

(C) a description of the subject matter of the complaint;

(D) the name of each person contacted in relation to the complaint;

(E) a summary of the results of the review and investigation of the complaint; and

(F) an explanation for the reason the complaint was dismissed if the complaint was dismissed without action other than the investigation of the complaint.

(d) After the preliminary evaluation period, the Board's staff may contact the complainant, the respondent, and any known witness concerning the complaint.

(e) After the preliminary evaluation period, the Board's staff shall take steps to dismiss the complaint or proceed with an investigation of the allegation(s) against the respondent. A complaint may be referred to another government agency if it appears that the other agency might have jurisdiction over the issue(s) raised in the complaint.

(f) If the Board's staff proceeds with an investigation, the staff shall:

(1) investigate the complaint according to the priority level assigned to the complaint;

(2) notify the complainant and respondent that, as a result of the staff's preliminary evaluation of the complaint, the staff has determined that the Board has jurisdiction over the allegations(s) described in the complaint and has decided to proceed with an investigation of the allegation(s) against the respondent; and

(3) gather sufficient information and evidence to determine whether a violation of a statutory provision or rule enforced by the Board has occurred.

(g) The Board's staff may conduct an investigation regardless of whether a complaint form was received as described in subsection (a) of this section.

(h) If the information and evidence gathered during an investigation are insufficient to prove that a violation has occurred, the Board's staff shall:

(1) dismiss the complaint;

(2) send notices to the complainant and respondent regarding the dismissal;

(3) if warranted, include in the respondent's notice a recommendation or warning regarding the respondent's future conduct; and

(4) if a complaint is determined to be unfounded, state in the respondent's notice that no violation was found.

(i) If the information and evidence gathered during an investigation are sufficient to prove that a violation has occurred, the Board's staff shall:

(1) seek to resolve the matter pursuant to section 5.175 or section 5.183 of this subchapter; or

(2) issue a warning to the respondent if the violation is the respondent's first violation and:

(A) the respondent has not received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent;

(B) the respondent provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public; and

(C) the guidelines for determining an appropriate penalty for the violation recommend an administrative penalty or a reprimand as an appropriate sanction for the violation.

(j) Before a proposed settlement agreement may be approved by the Board:

(1) the complainant, if known, must be notified of the terms of the agreement and the date, time, and location of the meeting during which the Board will consider the agreement; and

(2) the terms of the agreement must be reviewed by legal counsel for the Board to ensure that all legal requirements have been satisfied.

(k) If a complaint is dismissed, the complainant may submit to the Executive Director a written request for reconsideration. The written request must explain why the complaint should not have been dismissed.

§5.186. Subpoenas and Depositions.

(a) On a showing of good cause and on deposit of a sum reasonably estimated to cover the costs of issuing and serving the subpoena and the costs described in subsection (e) of this section, the Executive Director or the Chairman may issue a subpoena to require the attendance of a witness for examination under oath or the production of a record, document, or other evidence relevant to the investigation of, or a disciplinary proceeding related to, an alleged violation of a statutory provision or rule enforced by the Board.

(b) A subpoena must:

(1) be issued in the name of the State of Texas;

(2) be signed by the Executive Director or the Chairman;

(3) be addressed to a sheriff, constable, or other party authorized by the Texas Rules of Civil Procedure to serve a subpoena;

(4) state the time and place at which the witness is required to appear, the name of the person at whose instance the subpoena has been issued, and the date of the subpoena's issuance;

(5) include a specific description of any record, document, or other evidence covered by the subpoena; and

(6) be served by delivering a copy of the subpoena to the party named in the subpoena.

(c) A subpoena may be executed and returned at any time. The person serving the subpoena shall make due return thereof, showing the time and manner of service or showing that service was accepted by the witness by a written memorandum signed by the witness and attached to the subpoena.

(d) A deposition shall be taken in the manner prescribed for depositions in the Administrative Procedure Act (APA).

(e) A witness or deponent who is not a party to an enforcement proceeding and who is subpoenaed or otherwise compelled by the Board to attend any hearing or proceeding to provide testimony, give a deposition, or produce a record, document, or other evidence shall be entitled to receive:

(1) payment for mileage and reimbursement for transportation, meal, and lodging expenses as required by the APA for going to and returning from the place of the hearing or the place where the deposition is taken if the place is more than 25 miles from the person's place of residence; and

(2) a witness fee as required by the APA for each day or part of a day the person is necessarily present as a witness or deponent.

(f) Expenses and fees described in subsection (e) of this section shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the Executive Director.

(g) Payment for mileage and reimbursement for transportation, meal, and lodging expenses for a witness whose presence is required by a subpoena issued by the Executive Director or the Chairman shall be at the same rate as is paid to a state employee traveling on state business.

§5.187. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to determine the amount of the administrative penalty:

(1) The Board shall consider the following factors to determine whether the violation is minor, moderate, or major:

(A) Seriousness of misconduct and efforts to correct the ground for sanction:

(i) Minor--the respondent has demonstrated that he/she was unaware that his/her conduct was prohibited and unaware that the conduct was reasonably likely to cause the harm that resulted from the conduct or the respondent has demonstrated that there were significant extenuating circumstances or intervening causes for the violation; and the respondent has demonstrated that he/she provided a satisfactory remedy that alleviated or eliminated any harm or threat to the health or safety of the public.

(ii) Moderate--the violation shows that the respondent knowingly disregarded a standard or practice normally followed by a reasonably prudent person under the same or similar circumstances.

(iii) Major--this is a violation of an order of the Board or a violation that demonstrates gross negligence or recklessness; or the conduct posed a serious threat to the health or safety of the public; or, after being notified of the alleged violation and the harm or threat to the health or safety of the public, the respondent intentionally refused or failed to provide an available remedy to alleviate or eliminate the harm or threat to the health or safety of the public.

(B) Economic damage to property:

(i) Minor--there was no apparent economic damage to property.

(ii) Moderate--economic damage to property did not exceed $1,000, or damage exceeding $1,000 was reasonably unforeseeable.

(iii) Major--economic damage to property exceeded $1,000.

(C) Sanction history:

(i) Minor--this is the first time an administrative penalty or other sanction has been imposed against the respondent, and the respondent has not previously received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent.

(ii) Moderate--this is the second time an administrative penalty or other sanction has been imposed against the respondent; or the respondent previously was subject to an order of the Board through which the Board could have imposed an administrative penalty; or the respondent previously received a written warning or advisory notice from the Board regarding the law's restrictions which was directed to the respondent.

(iii) Major--this is at least the third time an administrative penalty or other sanction has been imposed against the respondent or the respondent has been subject to an order of the Board through which the Board could have imposed an administrative penalty.

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) Minor violations--if the violation is minor in every category described in subsection (1) of this section, an administrative penalty of $350 shall be imposed.

(B) Moderate violations--if the violation is moderate in any category described in subsection (1) of this section, an administrative penalty of not less than $351 and not more than $1,200 shall be imposed.

(C) Major violations--if the violation is major in any category described in subsection (1) of this section or if the Board determines that the facts of the case indicate a higher penalty is necessary in order to deter similar misconduct in the future, an administrative penalty of not less than $1,201 and not more than $5,000 shall be imposed.

(3) In order to determine the appropriate amount in a penalty range described in subsection (2) of this section, the Board shall consider the factors described in subsection (1) of this section.

(4) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in 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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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

The Texas Board of Architectural Examiners adopts an amendment to §5.242 for Title 22, Chapter 5, Subchapter K, concerning the board's and the State Office of Administrative Hearings' responsibilities as they pertain to contested cases, as published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3763). The section is being adopted without changes and the text will not be republished in the *Texas Register*.

This section generally describes the Board's procedures for addressing contested cases and ensuring that the procedures are consistent with governing law. As amended, the section clarifies that the administrative penalty guidelines appearing in a separate subchapter of the rules are to govern the imposition of all administrative penalties imposed by the Board or recommended by an administrative law judge. The section is also amended to authorize the Board to refuse to renew a respondent's certificate

of registration in any case where revocation of the respondent's certificate of registration is an appropriate penalty for the respondent's conduct.

As amended, the section will ensure that the Board and any administrative law judge who presides over a contested case will apply the same guidelines for imposing all administrative penalties so that penalties will be imposed in a consistent manner.

The board received no comments pertaining to the proposal to adopt this section.

The amendment to this section is adopted pursuant to Section 1051.452 of Tex. Occupations Code Annotated ch. 1051, which directs the Board to adopt an administrative penalty schedule to govern the amounts of all administrative penalties imposed by the Board, Section 1053.251 of Tex. Occupations Code Annotated ch. 1053, which lists refusal to renew a certificate of registration as a disciplinary sanction, and 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.

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §§217.1, 217.3, 217.6 - 217.10, 217.13, 217.15, 217.16, 217.19, 217.20

The Board of Nurse Examiners adopts amendments with one change to 22 TAC §217.19(2). The proposed amendments to §§217.1, 217.3, 217.6 - 217.10, 217.13, 217.15, 217.16, and 217.20, concerning Licensure, Peer Assistance, and Practice, are being adopted without change and were published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4720). One editorial change was made in §217.19(2) to remove a repetitive "or." Effective February 1, 2004, the Board of Nurse Examiners and Board of Vocational Nurse Examiners were merged into one agency, Board of Nurse Examiners. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted amendments implement HB 1483 and the make-up and function of the new Board of Nurse Examiners and are primarily for the purpose of providing consistent licensing processes to all nurses. The existing Board of Vocational Nurse Examiners' rules which are in conflict which these adopted amendments are concurrently being adopted for repeal.

No comments were received in response to the proposed amendments.

The adoption of amendments to these sections is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the amendments implement §§301.251, 301.258, 301.261, 301.351, 301.352, 301.419, and 301.4515 of the Texas Occupations Code.

§217.19. Incident-Based Nursing Peer Review.

(a) Minimum Due Process

(1) The provisions of this subsection (a) apply:

(A) to peer review for both registered nurses (RNs) and licensed vocational nurses (LVNs). Any reference to "nurse" is a reference to both RNs and LVNs. See Texas Occupations Code §303.001(1-3).

(B) only to peer review conducted for purpose of evaluating if a RN or LVN has engaged in unacceptable nursing practice.

(2) Texas Occupations Code §303.001(5), states, "'Peer review' means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or recommendation regarding a complaint." The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Once a decision is made that a nurse is subject to peer review, Texas Occupations Code §303.002(e) provides that the nurse is entitled to minimum due process. The purpose of this rule is to define minimum due process, to provide guidance to facilities in developing peer review plans, to assure that nurses have knowledge of the plan, and to provide guidance to the peer review committee in its fact finding process.

(3) A facility conducting peer review shall have written policies and procedures that, at a minimum, address:

(A) level of participation of nurse or nurse's representative at peer review proceeding beyond that required by Subsection (a)(4)(F) of these rules (e.g., nurse's or representative's ability to question witnesses);

(B) confidentiality and safeguards to prevent impermissible disclosures including written agreement by all parties to abide by Texas Occupations Code §§303.006 and 303.007;

(C) handling of cases involving nurses suspected of having problems with chemical dependency or mental illness in accordance with the Texas Occupations Code §301.410;

(D) reporting of nurses to the Board of Nurse Examiners by peer review committee in accordance with the Texas Occupations Code §301.403; and

(E) effective date of changes to the policies which in no event shall apply to peer review proceedings initiated before the change was adopted unless agreed in writing by the nurse being reviewed.

(4) In order to meet the minimum due process required by the Texas Occupations Code chapter 303, the Nursing Peer Review Committee must:

(A) comply with the membership and voting requirements as set forth in Texas Occupations Code §303.003(a) - (d);

(B) exclude from the committee any person or persons with administrative authority for personnel decisions directly relating to the nurse;

(C) provide written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility that his/her practice is being evaluated, that the peer review committee will meet on a specified date not sooner than 21 calendar days and not more than 45 calendar days from date of notice , unless otherwise agreed upon by the nurse and peer review committee. Said notice must include a written copy of the peer review plan, policies and procedures;

(D) include in the written notice:

(i) a description of the event(s) to be evaluated in sufficient detail to inform the nurse of the incident, circumstances and conduct (error or omission), including date(s), time(s), location(s), and individual(s) involved. The patient/client shall be identified by initials or number to the extent possible to protect confidentiality but the nurse shall be provided the name of the patient/client;

(ii) name, address, telephone number of contact person to receive the nurse's response; and

(iii) a copy of this rule (§217.19) and a copy of the facility's peer review plan, policies and procedures.

(E) provide the nurse the opportunity to review, in person or by attorney, the documents concerning the event under review, at least 15 calendar days prior to appearing before the committee;

(F) provide the nurse the opportunity to:

(i) submit a written statement regarding the event under review;

(ii) call witnesses, question witnesses, and be present when testimony or evidence is being presented;

(iii) be provided copies of the witness list and written testimony or evidence at least 48 hours in advance of proceeding;

(iv) make an opening statement to the committee;

(v) ask questions of the committee and respond to questions of the committee; and

(vi) make a closing statement to the committee after all evidence is presented;

(G) conclude its review no more than fourteen (14) calendar days from the peer review proceeding;

(H) provide written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility of the findings of the committee within ten (10) calendar days of when the committee's review has been completed; and

(I) permit the nurse to file a written rebuttal statement within ten (10) calendar days of the notice of the committee's findings and make the statement a permanent part of the peer review record to be included whenever the committee's findings are disclosed.

(5) Nurse's Right To Representation. A nurse shall have a right of representation as set out in this section. The rights set out in this section are minimum requirements and a facility may allow the nurse more representation. The peer review process is not a legal proceeding; therefore, rules governing legal proceedings and admissibility of evidence do not apply and the presence of attorneys is not required. The nurse has the right to be accompanied to the hearing by a nurse peer or an attorney. Representatives attending the peer review hearing must comply with the facility's peer review policies and procedures regarding participation beyond conferring with the nurse. If either the facility or nurse will have an attorney or representative present at the peer review hearing in any capacity, the facility or nurse must notify the other at least seven (7) calendar days before the hearing that they will have an attorney or representative attending the hearing and in what capacity. Notwithstanding any other provisions of these rules, if an attorney representing the facility or peer review committee is present at the peer review hearing in any capacity, including serving as a member of the peer review committee, the nurse is entitled to "parity of participation of counsel." "Parity of participation of counsel" means that the nurse's attorney is able to participate to the same extent and level as the facility's attorney; e.g., if the facility's attorney can question witnesses, the nurse's attorney must have the same right.

(6) Confidentiality of information presented to and/or considered by the peer review committee shall be maintained and not disclosed except as provided by Texas Occupations Code §§303.006 and 303.007. Disclosure/discussion by a nurse with the nurse's attorney is proper because the attorney is bound to the same confidentiality requirements as the nurse.

(7) In evaluating a nurse's conduct, the committee shall review the evidence to determine the extent to which any deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

(8) If a peer review committee finds that a nurse has engaged in conduct reportable to the Board of Nurse Examiners, the committee's report shall include:

(A) a description of any corrective action taken against the nurse and

(B) a statement as to whether the committee recommends that formal disciplinary action be taken against the nurse.

(9) Texas Occupations Code chapter 303, requires that peer review be conducted in good faith. A nurse who knowingly participates in peer review in bad faith is subject to disciplinary action by the Board under the Texas Occupations Code §301.452(b). Examples of bad faith are taking action against a nurse without providing the nurse the rights provided by these rules or taking action based on personal animosity towards the nurse.

(10) A nurse whose practice is being evaluated may properly choose not to participate in the proceeding after the nurse has been notified under rule 217.19(a)(4)(C). Texas Occupations Code §303.002(d) prohibits nullifying by contract any right a nurse has under the peer review process.

(11) The Chief Nursing Officer (CNO) of a facility is responsible for knowing the requirements of this Rule and for taking reasonable steps to assure that peer review is implemented and conducted in compliance with this Rule. The CNO is the registered nurse who is administratively responsible for nursing services.

(b) Effect of Nurse Reporting to Peer Review Committee. If a nurse reports a nurse to a nursing peer review committee for conduct that the reporting nurse has a duty to report to the Board, the report to the committee will satisfy the nurse's duty to report to the Board provided that the following conditions are met:

(1) The peer review committee shall report the nurse to the Board, if it finds the nurse engaged in reportable conduct. If the peer

review committee finds that the conduct constitutes a minor incident as defined by rule 217.16 (relating to reporting of minor incidents), it shall report in accordance with the requirements of that rule;

(2) The reporting nurse shall be notified of the peer review committee's findings and shall be subject to Texas Occupations Code §303.006; and

(3) the reporting nurse accepts in good faith the findings of the peer review committee.

This agency 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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Katherine Thomas
Executive Director
Board of Nurse Examiners
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For further information, please call: (512) 305-6823

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CHAPTER 223. FEES

22 TAC §223.1, §223.2

The Board of Nurse Examiners adopts amendments to 22 TAC Chapter 223 (Fees), §223.1 and §223.2 without changes to the proposed text. The proposed amendment of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4729) and will not be republished. These sections establish the fees necessary for the administration of the Board's functions. Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Chapter 223 (Fees) addresses the agency's fee structure. Section 223.1 establishes the fees necessary for the administration of the Board's functions. Section 223.2 (Charges for Public Records) is being adopted for amendment due to the change in law allowed for the charges imposed by agencies for public information. Those fees are now set by the Texas Building and Procurement Commission.

No comments were received in response to the proposed repeal of these sections.

The adopted amendments of this chapter are pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

No other rules, codes, or statutes will be affected by this adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine Thomas
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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 235. LICENSING

SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.1, §235.17

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 235 (Licensing), Subchapter A, §235.1 (Authority) and §235.17 (Temporary Permits). The proposed repeal of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4731). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' licensing rules. This adopted repeal is for the purpose of preventing conflicting rules and to provide consistency in the nurse licensing process.

No comments were received in response to this proposed repeal.

The adopted repeal of these sections is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Thomas
Executive Director
Board of Nurse Examiners
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SUBCHAPTER C. EXAMINATION

22 TAC §235.31, §235.32

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 235 (Licensing), Subchapter C (Examination), §235.31 (Applicability) and §235.32 (Notification of Examination Results). The proposed repeal of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4732). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' licensing rules. This adopted repeal is for the purpose of preventing conflicting rules and to provide consistency in the nurse licensing process.

No comments were received in response to the proposed repeal.

The adopted repeal of these sections is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Thomas
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Board of Nurse Examiners
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SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §§235.41 - 235.52

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 235 (Licensing), Subchapter D (Issuance of Licenses), §§235.41 - 235.52. The proposed repeal of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4732). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' licensing rules and chapter 223 which consolidates the fee structure of the agency. This adopted repeal is for the purpose of preventing conflicting rules and to provide consistency in the nurse licensing and fee process.

No comments were received in response to the proposed repeal of these sections.

The adopted repeal of these sections is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Thomas
Executive Director
Board of Nurse Examiners
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CHAPTER 236. NURSE LICENSURE COMPACT

SUBCHAPTER A. DEFINITIONS

22 TAC §236.1

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 236 concerning Nurse Licensure Compact, and specifically Subchapter A (Definitions), §236.1. Subchapter B (Issuance of a License by a Compact Party State) is being adopted for repeal concurrently with this subchapter. The proposed repeal of this section was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4733). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. 22 Texas Administrative Code chapter 220 (Nurse Licensure Compact) also contains rules addressing the nurse licensure compact and includes all nurses. This adopted repeal is for the purpose of preventing repetitious rules.

No comments were received in response to the proposed repeal.

The adopted repeal of this section is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adopted repeals will affect chapter 304 of the Texas Occupations Code which is entitled Nurse Licensure Compact.

This agency 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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Katherine Thomas
Executive Director
Board of Nurse Examiners
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SUBCHAPTER B. ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE

22 TAC §§236.11 - 236.13

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 236 concerning Nurse Licensure Compact, and specifically Subchapter B (Issuance of a License by a Compact Party State), §§236.11 - 236.13. Subchapter A (Definitions) is being adopted for repeal concurrently with this subchapter. The proposed repeal of this section was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4733). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. 22 Texas Administrative Code chapter 220 (Nurse Licensure Compact) also contains rules addressing the nurse licensure compact and includes all nurses. This adopted repeal is for the purpose of preventing repetitious rules.

No comments were received in response to the proposed repeal of this section.

The adopted repeal of this section is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adopted repeals will affect chapter 304 of the Texas Occupations Code which is entitled Nurse Licensure Compact.

This agency 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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Katherine Thomas
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CHAPTER 239. CONTESTED CASE PROCEDURE

SUBCHAPTER A. DEFINITIONS

22 TAC §239.1

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 239 (Contested Case Procedure), Subchapter A (Definitions), §239.1. The proposed repeal of this section was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4734). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' licensing rules. This adopted repeal is for the purpose of preventing conflicting definitions.

No comments were received in response to the proposed repeal of this section.

The adopted repeal of this section is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Thomas
Executive Director
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SUBCHAPTER B. ENFORCEMENT

22 TAC §239.16, §239.20

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 239 (Contested Case Procedure), Subchapter B (Enforcement), §239.16 and §239.20. The proposed repeal of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4734). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483

and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' licensing and peer assistance rules and chapter 223 which consolidates the fee structure of the agency. This adopted repeal is for the purpose of preventing conflicting rules and to provide consistency in the nurse peer assistance and fee process.

No comments were received in response to the proposed repeal.

The adopted repeal of this section is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Thomas
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SUBCHAPTER E. REINSTATEMENT PROCESS

22 TAC §§239.61 - 239.64

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 239 (Contested Case Procedure), Subchapter E (Reinstatement Process), §§239.61 - 239.64. The proposed repeal of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4735). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' reinstatement process. This adopted repeal is for the purpose of preventing conflicting rules and to provide consistency in the reinstatement process.

No comments were received in response to the proposed repeal.

The adopted repeal of this section is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Johnston
Executive Director
Board of Nurse Examiners
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CHAPTER 240. PEER REVIEW AND REPORTING

22 TAC §§240.11 - 240.13

The Board of Nurse Examiners adopts the repeal of 22 TAC Chapter 240 (Peer Review and Reporting), §§240.11 - 240.13. The proposed repeal of these sections was published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4735). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that implemented the consolidation. These adopted repeals implement HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted repeals are the adopted amendments to 22 Texas Administrative Code chapter 217 (Licensure, Peer Assistance and Practice) which incorporate Licensed Vocational Nurses into the Board of Nurse Examiners' peer review process. This adopted repeal is for the purpose of preventing conflicting rules and to provide consistency in the peer review and reporting process.

No comments were received in response to the proposed repeal.

The adopted repeal of this section is pursuant to the authority of Texas Occupations Code §§301.151 and 301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. The adoption of the repeal will not affect any existing statute.

This agency 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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Katherine Thomas
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2821

The Commissioner of Insurance adopts amendments to §21.2821, concerning reporting requirements for pharmacy claims. The amendments are adopted with changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4410).

The amendments are necessary to implement the provisions of Senate Bill (SB) 418, 78th Regular Legislative Session, by ensuring that the department receives complete and accurate information concerning all types of health care claims subject to prompt pay requirements. In addition to all other penalties or remedies authorized by the Insurance Code, SB 418 also allows for administrative penalties against carriers that are noncompliant in processing more than two percent of clean claims, including electronically submitted, affirmatively adjudicated pharmacy claims. The department originally adopted reporting rules on September 15, 2003, and subsequently informed carriers by bulletin that staff would propose rules specific to reporting of pharmacy claims at a later date.

The department has made a change that affects several of the proposed subsection paragraphs as published; however, that change does not introduce new subject matter or impact persons other than those subject to the proposal as originally published. In response to a comment, the department has categorized all pharmacy claims that are subject to the 21-day statutory claims payment period in one group, without distinguishing between claims from non-institutional and institutional providers. The department has deleted references to non-institutional and institutional providers from §21.2821(d)(19)-(28). Also, clarification language has been added and grammatical corrections have been made to subsection (e) of the section.

Adopted §21.2821 generally imposes reporting requirements on carriers subject to prompt pay rules and addresses how those reporting rules apply to electronically submitted, affirmatively adjudicated pharmacy claims.

Comment: A commenter supports the proposed rule, but suggests that the department not distinguish between non-institutional and institutional providers with regard to pharmacy claims. The commenter explains that pursuant to the definition of institutional provider, pharmacy claims would always be considered to be received from non-institutional providers because contracted pharmacies would always be considered to be non-institutional providers. Prescription drugs may be a covered service when provided by an institutional provider, but such service would be considered to be covered as a medical or health care service rather than as a pharmacy claim. The commenter states that separating pharmacy claims into non-institutional and institutional provider categories may inject an unintended administrative complication into institutional claims processing, and accordingly suggests that the pharmacy reporting requirements for claims be referenced simply as pharmacy claims rather than identifying them as derived from either non-institutional or institutional providers.

Agency Response: After further consideration of the definition of institutional provider in the context of pharmacy claims, the department agrees that pharmacy claims should not be separated into non-institutional and institutional provider claims categories because such a distinction is not applicable. Accordingly, the department has removed the distinction from the adopted rule.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION. For, with changes: Scott & White Health Plan.

The amendments are adopted under the Insurance Code Article 3.70-3C §3I(k), and §§843.342(k) and 36.001. Article 3.70-3C §3I(k) and §843.342(k) require the department to assess an insurer's or health maintenance organization's prompt pay compliance in processing submitted clean claims and grants the department the authority to subject such entities to an administrative penalty if violations involve the processing of more than two percent of submitted clean claims. 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.

§21.2821. Reporting Requirements.

(a) An HMO or preferred provider carrier shall submit to the department quarterly claims payment information in accordance with the requirements of this section.

(b) The HMO or preferred provider carrier shall submit the report required by subsection (a) of this section to the department on or before:

(1) May 15th for the months of January, February and March of each year;

(2) August 15th for the months of April, May and June of each year;

(3) November 15th for the months of July, August and September of each year; and

(4) February 15th for the months of October, November and December of each preceding calendar year.

(c) The HMO or preferred provider carrier shall submit the first report required by this section to the department on or before February 15, 2004 and shall include information for the months of September, October, November and December of the prior calendar year.

(d) The report required by subsection (a) of this section shall include, at a minimum, the following information:

(1) number of claims received from non-institutional preferred providers;

(2) number of claims received from institutional preferred providers;

(3) number of clean claims received from non-institutional preferred providers;

(4) number of clean claims received from institutional preferred providers;

(5) number of clean claims from non-institutional preferred providers paid within the applicable statutory claims payment period;

(6) number of clean claims from non-institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(7) number of clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(8) number of clean claims from non-institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(9) number of clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(10) number of clean claims from non-institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(11) number of clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(12) number of clean claims from institutional preferred providers paid within the applicable statutory claims payment period;

(13) number of claims paid pursuant to the provisions of §21.2809 of this title (relating to Audit Procedures);

(14) number of requests for verification received pursuant to §19.1724 of this title (relating to Verification);

(15) number of verifications issued pursuant to §19.1724 of this title;

(16) number of declinations, pursuant to §19.1724 of this title;

(17) number of certifications of catastrophic events sent to the department;

(18) number of calendar days business was interrupted for each corresponding catastrophic event;

(19) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the HMO or preferred provider carrier;

(20) number of electronically submitted, affirmatively adjudicated pharmacy claims paid within the 21-day statutory claims payment period;

(21) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or before the 45th day after the end of the 21-day statutory claims payment period;

(22) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 46th day and before the 91st day after the end of the 21-day statutory claims payment period; and

(23) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 91st day after the end of the 21-day statutory claims payment period.

(e) An HMO or preferred provider carrier shall annually submit to the department, on or before July 31, at a minimum, information related to the number of declinations of requests for verifications in the following categories:

(1) policy or contract limitations:

(A) premium payment timeframes that prevent verifying eligibility for 30-day period;

(B) policy deductible, specific benefit limitations or annual benefit maximum;

(C) benefit exclusions;

(D) no coverage or change in membership eligibility, including individuals not eligible, not yet effective or membership cancelled;

(E) pre-existing condition limitations; and

(F) other.

(2) declinations due to inability to obtain necessary information in order to verify requested services from the following persons:

(A) the requesting physician or provider;

(B) any other physician or provider; and

(C) any other person.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404071
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 11, 2004
Proposal publication date: May 7, 2004
For further information, please call: (512) 463-6327

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PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER I. PROVIDER BILLING PROCEDURES

28 TAC §134.800, §134.802

The Texas Workers' Compensation Commission (the commission) adopts amendments to §134.800 and §134.802, with changes to the proposed text published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2202).

As required by the Government Code §2001.033(1), the commission's reasoned justification for these rules are set out in this order which includes the preamble, which in turn includes the rules. This preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rules, and the reasons why the commission disagrees with some of the comments and recommendations.

Rule 134.800 is amended with respect to the forms that should be used by health care providers when submitting medical bills for payment. This rule currently specifies the forms that must be used by health care providers when billing for medical services provided to injured employees. In compliance with statutory provisions, the amendments achieve standardization with Centers for Medicare and Medicaid Services (CMS) policies, as directed

by the Texas Labor Code §413.011, certain subsections of the rule are amended to state that bills are to be submitted on forms consistent with current CMS requirements. The amended rule requires the use of billing forms that have a well-known, standardized structure that is more consistent with national health care billing standards for the delivery of quality medical care. This will provide greater administrative efficiencies to system participants, including the commission, by reducing multiple reporting requirements. Many healthcare providers are already billing on CMS-required forms, either in the workers' compensation setting or otherwise, and therefore, this rule will streamline business practices for system participants.

Subsection 134.800(g) is changed from proposal by providing for an effective date of September 1, 2004. The change in effective date from the proposed date of June 1, 2004 is to allow system participants sufficient time to prepare for the change in billing forms. Amended 134.800 does not require health care providers to file billing data that they are not currently required to file; it merely requires a different form for some types of services.

Rule 134.802 is amended to require insurance carriers to file medical billing data regarding pharmaceutical and dental benefits, which will create an improved system for monitoring the delivery of dental and pharmaceutical health care benefits. This in turn will allow the commission to more comprehensively and effectively monitor and evaluate patterns of practice among system participants, and to possibly develop pharmacy formularies. Other amendments to the rule require insurance carriers to file data on refunds to the insurance carrier for prior overpayments. These actions will aid the commission in its statutory duty to regulate and contain medical costs.

The effective date for filing pharmacy and dental billing data remains January 1, 2005, as proposed. This later effective date is allowed because amended rule 134.802 requires insurance carriers to file data that they have not previously been required to file with the commission.

Certain portions of these rules that are not amended at this time may be considered for amendment at a later time. In addition, portions of these rules may be moved to other commission rules at a later time.

The Medical Advisor reviewed and made recommendations regarding this adopted rule.

The following groups or associations provided comments regarding the proposed amendments:

Insurance Council of Texas supported the commission's adoption of amended rule 134.800 but opposed adoption of amended rule 134.802.

PMSI and Texas Pharmacy Association supported the proposed amendments to both rules.

Physiatry Reimbursement Specialists, Inc. opposed adoption of the proposed amendments to both rules.

In addition to supporting or opposing various portions of the rules, commenters made suggestions for improvements to the rules or asked for clarification on certain points. Comments containing such recommendations were received from the following groups or associations: Billings & Solomon, PLLC, and Texas Association of School Boards.

Summaries of the comments and commission responses are as follows:

§134.800

COMMENT: Commenter stated that the proposed rule does not clarify the effect of billing under a "differing platform" as a subclaimant under Texas Labor Code §409.009. Commenter further asserted that the rule should clarify that "billing under another platform as a subclaimant will not be an impediment to prosecution of a subclaim under §409.009."

RESPONSE: The commission disagrees that the rule, itself, needs to address whether it affects a health care provider's ability to seek reimbursement as a subclaimant pursuant to Texas Labor Code §409.009. The rule is amended to require the use of different billing forms than those currently required of certain health care providers, thereby achieving greater standardization with Centers for Medicare and Medicaid Services (CMS) policies, in conformity with Texas Labor Code §413.011. Therefore, the amended rule should have no effect on subclaims.

COMMENT: Commenter stated that "the proposed changes will enable providers to better provide the necessary medical services required by injured workers, and lessen the billing time and confusion for providers and payers alike, thus truly streamlining the system."

RESPONSE: The Commission agrees.

COMMENT: Commenter "strongly agrees with the commission . . . statement that the proposed changes will help providers, payers, and the commission achieve 'standardization with CMS policies and payment guidelines'." Commenter observed that the proposed changes will align commission billing requirements and practices with reimbursement policies in the Medical Fee Guideline.

RESPONSE: The Commission agrees.

COMMENT: Commenter stated that the proposed changes, including changes made to the TWCC-66 form, will create a smoother flow of information between provider and payer, enabling pharmacy providers to quickly and properly treat injured workers.

RESPONSE: The Commission agrees.

COMMENT: Observing that overpayment by insurance carriers is not an issue, commenter expressed a concern that insurance carriers currently pay units either incorrectly, partially, or without proper reasons for denial. Commenter added that providers will never be overpaid if insurance carriers continue to pay incorrectly.

RESPONSE: The commission disagrees with commenter's assertion that overpayments by insurance carriers do not occur. Commission records show that in 2003 the commission conducted refund audits of 18 health care providers for overpayments from insurance carriers. These audits revealed $141,543 in overpayments to health care providers by insurance carriers. Subsection (f), which has not been amended, supports the medical billing audit process of the commission by allowing the commission to order refunds of overpayment by the carrier when appropriate. The commission clarifies that incorrect payments are addressed in the Medical Dispute Resolution process (Chapter 133) and improper denial reasons are addressed in the Monitoring and Enforcement process (Chapter 180).

COMMENT: Commenter recommends that the Commission use "HIPAA 837," stating "it would add prohibitive costs to doctors participating in the system, requiring them to utilize two billing

systems to separately accommodate workers' compensation and private patients."

RESPONSE: The Commission interprets this comment to advocate use of the HIPAA billing format, rather than future implementation of the International Association of Industrial Accident Boards and Commissions (IAIABC) billing format anticipated by the commission in its proposal preamble. The commission is not prepared to implement use of the HIPAA billing format. In order to capture data elements that are unique to workers' compensation, the Commission plans to implement the IAIABC version of the 837, as it contains specific elements required for reporting data to the commission. System participants were surveyed in January 2003 as to whether they would prefer that the commission adopt the IAIABC standard version since it was being used already in other jurisdictions, or whether they would prefer that the commission build its own payment format, based on the Health Care Claimant Payment/Advice 835 form, developed by National Electronic Data Interchange, with a small companion file containing some 837 elements as this could pave the way for the eventual evolution to full electronic medical billing processes between payers and payees. The survey results showed a clear majority of respondents wanted the commission to adopt the IAIABC version of the HIPAA compliant 837 format that was already being used in other states. As stated in the proposal preamble, as well as Advisory 2004-04, the Commission's Business Process Improvement (BPI) initiative is currently working with electronic submission trading partners to develop a process for the electronic submission of medical billing data.

COMMENT: Commenter supports the adoption of the proposed amendments and states that the rule will result in standardization with CMS policies pertaining to the submission of medical bills on forms consistent with current CMS requirements.

RESPONSE: The Commission agrees.

COMMENT: Commenter opposes the rule and states that it is ambiguous and leaves much room for interpretation, proves meaningless, and not possible with current technology. Commenter further opposes the rule stating that providers would have to communicate with each and every insurance company to determine whether or not electronic billing is accepted. Commenter also states that it is impossible for providers to attach documentation to each claim submitted electronically.

RESPONSE: The Commission disagrees that §134.800(e) is ambiguous. The rule provides flexibility for providers and carriers to utilize electronic billing technology when mutually agreed upon or use standardized paper billing forms. This flexibility allows for the development of technological advances, such as electronic medical record documentation, to be incorporated. The Commission agrees that healthcare providers and insurance carriers must communicate with each other to determine if electronic billing is possible between the two parties. However, this should only have to occur once for each carrier, and the commission views this communication as beneficial to all system participants, in that it will allow for increased efficiencies and potential cost savings within the workers' compensation system. In addition, subsection (e) does not require health care providers to determine if an insurance carrier will accept electronic transmission; it is wholly voluntary on the part of the health care provider (and the insurance carrier, as well). The Commission disagrees that this rule is meaningless, as it provides for standardization of paper billing forms until such time that the commission outlines electronic billing specifications to be implemented for carriers and healthcare providers. Regarding commenter's assertion regarding the ability to attach documentation to electronically submitted claims, the commission clarifies that any supporting documentation that cannot be submitted electronically should be provided to the carrier in paper format, either by facsimile, mail, or hand delivery.

COMMENT: Commenter recommends that subsection (e) of the rule be further amended to allow the submission of claims by electronic means (or fax) and payment timeframes of 14 days for electronic and 27 days for faxed or mailed submissions.

RESPONSE: The commission disagrees with the commenters suggested language and clarifies that the amended rule does not address payment timeframes, which are governed by the statute and other rules; instead, it provides for standardization of paper billing forms with an allowance for mutually agreed upon electronic bill submission until such time that the commission outlines electronic billing specifications. Although Section 408.027 (a) of the Texas Labor Code states, "An insurance carrier shall pay the fee allowed under Section 413.011 for a service rendered by a health care provider not later than the 45th day after the date the insurance carrier receives the charge unless the amount of the payment or the entitlement to payment is disputed," a carrier is not prohibited from paying a bill sooner.

COMMENT: Commenter recommends that subsection (e) be changed to require payment of interest by carriers starting on the 31st day after receipt of "clean electronic and paper claims no later than 30 days after receipt of the claim."

RESPONSE: The commission disagrees with the recommendation for the insurance carrier to pay interest on the 31st day, because this would be contrary to Texas Labor Code §413.019(a), which states, "Interest on an unpaid fee or charge that is consistent with the fee guidelines accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the health care provider submits the bill to an insurance carrier until the date the bill is paid."

COMMENT: Commenter recommends that providers be required, in all instances, to submit certain types of claims in paper format, asserting that these claims require supporting documentation and, therefore, would not be appropriately submitted in electronic format. The claims identified by commenter relate to: Impairment Ratings, Independent Medical Evaluations, Maximum Medical Improvement Determinations, Required Medical Evaluations, Work Status Reports, Second Opinions, Functional Capacity Evaluations, and Initial Evaluations by all Providers.

RESPONSE: The documentation requirement concerns raised by commenter are addressed in other commission rules, not rules 134.800 and 134.802 and, therefore, are not the subject of this rule action. However, the Commission disagrees that providers should be prohibited from submitting certain types of claims electronically. Although supporting documentation for the services identified by commenter may need to be provided to the carrier in paper format, this would not prevent the provider from submitting a bill electronically. Any supporting documentation that cannot be submitted electronically should be provided to the carrier in paper format, either by facsimile, mail, or hand delivery.

COMMENT: Commenter recommends that carriers be required to pay claims up front and review them at a later date if discrepancies arise, and that providers be required to submit refunds if it is later determined that a provider was overpaid. Commenter

asserted that a carrier should, upon receipt of a provider's claim, be able to request documentation from the provider to determine whether services billed were provided, and request a refund from the provider if documentation does not indicate that those services were, in fact, provided.

RESPONSE: Commenter's recommendation relates to reimbursement policies and retrospective review, neither of which is addressed by §134.800. These issues are addressed in commission rule 133.1(a)(3), which defines the term, "complete medical bill," and in commission rule 133.301, which provides for the circumstances in which retrospective review of medical bills is allowed. The commission disagrees with commenter's assertion, however, that carriers should be required to pay claims up front and review them later to determine whether there is a basis for seeking a refund for overpayment to a provider. This would be inconsistent with Texas Labor Code §408.027(a), which states, "An insurance carrier shall pay the fee allowed under Section 413.011 for a service rendered by a health care provider not later than the 45th day after the date the insurance carrier receives the charge *unless the amount of the payment or the entitlement to payment is disputed.*" The statute contemplates that carriers should be permitted to review each bill and its supporting documentation to determine if there is reason to dispute the bill before paying the provider. Moreover, the commenter's recommendation would not be appropriate due to the additional considerations of compensability and extent of injury within the Texas workers' compensation system.

COMMENT: Commenter indicated support for the rule and believes the system will benefit from the ability to consider the additional data that will be provided to the commission regarding pharmaceutical health care benefits. Commenter indicated that the data will allow pharmacists to better format or structure what the pharmaceutical benefits should be like, and questions of medical necessity and treatment patterns would be obviated.

RESPONSE: The Commission agrees.

COMMENT: Commenter is in favor of electronic filing, stating that it is a standard format, it is a simple process, and it saves money for providers and carriers. Commenter observed, further, that all carriers that have implemented the CMS billing system have the capability of accepting Electronic Filing as part of the software. In order to entice providers to return to or stay in the workers' compensation system, commenter recommends that the commission make the system easier and faster.

RESPONSE: The commission agrees that utilizing electronic bill submission provides benefits to all system participants. In subsection (e) of the adopted rule, the commission continues to provide for mutually agreed upon electronic bill submissions. However, the commission also clarifies that this rule provides for standardization of paper billing forms until the commission outlines electronic billing specifications. Currently, as stated in Advisory 2004-04, the commission, through its Business Process Improvement (BPI) initiative, is working with electronic submission trading partners to develop a process for the electronic submission of medical billing data. The Commission is identifying options for adoption of full electronic billing from the health care providers to the insurance carriers and to the Commission. These automated tools allow for fewer disputes over billing and much shorter payment timeframes. The improved billing system may encourage more doctors to participate in the Texas workers' compensation system. In the Medicare system, the Centers for Medicare and Medicaid Services (CMS) contracts with two intermediaries to process bills. These two carriers specialize in Medicare payment policies and have software programs that are specifically designed and maintained using the most up to date Medicare policies. But in the Texas workers' compensation system, there are over 250 workers' compensation carriers, and additional bill review entities under contract with the carriers, that need to be taken into consideration while determining how to incorporate electronic billing into the workers' compensation system. Furthermore, the need for documentation on whether the medical care being billed for is related to a compensable injury adds additional complication to the use of electronic billing in a workers' compensation environment.

§134.802

COMMENT: Commenter supported the changes, as it will allow the commission to better track and understand the true nature of workers' compensation pharmacy. Commenter observed that the commission will be able to gain first hand knowledge of the pharmacy process from the acceptance of the claim, to dispensing of medications, to billing and eventual payment by the carrier or payer. Commenter stated that the proposed changes will also permit the commission to gain a better understanding of the medical costs attributed to the workers' compensation system.

RESPONSE: The Commission agrees.

COMMENT: Commenter supports the amendments to §134.802, stating they do not believe the amended rules will cause any additional financial or billing burden for payers and providers, including pharmacy providers.

RESPONSE: The Commission agrees.

COMMENT: Commenter states overpayment is not an issue; has concern that currently insurance carriers do not pay units correctly or with the proper denial reasons.

RESPONSE: The commission disagrees with commenter's assertion that overpayments by insurance carriers do not occur. Commission records show that in 2003 the commission conducted refund audits of 18 health care providers for overpayments from insurance carriers. These audits revealed $141,543 in overpayments to health care providers by insurance carriers. Subsection (f), which has not been amended, supports the medical billing audit process of the commission by allowing the commission to order refunds of overpayment by the carrier when appropriate. The commission clarifies that incorrect payments are addressed in the Medical Dispute Resolution process (Chapter 133) and improper denial reasons are addressed in the Monitoring and Enforcement process (Chapter 180).

COMMENT: Commenter recommends that the Commission should use the HIPAA 837.

RESPONSE: The Commission interprets this comment to advocate use of the HIPAA billing format, rather than future implementation of the International Association of Industrial Accident Boards and Commissions (IAIABC) billing format anticipated by the commission in its proposal preamble. The commission is not prepared to implement use of the HIPAA billing format. In order to capture data elements that are unique to workers' compensation, the Commission plans to implement the IAIABC version of the 837, as it contains specific elements required for reporting data to the commission. System participants were surveyed in January 2003 as to whether they would prefer that the commission adopt the IAIABC standard version since it was being used already in other jurisdictions, or whether they would prefer that the commission build its own payment format, based on the

Health Care Claimant Payment/Advice 835 form, developed by National Electronic Data Interchange, with a small companion file containing some 837 elements as this could pave the way for the eventual evolution to full electronic medical billing processes between payers and payees. The survey results showed a clear majority of respondents wanted the commission to adopt the IAIABC version of the HIPAA compliant 837 format that was already being used in other states. As stated in the proposal preamble, as well as Advisory 2004-04, the Commission's Business Process Improvement (BPI) initiative is currently working with electronic submission trading partners to develop a process for the electronic submission of medical billing data.

COMMENT: Commenter recommends that the Commission improve the insurance carrier data collection process by specifying/identifying the required data elements and format, stating the rule does not provide enough specificity. In addition, commenter recommends that, if the commission anticipates adding any reporting requirements that are unique to the Texas workers' compensation system, the commission should keep them limited and provide an opportunity for public comment before they are implemented.

RESPONSE: The commission clarifies that the commission-specific Electronic Claim Submission (ECS) record layout specifications and edits required for insurance carriers to report medical billing information are posted on the commission website rather than in any of its rules. This allows for expedited ECS changes without formal rule proposal and adoption process. In order to capture data elements that are unique to workers' compensation, the Commission plans to implement the IAIABC version of the 837, as it contains specific elements required for reporting data to the commission. In addition, there may be data elements that are unique to Texas workers' compensation such as pharmacy data. For example, the commission may add a data element to capture data reflecting the amount an injured employee paid to "upgrade" to a brand name drug, in accordance with the statute and commission rule 134.504, relating to Pharmaceutical Expenses Incurred by the Injured Employee.

COMMENT: Commenter recommends that the Commission allow for a process of public comment when changes are proposed to the data elements or tweaking to the forms.

RESPONSE: The commission agrees that there is benefit from receiving informal comments to data element requirements and changes to forms that are not in the formal rule making process. The commission has on several occasions invited public involvement in these decisions. For example, in the fall of 2003, through the Business Process Improvement efforts, as outlined in the August 2003 BPI newsletter, the commission requested public comments on the electronic data exchange elements prior to a final version of the IAIABC 837 implementation guides was published. In addition, other medical forms, such as the TWCC-67 (Instructions for completing the CMS-1500) have had technical users from the public involved prior to changes made.

COMMENT: Commenter recommends that more work is required on the rule to ensure a smoother transition to the new data reporting requirements.

RESPONSE: The Commission disagrees that this rule will not allow for a smooth transition to the new data reporting requirements. The rule as adopted, provides for standard paper billing forms until the commission outlines electronic billing specifications for carriers and healthcare providers.

COMMENT: Commenter supports the rule, stating that the system will benefit from the ability to consider data and information on pharmaceutical health care benefits.

RESPONSE: The Commission agrees.

STATUTORY AUTHORITY These amendments are adopted pursuant to Texas Labor Code §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form and manner and procedure for transmission of information to the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §406.010, which authorizes the commission to adopt rules necessary to specify the requirements for carriers to provide claims service and establishes that a person commits a violation if the person violates a rule adopted under this section; Texas Labor Code §408.021(a), which provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; Texas Labor Code §408.025, which requires the commission to specify by rule what reports a health care provider is required to file; Texas Labor Code §408.028, which requires health care practitioners providing care to an employee to prescribe any necessary prescription drugs in accordance with applicable state law; Texas Labor Code §413.011, which requires the commission to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Health Care Financing Administration (now know as the Centers for Medicare and Medicaid Services), including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements; and Texas Labor Code §413.053, which requires the commission to establish standards of reporting and billing governing both form and content.

These amended rules are adopted under: Texas Labor Code §402.042, §402.061, §406.010, §408.021(a), §408.025, §408.028, §413.011, and §413.053.

CROSS REFERENCE TO STATUTE

The previously cited sections of the Texas Labor Code are affected by this rule action. No other code, statute, or article is affected by this rule action.

§134.800. Required Billing Forms and Information.

(a) Except as provided by §134.801 of this title (relating to Submitting Medical Bills for Payment), health care providers shall submit medical bills for payment on standard forms used by the Centers for Medicare and Medicaid Services (CMS) or applicable forms prescribed in subsections (b) and (c), completed in accordance with Commission instructions. All information on medical bills shall be legible when submitted.

(b) Except as provided in subsections (c), and (d) of this section, all health care providers, as defined in §401.011 of the Texas Labor Code, shall submit medical bills using national standard health insurance claim forms, prepared according to Commission instructions.

(c) Pharmacists shall submit bills using the Commission form TWCC-66, Statement for Pharmacy Services, prepared according to Commission instructions.

(d) Dentists shall submit bills using a billing form currently approved by the American Dental Association prepared according to Commission instructions.

(e) Health care providers may submit medical bills by facsimile or electronic transmission, when mutually agreed upon between the health care provider and the insurance carrier, unless the bill and/or supporting documentation cannot be sent by those media, in which case the health care provider shall send the documentation by mail or personal delivery.

(f) The Medical Review Division may order the health care provider to reimburse a carrier when the carrier pays the health care provider in excess of the amount allowed by the appropriate Commission fee guideline.

(g) This rule shall apply to all dates of service on or after September 1, 2004.

§134.802. Insurance Carrier's Submission of Medical Bills to the Commission.

(a) The insurance carrier shall submit medical billing data to the Commission within 30 days after the insurance carrier makes payment, denies payment, or receives a refund of overpayment on a medical bill.

(b) Insurance carriers shall submit medical billing data electronically in the form and format prescribed by the Commission.

(c) The Commission shall prescribe the form, format, and content of the required medical billing data submission.

(d) This rule shall apply to all dates of service on or after July 15, 2000, for facility and professional medical services except pharmacy and dental services.

(e) This rule shall apply to all dates of service on or after January 1, 2005, for pharmacy and dental services in addition to the already required facility and professional medical 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 June 21, 2004.

TRD-200404055
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: July 11, 2004
Proposal publication date: March 5, 2004
For further information, please call: (512) 804-4287

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 10. EXPLORATION AND DEVELOPMENT OF STATE MINERALS OTHER THAN OIL AND GAS

31 TAC §§10.1, 10.2, 10.5, 10.8, 10.9

The Texas General Land Office adopts the amendments to §10.1(a), §10.2(b)(1), §10.5(b)(1)(F), §10.5(e)(1)(C), §10.8(a)(1), §10.8(b)(4)(D)(ii), §10.8(c)(3) and §10.9(f)(3) of Title 31, Part 1, Chapter 10, of the Texas Administrative Code. Section 10.1(a) is a definitions section, with amendments relating to the definition of the terms "board" and "surface mining". Section 10.2(b)(1) relates to application requirements and procedures. Section 10.5(b)(1)(F) relates to the duties of an owner of the soil. Section 10.5(e)(1)(C) relates to the division of hard mineral lease benefits. Section 10.8(a)(1) relates to the assignment of state hard mineral leases. Section 10.8(b)(4)(D)(ii) relates to assignments, releases, reports, royalty payments, inspections, forfeitures and reinstatements of state hard mineral leases and any applicable penalties and interest. Sections 10.8(c)(3) and 10.9(f)(3) relate to the inspection of records and contracts related to hard mineral leases. The amended sections are readopted without changes to the proposed text as published in the February 6, 2004 issue of the *Texas Register* (29 TexReg 6). The text will not be republished.

The amendments conform the rules to legislative amendments to the Texas Natural Resources Code. The amendment to TAC §10.1(a) conforms the rule to amendments to TNRC §53.001 by Acts 1993, 73rd Leg., ch. 897, §45, eff. Sept. 1, 1993 and Acts 1999, 76th Leg., ch. 1483, §3, eff. Aug. 30, 1999. The amendment to TAC §10.2(b)(1) conforms the rule to an amendment to TNRC §53.012(c) by Acts 1993, 73rd Leg., ch. 897, §46, eff. Sept. 1, 1993. The amendment to TAC §10.5(b)(1)(F) conforms the rule to an amendment to TNRC §53.074(a)(2) by Acts 1995, 74th Leg., ch. 937, §4, eff. Sept. 1, 1995. The amendment to TAC §10.5(e)(1)(C) conforms the rule to an amendment to TNRC §53.065(c) by Acts 1999, 76th Leg., ch. 1483, §4, eff. Aug. 30, 1999. The amendment to TAC §10.8(a)(1) conforms the rule to an amendment to TNRC §53.020 by Acts 1993, 73rd Leg., ch. 897, §50, eff. Sept. 1, 1993. The amendment to TAC §10.8(b)(4)(D)(ii) conforms the rule to an amendment to TNRC §53.024 by Acts 1993, 73rd Leg., ch. 897, §51, eff. Sept. 1, 1993. The amendment to TAC §10.8(c)(3) conforms the rule to an amendment to TNRC §53.027 by Acts 1993, 73rd Leg., ch 897, §52, eff. Sept. 1, 1993. The amendment to TAC §10.9(f)(3) conforms the rule to an amendment to TNRC §53.027 by Acts 1993, 73rd Leg., ch. 897, §52, eff. Sept. 1, 1993. The changes are made pursuant to §2001.039 (Agency Review of Existing Rules) of the Government Code.

No comments were received on the proposed changes.

The amendments to this section are adopted under Texas Natural Resources Code §31.051, which authorizes the Commissioner of the Texas General Land Office to make and enforce suitable rules consistent with the law and Texas Natural Resources Code §32.062 which grants rulemaking authority to the School Land Board.

The following code is affected by these rules: Texas Natural Resources Code, Title 2, Subtitle D, Chapter 53.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200404062
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Effective date: July 11, 2004
Proposal publication date: February 6, 2004
For further information, please call: (512) 305-8598

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Commission adopts the repeal of §§53.1-53.18, 53.22, 53.25, 53.35, 53.41, 53.50, 53.60, 53.70, 53.90, 53.100, and 53.200-53.206, and new §§53.1-53.16, 53.30, 53.50, 53.60, 53.70, 53.80, 53.90, 53.100, 53.110, and 53.120, concerning the department's rules governing fees. Section 53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, §53.6, concerning Recreational Fishing Licenses, Stamps and Tags, and §53.80, concerning Composition and Issuance are adopted with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2209). The repeal of §§53.1-53.18, 53.22, 53.25, 53.35, 53.41, 53.50, 53.60, 53.70, 53.90, 53.100, and 53.200-53.206, and new §§53.1-53.4, 53.7-53.16, 53.30, 53.50, 53.60, 53.70, 53.90, 53.100, 53.110, and 53.120, are adopted without changes and will not be republished. The change to §53.5 eliminates subsection (b)(5), which establishes the fee for white-tailed deer bonus tags. Paragraph (5) is no longer necessary because a separate commission action eliminated the bonus tag by repealing 31 TAC §65.29, concerning Bonus Tags. The change to §53.6 establishes fixed fees for day and "day plus" licenses and packages, which were originally proposed as ranges. In all cases, the adopted fees represent the low end of the published range, except for the fees for additional days for the "day plus" packages, which represent the high end of the proposed ranges. The fee amounts represent the amounts believed to be necessary to ensure that the cumulative effect of the fees to the department is revenue-neutral (i.e., approximately similar to the revenue amounts currently generated by the existing license structure, based on estimated demand for the new license types and packages).

The repeals and new sections are necessary to reorganize the chapter, as legislative, regulatory, and policy actions over the last 10 years have created the need to regroup various licenses and permits according to similarities of use and type, so as to make reference and utilization easier. The repeals of §§53.1-53.8, 53.10-53.17, 53.25, 53.41, 53.50, 53.60, 53.90, 53.100, and 53.200-53.206 are necessary to allow the designation of new sections addressing the same subject material. The repeals of §§53.9, concerning Investment of Lifetime License Endowment Fund, 53.35, concerning Selling Price of Department Information, and 53.70, concerning Protest Procedures for Vendors, are necessary to remove those sections from Chapter 53 (Finance) and place them in Chapter 51 (Executive), where they more properly belong. The repeal of §53.18, concerning Vessel Registration Agents and Surety Bonds, and §53.22, concerning License Deputy Appointment and Cancellation Procedures, are necessary because the subject material of the sections can be addressed by department policy and procedure and are therefore unnecessary in rule.

New §53.1, concerning Applicability, establishes Chapter 53 as the sole repository for the department's regulations prescribing fees, except for those fees contained in Chapter 59, concerning Parks, and Chapter 69, Subchapter H, concerning Issuance of Marl, Sand, and Gravel Permits. References in other chapters to fee amounts will be removed in other rulemakings in the future. The new section is necessary to prevent conflicts with provisions in other chapters.

New §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, is identical to the current §53.1, except for nonsubstantive changes. Current subsection (a)(1), which prohibits the hunting of deer and turkey without a license, has been removed because that provision is established by statute in Parks and Wildlife Code, Chapter 42, and is therefore unnecessary in regulation. The grammatical structure of current subsections (a)(2) and (b)(1) has been modified to create an affirmative sense (i.e., "a person may, if...," replacing "no person may, unless") to effect a clearer expression of the conditions under which a person may hunt or fish without being in physical possession of a license. Current subsection (b)(2) (regarding retention of red drum) has been modified to clarify that it applies to red drum caught in coastal waters and that a person must have a saltwater sportfishing stamp, and current subsection (d)(5) is removed because that provision is established by statute in Parks and Wildlife Code, Chapter 46, and is therefore unnecessary in regulation. The new section is necessary to consolidate all regulations generally applicable to licenses and permits in a single section.

New section §53.3, concerning Combination Hunting and Fishing Licenses and Packages, is substantively identical to the current §53.2, except for changes as noted. Language has been added establishing that the items included in combination packages shall be priced at a discounted rate. The provisions of current §53.2 (a) (establishing fees for combination hunting and fishing licenses) has been restructured in the proposed new section to establish combination hunting and fishing licenses packages for freshwater fishing, saltwater fishing, and all water fishing. The changes are intended to minimize customer confusion regarding addition of the new freshwater fishing stamp requirements and to maximize customer convenience. The proposed new section establishes a new resident combination hunting and freshwater fishing package ($47), resident combination hunting and saltwater fishing package ($52), resident combination hunting and "all water" fishing package ($57), resident senior combination hunting and freshwater fishing package ($15), resident senior combination hunting and saltwater fishing package ($20) and resident senior combination hunting and all water fishing package ($25). The fees for these packages consist of the current license cost plus (1) the cost of the new freshwater fishing stamp ($5), mandated under provisions of House Bill 1989, 78th Legislative Session, for the freshwater packages; (2) the cost of the current saltwater fishing stamp and surcharge ($10) for saltwater fishing packages; and (3) the cost of both the new freshwater fishing stamp and the current saltwater fishing stamp for all water fishing packages. Current subsection §53.2 (a) (3) (establishing the fee for the lifetime resident combination hunting and fishing license) has been removed and relocated to proposed new §53.4, concerning Lifetime Licenses. The provisions of current §53.2 (b) (establishing fees for combination license packages) also have been restructured to establish resident and resident senior super combination hunting and fishing license packages that incorporate the freshwater fishing stamp. The new section establishes resident super combination hunting and all water fishing package ($64) and a new resident senior super combination hunting and all water fishing package ($30). The super combination packages do not include references to the muzzleloader and freshwater trout stamps, but include the new freshwater fishing stamp, all of which is mandated under provisions of H.B. 1989, enacted by the 78th Texas Legislature, and contains a reference to the red drum tag for clarification purposes. The new section also incorporates a resident disabled veteran super combination hunting and all water package ($0), relocated from current §53.90 (which

is repealed in this rulemaking), eliminates references to the muzzleloader and freshwater trout stamps, includes provisions to implement the freshwater fishing stamp mandated by H.B. 1989; and includes a reference to the red drum tag for the purpose of clarification. The new section retains the fee for replacement of combination packages at $10, with modifications to clarify that the cost of replacement of super combination packages is also $10, and provides that there is no charge for replacement of a disabled veteran super combination hunting and all water fishing package. The new section is necessary to consolidate all provisions concerning combination hunting and fishing licenses in a single section.

New §53.4, concerning Lifetime Licenses, is necessary to consolidate provisions concerning the lifetime hunting license (from current §53.3), the lifetime fishing license (from current §53.3), and the lifetime resident combination hunting and fishing license (from current §53.2) into a single section dealing with lifetime licenses. The new section also includes the fee for the upgrade of a lifetime fishing or hunting license to a lifetime combination license, and the fee for replacing a lifetime license of any type. The remaining contents of current §53.3 are being relocated to other proposed new sections as noted.

New §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, is substantively identical to the provisions of current §53.3(a) and (b), except that: current subsection (a)(2) (establishing the fee for the lifetime hunting license) is eliminated because that provision is relocated to proposed new §53.4, concerning Lifetime Licenses; current subsection (a)(3) is reworded for the sake of clarity; and current subsection (b)(5) (establishing a fee for the muzzleloader stamp) is removed because the muzzleloader stamp was eliminated by legislative action. The new section is necessary to consolidate all provisions concerning recreational hunting licenses, stamps, and tags in a single section.

New §53.6, concerning Recreational Fishing Licenses, Stamps and Tags, establishes new freshwater, saltwater and all water fishing packages and is necessary to minimize customer confusion regarding addition of the new freshwater fishing stamp requirements (as mandated by H.B. 1989) and to maximize customer convenience by adding various licensing options. The freshwater trout stamp found in current §53.3(d) is repealed because legislative action (H.B. 1989) eliminated that stamp, and the fee for the freshwater fishing stamp is incorporated, also as authorized by H.B. 1989. New §53.6(a) establishes the prices of individual licenses that will be available only as part of a package, and establishes the period of validity for the "year-from-purchase" resident fishing license, the July and August resident fishing license, and the day resident and day non-resident fishing licenses. The fees for a resident fishing license ($23), special resident fishing license ($6), and non-resident fishing license ($50) are identical to current fees for these licenses as established in current §53.3(c). The "year-from-purchase" resident fishing license ($30), the July and August resident fishing license ($20), the day resident fishing license ($6), and day non-resident fishing license ($12) replace the temporary (14-day) resident sport fishing license, the temporary (three-day) resident sport fishing license, and the temporary (five-day) non resident fishing license in current §53.3(c). Proposed new §53.6(b) establishes the price for stamps that are sold either individually or as part of a package, and establishes the period of validity of the stamps. The fee for the freshwater fishing stamp ($5) is mandated in H.B. 1989, and the fees for the saltwater sportfishing stamp ($7) and surcharge ($3) are identical to the fees established in current §53.3(d). Proposed new §53.6(b) also clarifies that a red drum tag will be issued at no charge with each saltwater sportfishing stamp. Proposed new §53.6(c) establishes the price for fishing packages and licenses, as follows: resident freshwater fishing package ($28); resident saltwater fishing package ($33); resident "all water" fishing package ($38); special resident freshwater fishing package ($11); special resident saltwater fishing package ($16); special resident "all water" fishing package ($21); "year-from-purchase" resident "all water" fishing package ($45); July and August resident freshwater fishing package ($25); July and August resident saltwater fishing package ($30); July and August resident "all water" fishing package ($35); resident freshwater fishing "day plus" package ($11 for the first day, plus $4 for each additional consecutive day); resident saltwater fishing "day plus" package ($16 for the first day, plus $4 for each additional consecutive day); resident all water fishing "day plus" package ($21 for the first day, plus $4 for each additional consecutive day); nonresident freshwater fishing package ($55); nonresident saltwater fishing package ($60); nonresident "all water" fishing package ($65); nonresident freshwater fishing "day plus" package ($17 for the first day, plus $8 for each additional consecutive day); nonresident saltwater fishing "day plus" package ($22 for the first day, plus $8 for each additional consecutive day); nonresident all water fishing "day plus" package ($27 for the first day, plus $8 for each additional consecutive day); Lake Texoma fishing license ($12); and a replacement fee for fishing packages and licenses ($10). All packages established in the new section are priced at an amount equal to the cost of the license plus the costs of the stamps included in that package. The resident and nonresident freshwater, saltwater, and "all water" fishing "day plus" packages, consisting of the day resident fishing license or day nonresident fishing license and the applicable stamp (and the option to purchase additional consecutive days), establishes that a previous purchaser of these packages within the license year may repurchase the package for the price of the day resident fishing license or the day nonresident fishing license plus the cost for additional consecutive days, as the stamp privileges from the first purchase will be extended to the holder for the term of the subsequent purchase. The Lake Texoma fishing license is established at a fee identical to the fee in current §53.3 (c) for this item, and clarifies that holders of this license are exempt from freshwater fishing stamp requirements when fishing on Lake Texoma. Proposed new §53.6(d) establishes fees for fishing tags as follows: exempt angler red drum tag ($3); bonus red drum tag ($0); tarpon tag ($120); replacement tarpon tag ($30); individual bait-shrimp trawl tag ($35); and salt water trotline tag ($4). The exempt angler red drum tag is established to provide a mechanism to provide a red drum tag to individuals exempt from purchase of a resident or nonresident fishing license. The fees for the bonus red drum tag, tarpon tag, replacement tarpon tag, and individual bait-shrimp trawl tag are identical to current fee amounts established in current §53.3(e). The fee for the saltwater trotline tag increases from $3 to $4. The fee increase is necessary because it was inadvertently omitted from the comprehensive fee adjustments adopted in 2003. The department determined at that time that additional funds were needed to maintain current levels of service to the public. Fees for the majority of the licenses and permits had not been increased since 1996. Since that time, inflation significantly increased the cost of doing business (such as the cost of office space, utilities, vehicles, and gasoline), and the department added a variety of new programs and services. The existing fees were compared with various cost of living indices and the accumulated rates of inflation since 1996, which

was approximately 20%. The fee increase for the saltwater trotline tag is based on that calculation. Otherwise the new section is necessary to consolidate all provisions related to recreational fishing licenses, stamps, and tags in a single section.

New §53.7, concerning Furbearing Animal Licenses and Permits, contains the provisions of current §53.4(b), which are relocated into a new section exclusively addressing licenses and permits pertaining to furbearing animals. The contents of the proposed new section do not include current §53.4(b)(3) and (6) (establishing the fees for the resident and nonresident retail fur buyer's permits, respectively) because rulemaking action in 2003 amended the provisions of Chapter 65, Subchapter Q, to eliminate the sale of those permit types. The new section is necessary to consolidate all provisions concerning fur-bearing animal licenses and permits in a single section. New §53.8, concerning Alligator Licenses, Permits, Stamps, and Tags, contains the provisions of current §53.4(c), which are relocated into a new section exclusively addressing licenses, permits, stamps, and tags pertaining to alligators. In addition, the proposed new section incorporates the provisions of §65.362(e) and §65.365 (which establish fees for the alligator export permit and the alligator management tag, respectively) so that all fees concerning alligators are located in a single section. The new section is necessary to consolidate all provisions concerning alligator licenses, permits, and tags in a single section.

New §53.9, concerning Falconry Permits, contains the provisions of current §53.8(c), which are being retained in order to create a single section exclusively addressing falconry permits. The remaining provisions of current §53.8 are being relocated in other sections as noted. The new section is necessary to consolidate all provisions concerning falconry permits in a single section.

New §53.10, concerning Public Hunting and Fishing Permits and Fees, contains the provisions of current §53.5. Several nonsubstantive changes are made to the current rules. The caption of subsection (a) changes from "Hunting permits" to "Hunting and access permits," to more accurately reflect the scope of the provisions, and the wording of current §53.5(b)(1)(B) and (C) and (c)(2) have been nonsubstantively altered to eliminate awkward sentence construction. The new section is necessary to consolidate all provisions concerning public hunting and fishing permits in a single section.

New §53.11, concerning Commercial Hunting Licenses and Permits, contains the provisions of current §53.4(a), which are being relocated to a single section pertaining exclusively to commercial hunting activities regulated by the department. The new section differs from the current §53.4(a) only in that 1) fees for hunting cooperatives are removed, since those fees are established by statute in Parks and Wildlife Code, Chapter 43, Subchapter G, and need not be repeated in regulations, and in any case cannot be altered by the commission; and 2) the fee for an antlerless and spike-buck control permit application has been relocated to new §53.14, concerning Deer Management and Removal Permits so that all fees related to deer management and removal are in the same section. The new section is necessary to consolidate all provisions concerning commercial hunting licenses and permits in a single section.

New §53.12, concerning Commercial Fishing Licenses and Tags, contains the provisions of current §53.6, with the following nonsubstantive alterations: references to "license plates" are replaced with the term "display licenses," because metal plates will no longer be used; and a reference to "commercial oyster captain's" is changed to "commercial oyster boat captain's" for accuracy and consistency. The new section is necessary to consolidate all provisions concerning commercial fishing licenses and tags in a single section.

New §53.13, concerning Business Licenses and Permits-Fishing, contains the provisions of current §53.7, with the exception that current §53.7(4) (establishing the saltwater trotline tag fee) is removed because it has been relocated to proposed new §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags. In addition, the new section increases the fees for license transfers because those fee increases were inadvertently omitted from the comprehensive fee adjustments adopted in 2003. The fee increases are necessary for the department to recoup the increased administrative costs associated with processing transfers since the last fee increase in 1996. The new section is necessary to consolidate all provisions concerning business licenses and permits related to fishing in a single section.

New §53.14, concerning Deer Management and Removal Permits, contains the provisions of current §53.8(a) and (d)-(f) that apply to fees for permits pertaining to deer management and removal. The provisions have been nonsubstantively altered to: clarify that the renewal fee for the scientific breeder's permit is the same as the initial fee (to be consistent with the terminology of §65.603(d)(4), which addresses renewals, rather than re-application, which is consistent with Parks and Wildlife Code, §43.355); clarify that the fee for the trap, transport, and transplant permits is an administrative fee for application review, rather than for the permit itself (to be consistent with Parks and Wildlife Code, §43.061(f), which authorizes the commission to implement a fee for review of permit applications); clarify that the fee for the deer management permit is for the permit itself, rather than for processing the application (to be consistent with Parks and Wildlife Code, §43.603(c), which authorizes a fee for permit issuance, rather than for processing); incorporate current §53.4(a)(12); and modify the current reference to "antlerless deer control permit" to "antlerless and spike-buck deer control permit," which is necessary to accurately reflect the purpose of the permit. The new section is necessary to consolidate all provisions concerning deer management permits in a single section.

New §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits, contains the provisions of current §53.8(b) and (g), concerning game bird and game animal breeding licenses and commercial nongame permits, respectively; §69.310, concerning fees for educational, scientific, and zoological permits; §§57.117, 57.125, and 57.131, which establish fees for permits pertaining to exotic fish, shellfish, and exotic plants; §69.6, which establishes the fee for the commercial plant permit; §55.150, which establishes the fee for the permit for aerial management of wildlife and exotic species; §57.395, which establishes the fee for the permit to collect broodfish from Texas waters; §58.30, which establishes the fees for an application for an oyster lease, oyster lease rental, and oyster lease renewal or transfer. The fees are being relocated from other chapters in order to consolidate all fees in Chapter 53. The new section is necessary to create a section containing fee provisions for permits and licenses that cannot be grouped or associated with other types of licenses or permits.

New §53.16, concerning Vessel, Motor, and Marine Licensing Fees, contains the provisions of current §53.10, which have been nonsubstantively altered to clarify that "quick" title fees consist of an administrative surcharge for expedited title to a vessel or motor, and are in addition to applicable fees, and to remove obsolete

references to effective dates. The new section is necessary to consolidate all provisions concerning vessel, motor, and marine licensing fees in a single section.

New §53.30, concerning Facility Admission and Use Fees, contains the provisions of current §53.50, which establishes the entry fees for the Athens Freshwater Fisheries Center. In addition to the current fee, the new section also establishes a new fee for facility use and for the annual pass to the Athens Freshwater Fisheries Center; admission fees for Sea Center Texas; fees for the use of facilities at the Parrie Haynes Youth Ranch; entry fees for Old Tunnel Wildlife Management Area; and facility use fees for Mason Mountain Wildlife Management Area. The creation of the annual pass (and fee) at the Athens Freshwater Fisheries Center is intended to address requests for a discounted entry fee from persons who visit the center multiple times. The entrance fees for Sea Center Texas are necessary to recoup operational costs. The fees for the use of Parrie Haynes Youth Camp are necessary to ensure the ability of the facility to serve the youth of Texas under terms of the department's agreement with the Texas Youth Commission, and the costs of providing the facility for public use. The entry fees at Old Tunnel WMA, as well as the facilities use fees on Mason Mountain WMA, are necessary to fund public outreach, research, operations, and management on those areas, which, unlike the other wildlife management areas in the state system, are not eligible for reimbursement for those expenses under the federal Wildlife Restoration program; thus; it is imperative that the agency generate some type of revenue in order to continue to operate the areas for public use. The new section is necessary to consolidate the fees for the admission and use of department facilities other than state parks in a single section.

New §53.50, concerning Training and Certification Fees, contains the provisions of current §53.60, which establish fees for marine safety enforcement officer training and eliminates the current fee of $3 per student per hour for that training to make the course more affordable for peace officers from smaller jurisdictions and to ensure uniform quality of training instruction. The proposed new section also includes the provisions of §55.609, concerning registration fees for hunter education training, to consolidate all fees in Chapter 53; and incorporates a new fee for deferred hunter education. The new section is necessary to consolidate provisions related to fees for certification and training programs in a single section.

New §53.60, concerning Stamps, consolidates the provisions of current §§53.11-53.16 and those of current 53.3(f) (concerning the collector's edition stamp package) in a single section. References to the muzzleloader and freshwater trout have been eliminated because of legislative action that eliminated those stamps (H.B. 1989, 78th Legislature, Regular Session, 2003); the freshwater stamp has been added (also because of H.B. 1989); references to obsolete effective dates have been removed; reference to a collectible freshwater fishing stamp (authorized by H.B. 1989) has been added; and other, minor nonsubstantive grammatical changes have been made to enhance clarity. The new section is necessary to consolidate provisions related to stamps in a single section.

New §53.70, concerning License Deputies and Vessel Registration Agents, contains the provisions of current §53.17 and §53.25. The new section is substantively identical to the current provisions, except that current §53.17(b), concerning public inspection of application forms for appointment as an authorized vessel registration agent, is eliminated because there is no reason to state in regulation something that is self-evident, and because the forms can be mailed or transmitted electronically to anyone; and current §53.25 has been modified to eliminate a reference to fee amounts retained by license deputies for sale of Lake Texoma Fishing licenses in order to make amounts retained by license deputies uniform for all license types. The new section is necessary to consolidate the provisions related to license deputies and vessel registration agents in a single section.

New §53.80, concerning Commercial Fishing Boat Numbers, contains the provisions of current §53.41. The only change to the current text is the replacement of the term "metal plate" with the term "display license," which is necessary because the department will replace the metal license-plate type identification with a display license. The new section is necessary to consolidate the provisions related to commercial fishing boat numbers in a single section.

New §53.90, concerning Display of Registration Validation Sticker, contains the unchanged provisions of current §53.205, which prescribe the manner in which registration decals must be displayed and make a special provision for antique boats. The new section is necessary to relocate existing provisions to a different section designation as part of the process of restructuring the chapter.

New §53.100, concerning Bonded Title-Acceptable Situations, contains the unchanged provisions of current §53.206, which are necessary to set forth the circumstances under which the department will issue a bonded title in the event that complete documentation cannot be provided or obtained by an applicant for title, registration, or transfer. The new section is necessary to relocate existing provisions to a different section designation as part of the process of restructuring the chapter.

New §53.110, concerning Marine, Dealers, Distributors, and Manufacturers, contains the unchanged provisions of current §§53.200-53.204, which are being consolidated into a single section. New subsection (a) is current §53.200, concerning Definitions, which establishes a specific meaning for the word "consignment" for use in the context of the subchapter. New subsection (b), which is current §53.201, concerning Application, Renewal, Transfer, and Replacement, sets forth the required information and documentation that an applicant must submit in order to be licensed by the department as a dealer, distributor, or manufacturer. New subsection (c), which is current §53.202, concerning Notification-Change of Dealer, Manufacturer, Distributor Status, establishes a notification requirement for dealers, manufacturers, and distributors in the event that a change in address, ownership, business name, location, franchise agreement, contact information, or phone number has occurred. New subsection (d), which is current §53.203, concerning Display of License, requires licenses to be publicly displayed at all times. New subsection (e), which is current §53.204, concerning Reporting and Recordkeeping Requirements, sets forth the types of records that must be maintained as a condition of licensure. The new section is necessary to consolidate all provisions related to marine, dealers, distributors, and manufacturers in a single section.

New §53.120, concerning License Format and Legibility, consists of current §53.100, which has been modified to clarify that the provisions of the section apply only to licenses sold through the department's point-of-sale system. The new section is necessary to comply with a statutory requirement to promulgate rules establishing legibility standards for licenses issued by the

department and relocate existing provisions to a different section designation as part of the process of restructuring the chapter.

In general, the rules will function by establishing the fee amounts for the various licenses and permits sold by the department.

The department received a total of 427 comments on the proposed regulations. as follows: The terms "revenue neutral" and "revenue neutrality," as used in the department's responses to public comments, refer to the relationship between revenues from current fishing licenses and estimated revenue from the new fishing licenses and packages. The department has priced the new licenses and packages so as to generate a revenue stream that is approximately equivalent to that resulting from the current license structure (i.e., "revenue neutral"). The fee for the freshwater fishing stamp was not considered in calculating revenue neutrality, as the fee for the freshwater fishing stamp is established by the legislature.

COMMENT: 122 commenters opposed adoption of the rules, stating that the costs of the new freshwater fishing stamp and license packages are too high and will price individuals out of hunting and fishing.

AGENCY RESPONSE: The agency disagrees and responds that the fee increases are necessary but not burdensome. With the exception of the "year-from-purchase" fishing license and the various temporary fishing license options, all increases in license packages are attributable solely to the addition of the mandated freshwater fishing stamp, the revenues of which are statutorily dedicated to repair, maintenance, renovation or replacement of freshwater fish hatcheries, or the purchase of game fish for stocking purposes. The fees for the "year-from-purchase" and temporary fishing license options were set at levels necessary to allow the department to maintain a stable revenue stream and were intended to be revenue neutral. No changes were made as a result of the comments.

COMMENT: 22 commenters were opposed to adoption of the freshwater fishing stamp and license packages, expressing concern regarding the complexity of the license proposals (too many stamps and license options).

AGENCY RESPONSE: The department disagrees and responds that while a new freshwater fishing stamp is being added, as mandated by House Bill 1989; two stamps (muzzleloader and freshwater trout) are also being eliminated. In addition, the various license packages were created in order minimize customer confusion regarding license and stamp possession requirements, and to ensure that customers do not inadvertently fish without necessary stamp endorsements. No changes were made as a result of the comments.

COMMENT: 25 commenters opposed adoption of the freshwater fishing stamp, packages and associated fee increases, stating that there is no evidence that the increases will provide tangible benefits.

AGENCY RESPONSE: The department disagrees with the comment and responds that the increases will be used to make much needed repairs and renovations to freshwater fish hatcheries, which will directly impact the quality and quantity of freshwater fishing opportunities. No changes were made as a result of the comments.

COMMENT: 14 commenters opposed adoption of the freshwater fishing stamp, stating that the agency should just raise the cost of the fishing license and eliminate stamps altogether.

AGENCY RESPONSE: The department disagrees with the comment and responds that various dedicated stamps help to ensure that revenues are directed towards specific resources in proportion to the use of those particular resources, and that those who use the resource contribute to the upkeep of the resource. In addition, freshwater fishing and other stamps are mandated by statute and must be issued and purchased in order to fish legally within the state. Elimination of stamps requires an act of the legislature and is not within the discretion of the agency or commission. No changes were made as a result of the comments.

COMMENT: 11 commenters opposed adoption of the freshwater fishing stamp, stating that it makes the fishing license worthless.

AGENCY RESPONSE: The agency disagrees and responds that a fishing license is still required to lawfully fish in the public waters of the state, and that the fishing packages that will be sold will confer all the necessary privileges of fishing: freshwater, saltwater, or both, as desired by the purchaser. No changes were made as a result of the comments.

COMMENT: The agency received one comment recommending adoption of a family license package.

AGENCY RESPONSE: The agency disagrees and responds that the various license options proposed are intended to satisfy the majority of constituents and that development of a standard family license package would be complicated and potentially unfair because factors such as size and definition of "family" can vary widely. However, the department also notes that it has introduced a program to allow people to fish in sate parks without a license, within certain parameters, which addresses some concerns about family fishing opportunities. No changes were made as a result of the comments.

COMMENT: Two commenters were opposed to adoption of the proposal, stating that use of funds to stock non-native fish is wasteful.

AGENCY RESPONSE: The agency disagrees and responds that non-native fish stocking programs, such as trout, are popular programs that provide angling over the winter, especially in urban areas. The department feels these programs are important in reaching new anglers and making fishing opportunities available to all Texans. No changes were made as a result of the comments.

COMMENT: Two commenters opposed adoption of the freshwater fishing stamp, stating the associated fee increase places an unfair burden on anglers who do not fish non-native species.

AGENCY RESPONSE: The agency disagrees and responds that there is no disproportionate burden on anglers interested in native species because the freshwater fishing stamp proceeds would be used to produce both native and non-native species. The new hatcheries would produce non-native fish such as rainbow trout, as well as native species such as largemouth bass and channel catfish. No changes were made as a result of the comments.

COMMENT: 12 commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that the department should look at other alternatives to generate additional revenues.

AGENCY RESPONSE: The agency disagrees and responds that since revenues will be used to benefit freshwater angling, it would be unfair to have other users (non-anglers) bear the costs. No changes were made as a result of the comments.

COMMENT: Two commenters opposed adoption of freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should impose a tournament stamp instead.

AGENCY RESPONSE: The agency disagrees and responds that there is currently no mechanism for imposing such a fee, and, further, that the fees as adopted affect all anglers, irrespective of tournament participation, and thus are equitably distributed amongst all users of the resource. No changes were made as a result of the comments.

COMMENT: Three commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should increase fishing guide fees instead.

AGENCY RESPONSE: The agency disagrees and responds that fishing guide fees were increased from $75 to $200 in April 2003, and that nonresident saltwater fishing guide fees were subsequently increased to $1,000 in August 2003. The department feels that the current fees for fishing guide licenses are appropriate with respect to the impact of fishing guides on fisheries resources, and that the non-residentnonresident fee of $1,000 is comparable to amounts charged in other states; therefore no additional increases are necessary at this time. No changes were made as a result of the comments.

COMMENT: Five commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should consider imposing usage fees on water-skiers and jet-skiers instead.

AGENCY RESPONSE: The agency disagrees and responds that since revenues will be used to benefit freshwater angling, it would be unfair to have other users (non-anglers) bear the costs. In addition, owners of jet skis and boats are already required to pay a fee for registration and titling of their vessels. No changes were made as a result of the comments.

COMMENT: 16 commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should increase non-residentnonresident license fees instead.

AGENCY RESPONSE: The agency disagrees and responds that non-residentnonresident fees are set at rates comparable to those charged by other states and that any further increases would serve as a disincentive to non-residentnonresidents to fish in this state. In addition, non-residentnonresident fees were also increased as part of the proposal, and were increased in 2003 as part of an overall license fee adjustment.. No changes were made as a result of the comments.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional revenues it should make licenses available on-line instead.

AGENCY RESPONSE: The agency disagrees and responds that while an effort is underway to make licenses available on-line, the change is unlikely to generate additional license sales for the department and is intended primarily as an additional convenience for customers. No changes were made as a result of the comments.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should impose a license and registration fee on bikers who use TPWD funded and maintained trails instead.

AGENCY RESPONSE: The agency disagrees and responds that since revenues will be used to benefit freshwater angling, it would be unfair to have other users (non-anglers) bear the costs. Furthermore, the department lacks statutory authority to impose such fees. No changes were made as a result of the comments.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding the sporting goods sales tax should be applied to all sporting goods instead.

AGENCY RESPONSE: The agency disagrees and responds that changes to the application of the sporting goods sales tax require legislative action and are not within TPWD authority. No changes were made as a result of the comments.

COMMENT: Two commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should increase fines and step up law enforcement instead.

AGENCY RESPONSE: The agency disagrees and responds that since revenues will be used to benefit freshwater angling, it would be unfair to have other users (non-anglers) bear the costs. No changes were made as a result of the comments.

COMMENT: Three commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should create a stamp for use of recreational watercraft.

AGENCY RESPONSE: The agency disagrees and responds that since revenues will be used to benefit freshwater angling, it would be unfair to have other users (non-anglers) bear the costs. In addition, owners of recreational watercraft are already required to pay a fee for registration and titling of their vessels. No changes were made as a result of the comments.

COMMENT: Two commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that the freshwater trout stamp should be retained and only trout fishermen should pay the costs of the trout program.

AGENCY RESPONSE: The agency disagrees with the comments and responds that the freshwater stamp requirement is statutory, meaning that there is no option not to implement it. Further, the agency notes that trout stocking is just one part of the department's hatchery program; the stamp fees will be used to benefit all users of freshwater fisheries resources, and, therefore, all users should share the burden.

COMMENT: Two commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should increase fees for seniors instead.

AGENCY RESPONSE: The agency disagrees and responds that while the fees for some senior licenses have been increased as part of this proposal, other increases have not been pursued because many seniors are on a fixed income and fees must be set at rates sensitive to their fixed income status. In addition, seniors born before September 1, 1930 are statutorily exempt from fishing license requirements and therefore the department may not impose a fee on them. No changes were made as a result of the comments.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp and associated increases, stating that if the department requires additional funding it should charge river access fees instead.

AGENCY RESPONSE: The agency disagrees and responds that it lacks the statutory authority to impose such fees. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp and associated increases and recommended that anglers be allowed the option to donate $5 for freshwater fisheries improvements instead.

AGENCY RESPONSE: The agency disagrees and responds that donations would not generate a cash flow stable enough to repay the costs of building and improving freshwater hatcheries over the long term. No changes were made as a result of the comments.

COMMENT: 11 commenters expressed concern about the temporary nature of the freshwater fishing stamp, stating they were not convinced the stamp would be temporary.

AGENCY RESPONSE: The agency disagrees and responds that the legislation requiring the freshwater fishing stamp clearly specifies that the stamp and associated legislation will expire September 1, 2014. No changes were made as a result of the comments.

COMMENT: Two commenters recommended that TPWD re-examine/eliminate the user-pay approach.

AGENCY RESPONSE: The agency disagrees and responds that the user-pay/user-benefit model to funding fish and wildlife conservation through the sale of licenses is used in many other states and has proven to be successful throughout the United States. In addition, the user-pay approach is inherently fair, in that only those constituents using the resources are required to contribute to their upkeep. No changes were made as a result of the comments.

COMMENT: Ten commenters opposed adoption of the freshwater stamp, stating that the agency should just sell one license that includes all stamp privileges.

AGENCY RESPONSE: The agency disagrees and responds that while the proposal does include the super-combination hunting and all-water fishing license package, which includes all stamp privileges, the department must provide a variety of license package options to best meet all customer needs. No changes were made as a result of the comments.

COMMENT: 21 commenters opposed adoption of the freshwater fishing stamp and associated increases, stating that the department should reduce expenses and cut waste.

AGENCY RESPONSE: The agency disagrees and responds that in the last several years the department has reviewed its operations, has undergone a hiring freeze, eliminated non-essential travel, reduced capital expenditures, and instituted a number of measures to identify and correct inefficiencies and duplicative efforts. No changes were made as a result of the comments.

COMMENT: 21 commenters were opposed to adoption of a fee increase for the super-combination license. Thirteen of the commenters noted that the fee increase is uncalled for, given that only one stamp is added while two are eliminated.

AGENCY RESPONSE: The agency disagrees and responds that the $5 increase in the price of the super-combination license is solely due to the addition of the freshwater fishing stamp. Freshwater stamp revenues are statutorily dedicated to repair, maintenance, renovation or replacement of freshwater fish hatcheries, or the purchase of game fish for stocking purposes. To ensure revenue neutrality with regard to Game, Fish, and Water Safety Account amounts, it was necessary to add the full $5 freshwater fishing stamp fee to the existing price of the super-combination license. No changes were made as a result of the comments.

COMMENT: Nine commenters opposed adoption of fee increases on the basis that the increases will lead to illegal fishing activity.

AGENCY RESPONSE: The agency disagrees and responds that the fishing license fee increases are not prohibitive and are not believed to be an incentive for anyone to violate the law by failing to acquire a license. No changes were made as a result of the comments

COMMENT: Two commenters opposed the fee increases, stating that they would hurt families and low-income groups.

AGENCY RESPONSE: The agency disagrees and responds that the fee increases are necessary but not burdensome. In addition, the department has instituted a program that allows people to fish without a license in state parks, within certain parameters. No changes were made as a result of the comments.

COMMENT: Two commenters opposed the freshwater fishing stamp, stating that a fishing license should be valid in freshwater without the stamp.

AGENCY RESPONSE: The agency disagrees and responds that the additional revenues generated from the freshwater stamp are necessary for much-needed hatchery improvements and repairs that will benefit all anglers. No changes were made as a result of the comments.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp and associated increases and recommended that the department set a different fee for the catch and release program and eliminate the need to stock fish.

AGENCY RESPONSE: The department disagrees with the comment and responds that under the current model, the cost of department activities that are subsidized by the angling communities is shared equitably by all anglers. The department believes that this is the fairest and most efficient method of distributing the cost of managing and maintaining this public resource. No changes were made as a result of the comment.

COMMENT: One commenter opposed elimination of the muzzleloader and freshwater trout stamps.

AGENCY RESPONSE: The agency disagrees and responds that elimination of the stamps does not equate to elimination of muzzleloader hunting or freshwater trout fishing. So long as individuals hold the appropriate license or license package, they will still be able to enjoy these activities. Further, elimination of these two stamps is mandated under the provisions of HB 1989. No changes were made as a result of the comment.

COMMENT: One commenter opposed fee increases due to disabled veteran/fixed income status.

AGENCY RESPONSE: The agency disagrees and responds that the fee increases are not believed to be burdensome.

Furthermore, qualified disabled veterans may obtain a resident disabled veteran super-combination hunting and all-water fishing package at no cost. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption of the freshwater stamp, stating that the revenue would be better spent on other projects such as golden algae.

AGENCY RESPONSE: The agency disagrees and responds that the legislature has allocated funding for projects such as golden algae from other revenue sources, and that the freshwater fishing stamp revenues are needed for renovations and repairs to freshwater fish hatcheries. No changes were made as a result of the comment.

COMMENT: Two commenters opposed the fee increases, stating that the increased costs would discourage first-timers and others from trying the sport.

AGENCY RESPONSE: The agency disagrees and responds that the increases are not prohibitive and should not serve as a disincentive to those wishing to participate in the sport. Furthermore, the department offers affordable options for first-timers interested in trying the sport, including the annual no-license fishing day (1st Saturday in June of each year) and free fishing in state parks. No changes were made as a result of the comments.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp, expressing doubt that the revenue would actually be spent as intended.

AGENCY RESPONSE: The agency disagrees and responds that freshwater fish hatcheries are in dire need of repairs and renovations, and that the only allowable expense of stamp revenue, by law, is for the repair, maintenance, renovation or replacement of freshwater fish hatcheries or the purchase of game fish for stocking purposes. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption of the freshwater fishing stamp, stating that cities should pay to have trout stocked.

AGENCY RESPONSE: The agency disagrees with the comment and responds that trout are stocked in a variety of locations and not just within municipal jurisdictions, although cities already pay approximately half of the cost of the stocking program. In any case, the department manages all public freshwaters of the state regardless of political subdivision, and because the trout stocking program is extremely popular, the department believes it is a justifiable and beneficial use of appropriated funds. No changes were made as a result of the comment.

COMMENT: One commenter recommended reduced license prices for seniors at age 62 instead of 65.

AGENCY RESPONSE: The agency disagrees and responds that while it realizes that individual circumstances may vary, the standard retirement age is 65. In addition, offering reduced license prices at age 62 would negatively impact the department's ability to maintain current revenue and service levels. Finally, the department is not authorized to offer reduced prices for seniors at age 62, as the department's statutory authority permits the lowering or waiving of fees for individuals 65 and older. No changes were made as a result of the comment.

COMMENT: 10 commenters opposed the license packages, stating that the non-residentnonresident fees are too high.

AGENCY RESPONSE: The agency disagrees and responds that similar to the other proposed packages, the non-residentnonresident fishing license package fees consist only of the current cost for a non-residentnonresident fishing license ($50) and the cost of stamp endorsements required to fish legally in this state ($5 for freshwater, $10 for saltwater, and $15 for all water). Additionally, the department notes that nonresident fees are consistent with nonresident fees of surrounding states and states offering similar opportunity. No changes were made as a result of the comments.

COMMENT: One commenter opposed charging a fee for the exempt angler red drum tag.

AGENCY RESPONSE: The agency disagrees and responds that a minimal fee must be charged in order to recoup the administrative costs associated with issuing the new tag. No changes were made as a result of the comment.

COMMENT: One commenter recommended extending validity of license packages to two years rather than one.

AGENCY RESPONSE: The agency disagrees and responds that extending the period of validity to two years would require the price of licenses to be doubled in order to ensure revenue neutrality and that such an increase would be cost-prohibitive for some constituents. This type of change would also destabilize cash flow to the department. Finally, statute clearly provides for a yearly period of validity for licenses and the department currently lacks authority to implement such a change. No changes were made as a result of the comment.

COMMENT: One commenter recommended that license discounts be based on documented need, not age.

AGENCY RESPONSE: The agency disagrees and responds that in order to implement need-based discounts, the department would be required to implement methods to accurately determine and verify the needs of constituents, which would likely be cost-prohibitive. No changes were made as a result of the comment.

COMMENT: One commenter recommended special rates for veterans.

AGENCY RESPONSE: The agency disagrees and responds that while certain qualified disabled veterans may currently obtain a resident disabled veteran super-combination hunting and all-water fishing package at no cost, extending special rates to all veterans would require an increase in costs for other segments of the population in order to maintain revenue streams sufficient to continue providing current services. No changes were made as a result of the comment.

COMMENT: 30 commenters specifically were opposed to the prices for the temporary licenses, stating that the costs were too high.

AGENCY RESPONSE: The agency disagrees and responds that the prices for the temporary licenses are not believed to be burdensome, and were set at levels necessary to maintain revenue neutrality in replacing existing temporary licenses. For example, the July and August fishing license, which is valid from the first day of July through the last day of August, is priced at $20. This represents just a $5 increase from the existing temporary license that is only valid for 14 days. Further, the July and August freshwater, saltwater, and all water fishing packages, which are $25, $30 and $35, respectively, include the stamps necessary to legally fish in various state waters.

As another example, the temporary three-day resident fishing license is currently $12. This cost does not include the cost for necessary stamps, which would be an additional $5 or $10, depending on where the license would be used. The resident day-plus package, if purchased for a three-day period, would total $19 for freshwater and $24 for saltwater, but would include needed stamp endorsements. This amount represents only a $2 increase from the existing three-day temporary license with required stamps. No changes were made as a result of the comment.

COMMENT: Ten commenters opposed the period of validity of the temporary licenses, stating that there should only be a year-round license.

AGENCY RESPONSE: The agency disagrees and responds that in order to best meet the diverse needs of its constituents, including those who may not want to fish year round, the department must offer a variety of license options. No changes were made as a result of the comment.

COMMENT: Nine commenters opposed the prices for the non-residentnonresident temporary licenses, stating that the fees would deter tourists.

AGENCY RESPONSE: The department disagrees with the comments and responds that the new fees are not believed to be a disincentive to tourists, and further responds that when the quality and diversity of angling opportunity in Texas is considered, the cost of nonresident licenses is a bargain for tourists. No changes were made as a result of the comments.

COMMENT: One commenter recommended that the costs for temporary licenses should be the same for each day.

AGENCY RESPONSE: The agency disagrees and responds that based on the department's analysis of user behavior, it was necessary to establish varying fee amounts for use on subsequent days in order to ensure revenue neutrality of the proposed license changes. No changes were made as a result of the comment.

COMMENT: One commenter was opposed to the price for the one-day licenses, stating that the fee should be higher.

AGENCY RESPONSE: The department disagrees and responds that the price for the one-day license was established at a level necessary to ensure revenue neutrality of the proposed license changes. No changes were made as a result of the comment.

COMMENT: Six commenters were opposed to the temporary fishing license options, stating that they were too complex.

AGENCY RESPONSE: The agency disagrees and responds that the license options were designed to help minimize confusion regarding new stamp requirements, and points out that anglers must select among only three criteria in determining which package to purchase: (1) duration of the package; (2) type of license (fresh, salt or both) in order to ensure that they possess the endorsements necessary to fish legally; and (3) resident or non-residentnonresident. No changes were made as a result of the comments.

COMMENT: One commenter opposed the non-residentnonresident temporary fishing packages, stating that the fees should be higher.

AGENCY RESPONSE: The department disagrees and responds that the prices for the non-residentnonresident temporary packages were established at a level necessary to ensure revenue neutrality of the proposed license changes. No changes were made as a result of the comment.

COMMENT: One commenter opposed temporary licenses, stating that purchasers of the day-plus fishing packages should be granted the flexibility to specify any subsequent days rather than subsequent consecutive days only.

AGENCY RESPONSE: The agency disagrees and responds that while purchasers do not have the flexibility to specify non-consecutive days as part of the initial purchase, the day-plus packages are structured to allow customers to repurchase the day-plus fishing package at any time during the same license year at a lower price than the original purchase. The department feels that this structure adequately accommodates the concern expressed. No changes were made as a result of the comment.

COMMENT: 32 commenters opposed adoption of the July and August license, stating the cost is too high and that the license is not a good value to the consumer.

AGENCY RESPONSE: The agency disagrees and responds that the price for the July and August license is not believed to be burdensome, and was set at levels necessary to maintain revenue neutrality in replacing existing temporary licenses. The license, which is valid for over 60 days (from the first day of July through the last day of August), is priced at $20. This represents just a $5 increase from the existing temporary license that is only valid for 14 days. Further, the July and August freshwater, saltwater, and all water fishing packages, which are $25, $30 and $35, respectively, include the stamps necessary to legally fish in various state waters. No changes were made as a result of the comments.

COMMENT: Three commenters opposed the July and August license, stating that the cost of the July and August license should be determined on a prorated basis.

AGENCY RESPONSE: The agency disagrees and responds that the price for July and August license was established at a level necessary to ensure revenue neutrality of the proposed license changes, and that prorating the price would lead to a revenue loss to the department that would negatively impact provision of services. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption of the July and August license, stating that the license should be valid for the summer months of June, July, and August.

AGENCY RESPONSE: The agency disagrees and responds that analysis of fishing license purchase patterns has indicated that customers are generally unwilling to purchase a full year license after mid-June. The July and August license was configured for that segment of constituents who would be unwilling to purchase a yearly license, but for whom the day-plus license would not be an attractive option. Based on this analysis, the department believes that a subset of constituents would find that this license option (and duration) best meets their needs. No changes were made as a result of the comment.

COMMENT: Two commenters opposed adoption of the July and August license, stating that July and August are not peak fishing months.

AGENCY RESPONSE: The agency, while aware that July and August are not peak fishing months, responds that the license

was configured to accommodate certain customers unwilling to purchase a year-long license. The department believes that a subset of constituents would find that this license option (and duration) best meets their needs. No changes were made as a result of the comment.

COMMENT: 26 commenters opposed adoption of the "year-from-purchase" license, stating that multiple license expiration dates (for hunting and fishing licenses) would cause confusion and could possibly lead to increased violations.

AGENCY RESPONSE: The agency, while concerned about the possible increase in violations, responds that a subset of department constituents have requested that this option be made available, and the agency is attempting to address this demand and provide our customers with a range of fishing license and package options. No changes were made as a result of these comments.

COMMENT: 42 commenters opposed adoption of the "year-from-purchase" license, stating that the cost is too high and should not be higher than the amounts charged for fishing licenses that are valid for the license year (September through August).

AGENCY RESPONSE: The agency disagrees and responds that implementation of the "year-from-purchase" license will result in increased administrative costs and, based on past experience, will require an increase in enforcement efforts. Given these various cost considerations, the higher price for the license is necessary. No changes were made as a result of these comments.

COMMENT: One commenter recommended that the "year-from-purchase" license option should be extended to all licenses.

AGENCY RESPONSE: The agency disagrees and responds that the practical difficulties of providing a year-to-date option for all licenses (recordkeeping, programming costs for point-of-sale machines, regulatory conflicts) would necessitate additional revenue capture to maintain current levels of service. No changes were made as a result of these comments.

COMMENT: Two commenters opposed the "year-from-purchase" license, stating that the department should prorate license costs.

AGENCY RESPONSE: The agency disagrees and responds that prorating costs would lead to a revenue loss to the department and would negatively impact provision of services. No changes were made as a result of the comment.

COMMENT: One commenter was opposed to increasing the price of the special resident license.

AGENCY RESPONSE: The agency disagrees and responds that cost of the special resident fishing license ($6) itself has not increased, and that the special resident fishing packages for freshwater ($11); saltwater ($16) and all-water ($21) merely incorporate the cost of the stamp endorsements required to legally fish in various public waters ($5 for freshwater fishing; $10 for saltwater; and $15 for all-water). No changes were made as a result of this comment.

COMMENT: One commenter recommended increasing the cost of the saltwater trotline tag to $10.

AGENCY RESPONSE: The agency disagrees and responds that the cost of the saltwater trotline tag fee was recently increased to $4 based on review of CPI trends, and the department feels that the price is currently set at a reasonable and appropriate level. No changes were made as a result of this comment.

COMMENT: One commenter recommended creation of a special non-residentnonresident fishing license.

AGENCY RESPONSE: The agency disagrees and responds that the fee changes made as part of this proposal were necessary to either implement the new freshwater fishing stamp or to ensure revenue neutrality of the license restructuring effort. Changing the requirements for non-residentnonresidents fishing licenses would result in a revenue loss to the department and would not be a revenue neutral approach. No changes were made as a result of the comment.

COMMENT: Two commenters recommended a $5/day license for party/head boat fishers.

AGENCY RESPONSE: The department disagrees and responds that the intent of the rulemaking was not to implement new licenses and fees, but to implement legislative mandates and restructure various licenses in order to accommodate the legislative mandates without losing revenue. No changes were made as a result of the comments.

COMMENT: One commenter recommended that non-residentnonresidents should be able to fish under a Captain's License when on a for-hire trip.

AGENCY RESPONSE: The agency disagrees and responds that the fee changes made as part of this proposal were necessary to either implement the new freshwater fishing stamp or to ensure revenue neutrality of the license restructuring effort. Changing the requirements for non-residentnonresidents fishing with a fishing guide would result in a revenue loss to the department and would not be a revenue neutral approach unless corresponding increases were made to fishing guide licenses. No changes were made as a result of the comment.

COMMENT: The agency received one comment recommending that seniors over age 65 be exempt from fishing license fees and requirements.

AGENCY RESPONSE: The agency disagrees and responds that while it does currently offer seniors over the age of 65 a lower cost license (special resident license), allowing these seniors an exemption from fees and license requirements would result in a revenue loss to the department and would not be a revenue neutral approach. No changes were made as a result of the comment.

COMMENT: The agency received one comment stating that increasing nonresident fees will serve as a disincentive to out-of-state tourism related to angling.

AGENCY RESPONSE: The agency disagrees and responds that the nonresident fees are consistent with nonresident fees of surrounding states and states offering similar opportunity, and therefore shouldn't lead to a reduction in angler-related tourism. No changes were made as a result of the comment.

COMMENT: The agency received one comment stating that the "year-to-date" license will lead to inadvertent violations by persons who will not remember when their license expires.

AGENCY RESPONSE: The agency disagrees with the comment and responds that persons will have the option of purchasing the

"year-to-date" license or the traditional September-to-August license. People choosing to avoid the inconvenience of keeping track of license validity therefore are able to purchase the traditional license when it becomes available each August as they have in the past. No changes were made as a result of the comment.

The Texas Deer Association and the Grimes County Wildlife Committee opposed adoption of the fee for the creation of the freshwater fishing stamp, stating that if the new stamp replaces the trout stamp, but not everyone fishes for trout, the new stamp is therefore a burden on everyone who doesn't fish for trout. The agency disagrees with the comment and has previously responded to it elsewhere in this preamble.

The Texas Association of Bass Clubs opposed adoption of the proposed license structure changes (specifically, the numerous options involved), stating that the new structure would cause confusion, and expressed skepticism that the revenue would actually be used as intended. The agency disagrees with the comment and has previously responded to it elsewhere in this preamble.

The Texas Saltwater Guides Association opposed adoption of the fees for non-residentnonresident licenses, stating that the new fees would push non-residentnonresidents to fish in other states. The agency disagrees with the comment and has previously responded to it elsewhere in this preamble.

The Sportsmen Conservationists of Texas (SCOT) opposed adoption of the July-August fishing licenses stating that the licenses were not necessary or useful, and further opposed adoption of the "year-to-date" licenses, stating that more people will inadvertently break the law because they will not remember when their license expires. The agency disagrees with the comment and has responded to it elsewhere in this preamble. SCOT supported the adoption of the remainder of the new rules as proposed.

SUBCHAPTER A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §§53.1 - 53.10

The repeals and new rules are adopted under the authority of Government Code, §2155.076, which requires a state agency to adopt rules for resolving vendor protests relating to purchasing issues and Parks and Wildlife Code:

Chapter 11: §11.027, which authorizes the commission to establish a fee to cover costs associated with the review of an application for a permit required by the code; to sell any item in the possession of the department in which the state has title, or acquire and resell items if a profit can be made, to charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card, and a fee for entering, reserving, or using a facility or property owned or managed by the department; §11.0271, which authorizes the department to establish participation fees, not to exceed $25 per species for each participant on an application, in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event; §11.0272, which authorizes the commission to approve participation fees, not to exceed $25 per species or event for each participant on an application, in drawings for special fishing or other special programs, packages, or events the costs of which exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event; §11.030, which authorizes the commission to adopt rules relating to the release, use, and sale of customer information; and §11.056, which authorizes the commission to establish the price of a wildlife art decal or stamp or editions of stamps and decals; §11.065, which authorizes the commission to adopt rules for the investment of the lifetime license endowment account;

Chapter 12: §12.702, which authorizes the commission to establish collection and issuance fees for license deputies to sell licenses, stamps, tags, permits, or other similar item issued under any chapter the code; §12.703, which requires the commission to specify standards for licenses issued by an electronic point-of-sale system, including the legibility of the licenses;

Chapter 31: §31.006, which authorizes the commission to allow a dealer who holds a dealer's or manufacturer's number to act as the agent of the department and to require an agent to execute a surety bond in an amount set by the department, and to adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state, including fees; §31.032, which authorizes the department to prescribe the manner in which identification numbers and validation decals are placed on a vessel and authorizes the commission to adopt rules for the placement of validation decals for antique boats; §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including transfer procedures, application forms, application and renewal procedures, and reporting and recordkeeping requirements; and §31.0465, which authorizes the commission to define by rule what constitutes an acceptable situation in which certificates of title may be issued after the filing of a bond, and §31.039 which authorizes the commission to charge a fee for access to ownership and other records; §31.121, which requires the commission to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers;

Chapter 42: §42.012, which authorizes the commission to establish a fee for a resident hunting license; §42.0121, which authorizes the commission to establish a fee for a lifetime resident hunting license; §42.014, which authorizes the commission to establish a fee for a nonresident special hunting license; §42.0141, which authorizes the commission to establish a fee for a general nonresident hunting license; §42.0142, which authorizes the commission to establish a fee for banded bird hunting licenses; §42.0143, which authorizes the commission to establish a fee for a nonresident five-day special hunting license; §42.0144, which authorizes the commission to establish a fee for a nonresident spring turkey hunting license; and §42.017, which authorizes the commission to establish a fee for a duplicate license or tags;

Chapter 43: §43.012, which authorizes the commission to issue a white-winged dove stamp in a form and manner prescribed by

the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.022, which authorizes the commission to establish a fee for permits for scientific, educational, and zoological permits; §43.044, which authorizes the commission to establish a fee for hunting lease licenses; §43.061, which authorizes the commission to establish a fee for permits to trap, transport, or transplant game animals or game birds; §43.0611, which authorizes the commission to establish a fee for an urban white-tailed deer removal permit; §43.0721, which authorizes the commission to establish a fee for a private bird hunting area license; §43.0722, which authorizes the commission to establish a fee for a private bird hunting area license; §43.0764, which authorizes the commission to establish a fee for a field trial permit; §43.110, which authorizes the commission to establish a fee for a permit that authorizes the management of wildlife or exotic animals by the use of aircraft; §43.201, which authorizes the commission to issue an archery stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.202, which authorizes the commission to establish a fee for an archery stamp; §43.252, which authorizes the commission to issue a turkey stamp in a form and manner prescribed by the department, and to provide for identification, possession, and exemption requirements; §43.303, which authorizes the commission to issue a waterfowl stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.355, which authorizes the commission to establish a fee for a scientific breeder's permit; §43.403, which authorizes the commission to issue a saltwater sportfishing stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.554, which authorizes the commission to establish a fee for a permit to allow a licensed fish farmer to take a specified quantity of fish brood stock from specified public water; §43.603, which authorizes the commission to establish a fee for the issuance or renewal of a deer management permit; §44.003, which authorizes the commission to establish a fee for a game breeder's license;

Chapter 45: §45.003, which authorizes the commission to establish a fee for commercial game bird breeder's licenses;

Chapter 46: §46.004, which authorizes the commission to establish fees for a resident fishing license, a nonresident fishing license, a lifetime resident fishing license, duplicate tags, and issuance and collection fees for licenses and tags; §46.005, which authorizes the commission to establish the period of validity and a fee for resident and nonresident temporary sportfishing licenses; §46.006, which authorizes the commission to establish a fee for duplicate fishing licenses and tags; §46.007, which authorizes the commission to establish a period of validity for fishing licenses and tags; §46.0085, which authorizes the commission to issue tags for finfish; §46.104, which authorizes the commission to establish a fee for the Lake Texoma fishing license; §46.105, which authorizes the commission to establish a fee for the Lake Texoma 10-day fishing license;

Chapter 47: §47.002, which authorizes the commission to establish a fee for a resident or nonresident general commercial fisherman's license; §47.003, which authorizes the commission to establish a fee for a resident or nonresident commercial finfish fisherman's license; §47.004, which authorizes the commission to establish a fee for a fishing guide license; §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license and number and rules governing the issuance, use, and display of commercial fishing boat numbers; §47.008, which authorizes the commission to establish fees for menhaden boat licenses ; §47.009, which authorizes the commission to establish a fee for a wholesale fish dealer's license; §47.010, which authorizes the commission to establish a fee for a wholesale truck dealer's fish license; §47.011, which authorizes the commission to establish a fee for a retail fish dealer's license; §47.013, which authorizes the commission to establish a fee for a retail dealer's truck license; §47.014, which authorizes the commission to establish a fee for bait dealer's licenses; §47.016, which authorizes the commission to establish a fee for a menhaden fish plant license; §47.017, which authorizes the commission to establish a fee for renewal of a menhaden fish plant license; §47.031, which authorizes the commission to establish the period of validity for any license issued under the authority of Chapter 47 and provides for the transfer of licenses and permits; §47.075, which authorizes the commission to establish a fee for a commercial finfish fisherman unless the person has obtained a commercial finfish fisherman's license; §47.079, which authorizes the commission to establish a fee for the transfer of a commercial finfish fisherman's license.

Chapter 49: §49.014, which authorizes the commission to establish a fee for any falconry, raptor propagation, or nonresident trapping permit;

Chapter 50: §50.001, which authorizes the commission to establish combination licenses and packages and the fees for each; §50.0021, which authorizes the commission to establish the period of validity for combination licenses and packages; §50.004, which authorizes the commission to establish a fee for duplicate combination licenses and packages;

Chapter 62: §62.014, which authorizes the commission to impose a fee not to exceed $15 to defray administrative costs of implementing hunter education courses;

Chapter 65: §65.003, §65.004, which authorizes the commission to establish a fee for permits that govern the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator; §65.004, which authorizes the commission to establish a fee for a resident or nonresident alligator hunter's license, a nonresident alligator hunter's license.

Chapter 66: §66.007, which authorizes the commission to establish rules governing permits to import, possess, sell, or place into water of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants; §66.017, which authorizes the commission to establish the period of validity for licenses, permits, and tags issued under the authority of Chapter 66, and the fee for transfers of licenses, permits, and tags issued under authority of Chapter 66; §66.018, which authorizes the commission to establish a fee for a crab trap tag; §66.020, which authorizes the commission to establish a fee for permits authorizing the sale and purchase of protected fish; §66.206, which authorizes the commission to establish a fee for tags for trotlines used in public salt water;

Chapter 67: §67.0041, which authorizes the commission to establish a fee for permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife;

Chapter 71: §71.002, which authorizes the commission to establish a fee for a resident or nonresident trapper's license, a resident or nonresident wholesale fur dealer's license, and a fur-bearing animal propagation permit.

Chapter 76: §76.006, which authorizes the commission to establish a fee for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state; §76.017, which authorizes the commission to establish a fee for a certificate of location for a private oyster bed; §76.018, which authorizes the commission to establish the period of validity for licenses issued under authority of Chapter 76, and fees for the transfer of licenses; §76.104, which authorizes the commission to establish a fee for a commercial oyster boat license, a sport oyster boat license, a commercial oyster fisherman's license, a commercial oyster boat captain's license, a commercial oyster boat license for a boat that is not numbered under Chapter 31 or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner, a sport oyster boat license for a boat that is not numbered under Chapter 31 or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner, a fee for a nonresident commercial oyster fisherman's license, and a nonresident commercial oyster boat captain's license; §76.1041, which authorizes the commission to establish requirements for the design and display of a commercial oyster boat license;

Chapter 77: §77.031, which authorizes the commission to establish a fee for a commercial bay shrimp boat license and a commercial bay shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner; §77.033, which authorizes the commission to establish a fee for a commercial bait-shrimp boat license and a commercial bait-shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner; §77.035, which authorizes the commission to establish a fee for a commercial gulf shrimp boat license and a commercial gulf shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner; §77.0351, which authorizes the commission to establish a fee for a residents or nonresident commercial shrimp boat captain's license issued by the department; §77.0361, which authorizes the commission to establish a fee for transfers of licenses issued under Chapter 77, duplicate license plates, and duplicate or replacement licenses; §77.037, which authorizes the commission to establish a fee for a transfer of a commercial gulf shrimp boat license; §77.043, which authorizes the commission to establish a fee for a bait-shrimp dealer's license; §77.048, which authorizes the commission to establish a fee for an individual bait-shrimp trawl; §77.115, which authorizes the commission to establish a fee for a transfer of a commercial bay or bait shrimp boat license;

Chapter 78: §78.002, which authorizes the commission to establish a fee for a resident or nonresident commercial mussel and clam fisherman's license; §78.003, which authorizes the commission to establish a fee for a resident or nonresident shell buyer's license; §78.004, which authorizes the commission to establish a fee for the export of mussels or clams or mussel or clam shells; §78.105, which authorizes the commission to establish a fee for a crab boat license; §78.109, which authorizes the commission to establish a fee for a transfer of a license issued under Chapter 78;

Chapter 81: §81.403, which authorizes the commission to establish a fee for a permit for the hunting of wildlife or for any other use in wildlife management areas;

Chapter 86: §86.007, which authorizes the commission to establish a fee for processing notifications of proposed activities governed by Chapter 86 and for payment for substrate materials;

Chapter 88: §88.006, which authorizes the commission to establish a fee for a permit to collect endangered, threatened, or protected native plants for commercial purposes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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SUBCHAPTER B. STAMPS

31 TAC §§53.11 - 53.16

The repeals are adopted under Parks and Wildlife Code, §11.056, which authorizes the commission to establish the price of a wildlife art decal or stamp or editions of stamps and decals; §11.065, which authorizes the commission to adopt rules for the investment of the lifetime license endowment account; §43.012, which authorizes the department to issue a white-winged dove stamp in a form and manner prescribed by the department, and providing for identification, possession, and exemption requirements; §43.201, which authorizes the department to issue an archery stamp in a form and manner prescribed by the department, and providing for identification, possession, and exemption requirements; §43.252, which authorizes the department to issue a turkey stamp in a form and manner prescribed by the department, and providing for identification, possession, and exemption requirements; §43.303, which authorizes the department to issue a waterfowl stamp in a form and manner prescribed by the department, and providing for identification, possession, and exemption requirements; and §43.403, which authorizes the department to issue a saltwater sportfishing stamp in a form and manner prescribed by the department, and providing for identification, possession, and exemption requirements.

This agency 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. VESSEL REGISTRATION AGENTS AND SURETY BONDS

31 TAC §53.17, §53.18

The repeals are adopted under Parks and Wildlife Code, §31.006, which authorizes the commission to allow a dealer who holds a dealer's or manufacturer's number to act as the agent of the department and to require an agent to execute a surety bond in an amount set by the department, and to adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state, including fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. LICENSE DEPUTIES

31 TAC §53.22, §53.25

The repeals are adopted under Parks and Wildlife Code, §12.701, which authorizes the commission to designate persons to act as license deputies, and §12.702, which authorizes the commission to establish collection and issuance fees for license deputies to sell licenses, stamps, tags, permits, or other similar item issued under any chapter of the code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. SELLING PRICE OF DEPARTMENTAL INFORMATION

31 TAC §53.35

The repeal is adopted under Parks and Wildlife Code, §11.030, which authorizes the commission to adopt rules relating to the release, use, and sale of customer information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 389-4775

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SUBCHAPTER F. COMMERCIAL FISHING BOAT NUMBERS

31 TAC §53.41

The repeal is adopted under Parks and Wildlife Code, §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license and number and rules governing the issuance, use, and display of commercial fishing boat numbers.

This agency 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 G. TEXAS FRESHWATER FISHERIES CENTER ADMISSION FEES

31 TAC §53.50

The repeal is adopted under Parks and Wildlife Code, §11.027, which authorizes the commission to establish a fee for entering, reserving, or using a facility or property owned or managed by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. MARINE SAFETY ENFORCEMENT--TRAINING AND CERTIFICATION FEES

31 TAC §53.60

The repeal is adopted under Parks and Wildlife Code, §31.121, which requires the commission to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 389-4775

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SUBCHAPTER I. PROTEST PROCEDURES FOR VENDORS

31 TAC §53.70

The repeal is adopted under Government Code, §2155.076, which requires the department as a state agency to adopt rules for resolving vendor protests relating to purchasing issues

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER J. EXEMPTIONS FOR DISABLED VETERANS

31 TAC §53.90

The repeal is adopted under Parks and Wildlife Code, §43.012, which authorizes the commission to exempt persons from requirements relating to a white-winged dove stamp; §43.202, which authorizes the commission to exempt persons from requirements relating to an archery stamp; §43.252, which authorizes the commission to exempt persons from requirements relating to a turkey stamp; §43.403, which authorizes the commission to exempt persons from requirements relating to a saltwater sportfishing stamp; and the provisions of H.B. 1989, which created the freshwater fishing stamp and authorizes the commission exempt persons from requirements relating to possession of the stamp, and eliminated the muzzleloader stamp and the freshwater trout stamp.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty
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SUBCHAPTER K. LICENSE STANDARDS

31 TAC §53.100

The repeal is adopted under Parks and Wildlife Code, §12.703, which requires the commission to specify standards for licenses issued by an electronic point-of-sale system, including the legibility of the licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty
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For further information, please call: (512) 389-4775

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SUBCHAPTER L. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

31 TAC §§53.200 - 53.206

The repeals are adopted under Parks and Wildlife Code, §31.032, which authorizes the department to prescribe the manner in which identification numbers and validation decals are placed on a vessel and authorizes the commission to adopt rules for the placement of validation decals for antique boats; §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses,

including transfer procedures, application forms, application and renewal procedures, and reporting and recordkeeping requirements; and §31.0465, which authorizes the commission to define by rule what constitutes an acceptable situation in which certificates of title may be issued after the filing of a bond, and §31.039 which authorizes the commission to charge a fee for access to ownership and other records.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty
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SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.1 - 53.16

The new rules are adopted under Parks and Wildlife Code, Chapter 11: §11.027, which authorizes the commission to establish a fee to cover costs associated with the review of an application for a permit required by the code; to sell any item in the possession of the department in which the state has title, or acquire and resell items if a profit can be made, to charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card, and a fee for entering, reserving, or using a facility or property owned or managed by the department; §11.0271, which authorizes the department to establish participation fees, not to exceed $25 per species for each participant on an application, in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event; §11.0272, which authorizes the commission to approve participation fees, not to exceed $25 per species or event for each participant on an application, in drawings for special fishing or other special programs, packages, or events the costs of which exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event; §11.030, which authorizes the commission to adopt rules relating to the release, use, and sale of customer information; and §11.056, which authorizes the commission to establish the price of a wildlife art decal or stamp or editions of stamps and decals; §11.065, which authorizes the commission to adopt rules for the investment of the lifetime license endowment account;

Chapter 12: §12.702, which authorizes the commission to establish collection and issuance fees for license deputies to sell licenses, stamps, tags, permits, or other similar item issued under any chapter the code; §12.703, which requires the commission to specify standards for licenses issued by an electronic point-of-sale system, including the legibility of the licenses;

Chapter 31: §31.006, which authorizes the commission to allow a dealer who holds a dealer's or manufacturer's number to act as the agent of the department and to require an agent to execute a surety bond in an amount set by the department, and to adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state, including fees; §31.032, which authorizes the department to prescribe the manner in which identification numbers and validation decals are placed on a vessel and authorizes the commission to adopt rules for the placement of validation decals for antique boats; §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including transfer procedures, application forms, application and renewal procedures, and reporting and recordkeeping requirements; and §31.0465, which authorizes the commission to define by rule what constitutes an acceptable situation in which certificates of title may be issued after the filing of a bond, and §31.039 which authorizes the commission to charge a fee for access to ownership and other records; §31.121, which requires the commission to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers;

Chapter 42: §42.012, which authorizes the commission to establish a fee for a resident hunting license; §42.0121, which authorizes the commission to establish a fee for a lifetime resident hunting license; §42.014, which authorizes the commission to establish a fee for a nonresident special hunting license; §42.0141, which authorizes the commission to establish a fee for a general nonresident hunting license; §42.0142, which authorizes the commission to establish a fee for banded bird hunting licenses; §42.0143, which authorizes the commission to establish a fee for a nonresident five-day special hunting license; §42.0144, which authorizes the commission to establish a fee for a nonresident spring turkey hunting license; and §42.017, which authorizes the commission to establish a fee for a duplicate license or tags;

Chapter 43: §43.012, which authorizes the commission to issue a white-winged dove stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.022, which authorizes the commission to establish a fee for permits for scientific, educational, and zoological permits; §43.044, which authorizes the commission to establish a fee for hunting lease licenses; §43.061, which authorizes the commission to establish a fee for permits to trap, transport, or transplant game animals or game birds; §43.0611, which authorizes the commission to establish a fee for an urban white-tailed deer removal permit; §43.0721, which authorizes the commission to establish a fee for a private bird hunting area license; §43.0722, which authorizes the commission to establish a fee for a private bird hunting area license; §43.0764, which authorizes the commission to establish a fee for a field trial permit; §43.110, which authorizes the commission to establish a fee for a permit that authorizes the management of wildlife or exotic animals by the use of aircraft; §43.201, which authorizes the commission to issue an archery stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.202, which authorizes the commission to

establish a fee for an archery stamp; §43.252, which authorizes the commission to issue a turkey stamp in a form and manner prescribed by the department, and to provide for identification, possession, and exemption requirements; §43.303, which authorizes the commission to issue a waterfowl stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.355, which authorizes the commission to establish a fee for a scientific breeder's permit; §43.403, which authorizes the commission to issue a saltwater sportfishing stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.554, which authorizes the commission to establish a fee for a permit to allow a licensed fish farmer to take a specified quantity of fish brood stock from specified public water; §43.603, which authorizes the commission to establish a fee for the issuance or renewal of a deer management permit; §44.003, which authorizes the commission to establish a fee for a game breeder's license;

Chapter 45: §45.003, which authorizes the commission to establish a fee for commercial game bird breeder's licenses;

Chapter 46: §46.004, which authorizes the commission to establish fees for a resident fishing license, a nonresident fishing license, a lifetime resident fishing license, duplicate tags, and issuance and collection fees for licenses and tags; §46.005, which authorizes the commission to establish the period of validity and a fee for resident and nonresident temporary sportfishing licenses; §46.006, which authorizes the commission to establish a fee for duplicate fishing licenses and tags; §46.007, which authorizes the commission to establish a period of validity for fishing licenses and tags; §46.0085, which authorizes the commission to issue tags for finfish; §46.104, which authorizes the commission to establish a fee for the Lake Texoma fishing license; §46.105, which authorizes the commission to establish a fee for the Lake Texoma 10-day fishing license;

Chapter 47: §47.002, which authorizes the commission to establish a fee for a resident or nonresident general commercial fisherman's license; §47.003, which authorizes the commission to establish fee for a resident or nonresident commercial finfish fisherman's license; §47.004, which authorizes the commission to establish a fee for a fishing guide license; §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license and number and rules governing the issuance, use, and display of commercial fishing boat numbers; §47.008, which authorizes the commission to establish fees for menhaden boat licenses ; §47.009, which authorizes the commission to establish a fee for a wholesale fish dealer's license; §47.010, which authorizes the commission to establish a fee for a wholesale truck dealer's fish license; §47.011, which authorizes the commission to establish a fee for a retail fish dealer's license; §47.013, which authorizes the commission to establish a fee for a retail dealer's truck license; §47.014, which authorizes the commission to establish a fee for bait dealer's licenses; §47.016, which authorizes the commission to establish a fee for a menhaden fish plant license; §47.017, which authorizes the commission to establish a fee for renewal of a menhaden fish plant license; §47.031, which authorizes the commission to establish the period of validity for any license issued under the authority of Chapter 47 and provides for the transfer of licenses and permits; §47.075, which authorizes the commission to establish a fee for a commercial finfish fisherman unless the person has obtained a commercial finfish fisherman's license; §47.079, which authorizes the commission to establish a fee for the transfer of a commercial finfish fisherman's license.

Chapter 49: §49.014, which authorizes the commission to establish a fee for any falconry, raptor propagation, or nonresident trapping permit;

Chapter 50: §50.001, which authorizes the commission to establish combination licenses and packages and the fees for each; §50.0021, which authorizes the commission to establish the period of validity for combination licenses and packages; §50.004, which authorizes the commission to establish a fee for duplicate combination licenses and packages;

Chapter 62: §62.014, which authorizes the commission to impose a fee not to exceed $15 to defray administrative costs of implementing hunter education courses;

Chapter 65: §65.003, §65.004, which authorizes the commission to establish a fee for permits that govern the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator; §65.004, which authorizes the commission to establish a fee for a resident or nonresident alligator hunter's license, a nonresident alligator hunter's license.

Chapter 66: §66.007, which authorizes the commission to establish rules governing permits to import, possess, sell, or place into water of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants; §66.017, which authorizes the commission to establish the period of validity for licenses, permits, and tags issued under the authority of Chapter 66, and the fee for transfers of licenses, permits, and tags issued under authority of Chapter 66; §66.018, which authorizes the commission to establish a fee for a crab trap tag; §66.020, which authorizes the commission to establish a fee for permits authorizing the sale and purchase of protected fish; §66.206, which authorizes the commission to establish a fee for tags for trotlines used in public salt water;

Chapter 67: §67.0041, which authorizes the commission to establish a fee for permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife;

Chapter 71: §71.002, which authorizes the commission to establish a fee for a resident or nonresident trapper's license, a resident or nonresident wholesale fur dealer's license, and a fur-bearing animal propagation permit.

Chapter 76: §76.006, which authorizes the commission to establish a fee for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state; §76.017, which authorizes the commission to establish a fee for a certificate of location for a private oyster bed; §76.018, which authorizes the commission to establish the period of validity for licenses issued under authority of Chapter 76, and fees for the transfer of licenses; §76.104, which authorizes the commission to establish a fee for a commercial oyster boat license, a sport oyster boat license, a commercial oyster fisherman's license, a commercial oyster boat captain's license, a commercial oyster boat license for a boat that is not numbered under Chapter 31 or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner, a sport oyster boat license for a boat that is not numbered under Chapter 31 or does not have a certificate of documentation issued by the United States Coast Guard that

lists an address in Texas for the boat owner, a fee for a nonresident commercial oyster fisherman's license, and a nonresident commercial oyster boat captain's license; §76.1041, which authorizes the commission to establish requirements for the design and display of a commercial oyster boat license;

Chapter 77: §77.031, which authorizes the commission to establish a fee for a commercial bay shrimp boat license and a commercial bay shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner; §77.033, which authorizes the commission to establish a fee for a commercial bait-shrimp boat license and a commercial bait-shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner; §77.035, which authorizes the commission to establish a fee for a commercial gulf shrimp boat license and a commercial gulf shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner; §77.0351, which authorizes the commission to establish a fee for a residents or nonresident commercial shrimp boat captain's license issued by the department; §77.0361, which authorizes the commission to establish a fee for transfers of licenses issued under Chapter 77, duplicate license plates, and duplicate or replacement licenses; §77.037, which authorizes the commission to establish a fee for a transfer of a commercial gulf shrimp boat license; §77.043, which authorizes the commission to establish a fee for a bait-shrimp dealer's license; §77.048, which authorizes the commission to establish a fee for an individual bait-shrimp trawl; §77.115, which authorizes the commission to establish a fee for a transfer of a commercial bay or bait shrimp boat license;

Chapter 78: §78.002, which authorizes the commission to establish a fee for a resident or nonresident commercial mussel and clam fisherman's license; §78.003, which authorizes the commission to establish a fee for a resident or nonresident shell buyer's license; §78.004, which authorizes the commission to establish a fee for the export of mussels or clams or mussel or clam shells; §78.105, which authorizes the commission to establish a fee for a crab boat license; §78.109, which authorizes the commission to establish a fee for a transfer of a license issued under Chapter 78;

Chapter 81: §81.403, which authorizes the commission to establish a fee for a permit for the hunting of wildlife or for any other use in wildlife management areas;

Chapter 86: §86.007, which authorizes the commission to establish a fee for processing notifications of adopted activities governed by Chapter 86 and for payment for substrate materials;

Chapter 88: §88.006, which authorizes the commission to establish a fee for a permit to collect endangered, threatened, or protected native plants for commercial purposes

§53.5. Recreational Hunting Licenses, Stamps, and Tags.

(a) Hunting licenses:

(1) resident hunting--$23;

(2) special resident hunting--$6. Valid for residents under 17 years of age, residents who are 65 years of age or older, and nonresident hunters who are under 17 years of age on the date of license purchase;

(3) replacement hunting--$10;

(4) general nonresident hunting--$300;

(5) nonresident special hunting--$125;

(6) nonresident five-day special hunting--$45;

(7) nonresident spring turkey hunting--$120; and

(8) nonresident banded bird hunting--$25.

(b) Hunting stamps and tags:

(1) turkey--$5;

(2) white-winged dove--$7;

(3) archery hunting--$7;

(4) state waterfowl--$7.; and

(5) bonus deer tag---$10.

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

(a) The items listed in this subsection are sold only as part of a package. The price and terms of these items are as follows:

(1) resident fishing license--$23

(2) special resident fishing license--$6

(3) "year-from-purchase" resident fishing license--$30. The "Year-from-purchase" resident fishing license is valid from the date of purchase through the end of the purchase month of the subsequent year.

(4) July and August resident fishing license--$20. The July and August resident fishing license is valid from the first day of July through the last day of August for the license year of purchase.

(5) day resident fishing license--$6. The day resident license is valid within a license year for the specified days of the resident "day plus" package within which it is sold.

(6) non-resident fishing license--$50

(7) day non-resident fishing license--$12. The day non-resident license is valid within a license year for the specified days of the non-resident "day plus" package within which it is sold.

(b) The items listed in this subsection may be sold individually or as part of a package. Stamps sold individually shall be valid from the date of purchase or the start date of the license year, whichever is later, through the last day of the license year. Stamps sold as part of a fishing package shall be valid for the same time period as the license included in the package as specified in this rule. The price of these stamps are as follows:

(1) freshwater fishing stamp--$5; and

(2) saltwater sportfishing stamp--$7 plus a saltwater sport fishing stamp surcharge of $3 (surcharge to be effective until September 1, 2005). A red drum tag shall be issued at no additional charge with each saltwater sportfishing stamp.

(c) Fishing packages and licenses. The price of any fishing package shall be the sum of the price of the individual items included in the package.

(1) resident freshwater fishing package--$28. Package consists of a resident fishing license and a freshwater fish stamp;

(2) resident saltwater fishing package--$33. Package consists of a resident fishing license and a saltwater sportfishing stamp with a red drum tag;

(3) resident "all water" fishing package--$38. Package consists of a resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag;

(4) special resident freshwater fishing package--$11. Package consists of a special resident fishing license and a freshwater fishing stamp;

(5) special resident saltwater fishing package--$16. Package consists of a special resident fishing license and a saltwater sportfishing stamp with a red drum tag;

(6) special resident "all water" fishing package--$21. Package consists of a special resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag;

(7) "year-from-purchase" resident "all water" fishing package--$45. Package consists of a "year-from-purchase" resident fishing license, a freshwater stamp, and a saltwater sportfishing stamp with a red drum tag;

(8) July and August resident freshwater fishing package--$25. Package consists of a July and August resident fishing license and a freshwater fishing stamp.

(9) July and August resident saltwater fishing package--$30. Package consists of a July and August resident fishing license and a saltwater sportfishing stamp with a red drum tag.

(10) July and August resident "all water" fishing package--$35. Package consists of a July and August resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag.

(11) resident freshwater fishing "day plus" package--$11 for the first day plus $4 for each additional consecutive day. Package consists of a day resident fishing license and a freshwater fishing stamp, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $6 for the first day plus $4 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.

(12) resident saltwater fishing "day plus" package--$16 for the first day plus $4 for each additional consecutive day. Package consists of a day resident fishing license and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $6 for the first day plus $4 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.

(13) resident all water fishing "day plus" package--$21 for the first day plus $4 for each additional consecutive day. Package consists of a day resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $6 for the first day plus $4 for each additional consecutive day. The privileges of the stamps shall be extended to the holder for the term of the subsequent purchase of this package.

(14) non-resident freshwater fishing package--$55. Package consists of a non-resident fishing license and a freshwater fish stamp.

(15) non-resident saltwater fishing package--$60. Package consists of a non-resident fishing license and a saltwater sportfishing stamp with a red drum tag.

(16) non-resident "all water" fishing package--$65. Package consists of a non-resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag.

(17) non-resident freshwater fishing "day plus" package--$17 for the first day plus $8 for each additional consecutive day. Package consists of a day non-resident fishing license and a freshwater fishing stamp, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $12 for the first day plus $8 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.

(18) non-resident saltwater fishing "day plus" package--$22 for the first day plus $8 for each additional consecutive day. Package consists of a day non-resident fishing license and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $12 for the first day plus $8 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.

(19) non-resident all water fishing "day plus" package--$27 for the first day plus $8 for each additional consecutive day. Package consists of a day non-resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $12 for the first day plus $8 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.

(20) Lake Texoma fishing license--$12. Holders of a valid Lake Texoma License are exempt from freshwater fishing stamp requirements solely for the purpose of fishing on Lake Texoma; and

(21) Replacement fishing package or license--$10.

(d) Fishing tags:

(1) exempt angler red drum tag--$3. Provides a red drum tag for persons that are exempt from the purchase of a resident or non-resident fishing license of any type or duration;

(2) bonus red drum tag--$0. Available only to anglers presenting a fully executed original or duplicate red drum tag, a valid fishing package or license and the required information;

(3) tarpon tag--$120;

(4) replacement tarpon tag--$30;

(5) individual bait-shrimp trawl tag--$35; and

(6) saltwater trotline tag--$4.

This agency 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-200403991
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: March 5, 2004
For further information, please call: (512) 389-4775

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DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The new rule is adopted under Parks and Wildlife Code, §11.027, which authorizes the commission to establish a fee for entering, reserving, or using a facility or property owned or managed by the department.

This agency 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. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The new rule is adopted under the authority of Parks and Wildlife Code, §31.121, which requires the commission to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers, and §62.014, which authorizes the commission to impose a fee not to exceed $15 to defray administrative costs of implementing hunter education courses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. STAMPS

31 TAC §53.60

The new rule is adopted under the authority of Parks and Wildlife Code, §11.056, which authorizes the commission to establish the price of a wildlife art decal or stamp or editions of stamps and decals; §43.012, which authorizes the commission to issue a white-winged dove stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.201, which authorizes the commission to issue an archery stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.202, which authorizes the commission to establish a fee for an archery stamp; §43.252, which authorizes the commission to issue a turkey stamp in a form and manner prescribed by the department, and to provide for identification, possession, and exemption requirements; §43.303, which authorizes the commission to issue a waterfowl stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; §43.403, which authorizes the commission to issue a saltwater sportfishing stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee; and §43.804, which authorizes the commission to issue a freshwater fishing stamp in a form and manner prescribed by the department, to provide for identification, possession, and exemption requirements, and to establish a fee.

This agency 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. LICENSE DEPUTIES AND VESSEL REGISTRATION AGENTS

31 TAC §53.70

The new rule is adopted under the authority of Parks and Wildlife Code, §12.702, which authorizes the commission to establish collection and issuance fees for license deputies to sell licenses, stamps, tags, permits, or other similar item issued under any chapter the code, and §31.006, which authorizes the department to authorize a dealer who holds a dealer's or manufacturer's number to act as the agent of the department under Subchapter B of this chapter and under Chapter 160, Tax Code, for the issuance of certificates of number and the collection of fees and taxes for boats sold by that dealer

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. COMMERCIAL FISHING BOAT NUMBERS

31 TAC §53.80

The new rule is adopted under the authority of Parks and Wildlife Code, §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license and number and rules governing the issuance, use, and display of commercial fishing boat numbers

§53.80. Composition and Issuance.

The commercial fishing boat number will be on a display license to be issued with the commercial fishing boat license bearing the same number in a manner determined by the executive director. The display license will be of a design and contain such additional information as the executive director may determine to be necessary to identify the boat as a commercial fishing boat. In the event of the loss or defacement of a display license, the licensee may obtain a duplicate at the fees prescribed in §53.12 of this title (relating to Commercial Fishing Licenses and Tags).

This agency 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. DISPLAY OF BOAT REGISTRATION

31 TAC §53.90

The new rule is adopted under Parks and Wildlife Code, §31.032, which authorizes the department to prescribe the manner in which identification numbers and validation decals are placed on a vessel and authorizes the commission to adopt rules for the placement of validation decals for antique boats

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. BONDED TITLE FOR VESSELS/OUTBOARD MOTORS

31 TAC §53.100

The new rule is adopted under §31.0465, which authorizes the commission to define by rule what constitutes an acceptable situation in which certificates of title may be issued after the filing of a bond.

This agency 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 G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

31 TAC §53.110

The new rule is adopted under Parks and Wildlife Code, §31.006, which authorizes the commission to adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state, including fees; §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including transfer procedures, application forms, application and renewal procedures, and reporting and recordkeeping requirements; and §31.039 which authorizes the commission to charge a fee for access to ownership and other records.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. LICENSE STANDARDS

31 TAC §53.120

The new rule is adopted under Parks and Wildlife Code, §12.703, which requires the commission to specify standards for licenses issued by an electronic point-of-sale system, including the legibility of the licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Commission adopts amendments to §§65.3, 65.30, 65.42, 65.60, 65.64, 65.71, 65.72, 65.78, and 65.82, concerning the Statewide Hunting and Fishing Proclamation. Section 65.42 is adopted with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2238). Sections 65.3, 65.30, 65.60, 65.64, 65.71, 65.72, 65.78, and 65.82 are adopted without changes and will not be republished.

The change to §65.42 removes a reference to bonus tags from subsection (a) and adds language to clarify that the annual bag limit can be exceeded by use of Managed Lands Deer Permits, Landowner Assisted Management Plan permits, special public hunting permits, and antlerless permits issued by the U.S. Forest Service. The change comports the contents of the subsection with rule changes effected in a separate rulemaking, which allow persons under certain circumstances to exceed the annual bag limit.

The amendment to §65.3, concerning Definitions, adds a definition for 'folding panel trap.' Current gear restrictions do not address the use of folding panel traps for taking crabs. Another portion of this rulemaking, the amendment to §65.78, allows the use of folding panel traps and a definition is needed to describe that type of gear so that it may be legally differentiated from other devices.

The amendment to §65.30, concerning Pronghorn Antelope, clarifies the meaning of the term 'tract of land.' The current method used by the department to allocate antelope permits is based on the concept of the herd unit, which can be thought of as the antelope within that set of natural or man-made physical boundaries (such as highways, rivers, net-wire fences, etc.) functioning to segregate those animals from other groups of antelope. Biological determinations of sustainable harvest numbers within a herd unit are derived from analysis of population data and habitat quality for that herd unit. The current regulation uses the term 'tract of land' in a way that suggests permits are issued for a specific tract of land, which indeed is the case in some instances. However, there are situations in which a landowner owns several tracts of land within a single herd unit. Since the harvest recommendations and subsequent permit issuance are based on the herd unit, it makes no difference, from a biological standpoint, exactly where the harvest of animals occurs, provided it occurs within the herd unit for which the permits were issued. The amendment accordingly stipulates that, for the purposes of the section, 'tract of land' means any tract of land (including multiple tracts of land) under the same ownership within a single herd unit.

The amendment to §65.42, concerning Deer, consists of several actions. The first affects the Late Youth-Only Season. The late youth-only season was implemented in 2002 to complement the popular October youth-only season instituted in 1999 under the provisions of House Bill 2542, enacted by the 75th Texas Legislature, which authorized the commission to provide special hunting seasons restricted to persons less than 17 years of age. The purpose of youth-only seasons is to foster and encourage youth participation in hunting activities by offering special time periods when mentors can take the opportunity to introduce to or instruct youths in the enjoyment of wildlife resources without the distractions of competing seasons or adult hunters. The exclusivity of the youth seasons also serves to promote hunting activities generally to those who might be interested in becoming involved. The current late youth-only season takes place the weekend following the general open season in counties that do not have a late special season or a late muzzleloader-only season, and does not apply to properties for which Level 3 Managed Lands Deer permits have been issued. The bag limit is restricted to antlerless deer in the number specified for the county where the take occurs, and if there are permit restrictions in the county during the general season, the harvest of antlerless deer during the late youth-only season must be by permit. The amendment as adopted would alter the late youth-only season to allow the harvest of buck deer in all counties that have an open general season, and eliminate permit requirements for the take of antlerless deer in all counties except those where the antlerless harvest during the general season is by permit only for the entire general season. The action is intended to make the late youth-only season more consistent with the early youth-only season so as to reduce confusion and encourage greater participation. Department data indicate that the cumulative harvest during the current youth-only seasons is a negligible part of the overall deer harvest and therefore the amendment will not result in depletion or waste as defined by Parks and Wildlife Code, §61.005.

The amendment to §65.42 also would implement a four-day period (from Thanksgiving Day through the Sunday following Thanksgiving Day) during which antlerless deer could be taken without a permit in Brazos, Cherokee, Gregg, Grimes, Houston, Madison, Rusk, and Robertson counties. Under current regulations, the take of antlerless deer in those counties is by permit only for the entire general season. The current system of allowing general-season doe harvest with only LAMPS or MLD permits is not suitable for the current deer herd conditions. Analysis of deer herd characteristics indicates some deteriorating herd-health indicators throughout the counties in question. The sex ratio is greatly skewed towards the doe segment of the deer herd and has remained above 4.9 does per buck for the past eight years (stabilized at around 5.6 does per buck for the last three years). Breeding chronology records for the Post Oak and Pineywoods ecoregions show an extremely long breeding season, which is most likely due to a skewed sex ratio. Fawn production has declined over the past eight years, and the values remain very low. The overall trend during the past eight years indicates a slightly increasing density, with a dramatic increase over the past three years. According to hunter harvest surveys for the 2002-2003 hunting season, hunters killed only 1.5 does per 1,000 acres of deer range in the eight counties. Dressed body weight for 2.5 year-old does has consistently declined over the past eight years to well below the 80 pounds

typical for this age/sex class; however, yearling buck weights have been on a slight increase. Increased doe harvest during the general season would help reduce the impact of the deer herd upon the habitat, improve the sex ratio, improve fawning success, and shorten the breeding season. The improved habitat resulting from this change should improve herd health by improving the quantity, quality, and diversity of food resources. Additionally, harvest pressure on yearling and 2.5 year old bucks could potentially decrease by redirecting some of the harvest towards does. In addition to improving biological parameters, additional doe days in these counties would increase hunter opportunity with absolutely no detriment to the resource for an area that has seen a 25% and 23% decrease in the number of hunters and hunter days, respectively, over the past 10 years. Based on the supporting data, the amendment will not result in depletion or waste as defined by Parks and Wildlife Code, §61.005.

The amendment to §65.60, concerning Pheasant; Open Seasons, Bag, and Possession Limits, reinstates an opening date of the first Saturday in December in Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties. In April of 2003, the commission established an opening day of the first Saturday in December for those counties; however, the Outdoor Annual (a publication that is the principal source of hunter and angler information in the state) erroneously listed the opening day as the second Saturday in December. Rather than cause confusion among hunters and landowners, the commission in August of 2003 established the opening date as the second Saturday in order to maintain consistency with published material. The opening date is now being moved back to the date originally adopted in April of 2003 to reflect the original rulemaking.

The amendment to §65.64, concerning Turkey, opens a fall season for Rio Grande turkey in Denton and Johnson counties, a spring season for Eastern turkey in Hardin and Liberty counties, makes the open spring season for Eastern turkey effective for the entire county in Montgomery and Tyler counties (each of which under current regulations enjoys a spring season for Eastern turkey in only a portion of the county), and extends the spring season for Eastern turkey to run from April 1 through April 30 of each year in all counties with a spring season for Eastern turkey.

Rio Grande turkey habitat in Denton and Johnson counties is confined to riparian areas, which is also where turkey habitat occurs in adjoining counties. Fall turkey harvest data for surrounding counties indicate harvest ranges from 0 to 375 turkeys harvested per county. Since portions of Denton and Johnson counties contain amounts of suitable turkey habitat similar to that in the surrounding counties, the harvest numbers in Denton and Johnson counties should be less than or equivalent to the harvest in surrounding counties.

Hardin County was stocked with Eastern turkey at three sites along the Big Thicket Corridor. One site was stocked in 1994 and two sites were stocked in 2001. The original stocking was in a remote area and Hardin County has few cooperators for the annual statewide brood survey, so little data exists regarding the success of this site. However, the remaining two sites, approximately 30 miles from the original release site, reported observing scattered individuals prior to release. Post-release, groups of turkeys (5-10 birds, including juveniles) have been observed on a regular basis during the fall of 2001 and 2002. It is therefore evident that an established population exists along the Big Thicket Corridor. The Big Thicket Corridor population will have been protected from harvest from 4-12 breeding seasons prior to the opening of the proposed season and further protection from harvest is no longer necessary. Liberty County was stocked at two sites along the Trinity River Corridor in 1999. The Liberty County turkey population, therefore, will have had six breeding seasons of protection prior to the proposed season and further closed-season protection is unnecessary. The season in Montgomery County (north of State Hwy. 105) was opened in 2000, when the season was opened for the entire Sam Houston National Forest. The Sam Houston National Forest includes lands in Montgomery, San Jacinto, and Walker counties. The only two sites stocked in Montgomery County exist entirely on private land south of State Hwy. 105, which were stocked in 1993. Opening the remainder of Montgomery County would simplify regulations, and after 12 protected breeding seasons, further closed-season protection is unnecessary. Two areas in Newton County were stocked in 2000 under license agreements that prohibited turkey hunting within posted areas. Observers have reported seeing production every year since the release, and gobble call-counts on one release site indicated the presence of a minimum of 30 different gobblers during the spring of 2002. These Newton County sub-populations will have experienced five protected breeding seasons prior to the 2005 spring season. Further closed-season protection on these properties is unnecessary. The spring season in Tyler County (north of U.S. Hwy. 190) was opened during the 2000 season. Tyler County was last stocked in 1997. Therefore, continued closed-season protection is unnecessary and opening the southern half of Tyler County would expand recreational opportunity and simplify regulations. Harvest regulations currently governing Eastern turkey hunting in East Texas are the most conservative in the nation. These regulations allow limited hunting opportunity as soon as populations are established and are designed not to interfere with expansion. The opening date of the initial Eastern turkey season in 1995 in Red River County (the Monday closest to 21 April) was timed to coincide with the peak median date of incubation initiation identified from two previous Eastern turkey studies in Jasper and Trinity counties (Hopkins 1981 and Campo 1983). This season structure has been selected because all of the breeding has occurred prior to the season opener and gobblers are entering a second peak in gobbling activity, coinciding with a decrease in hen availability. Significant comments received from the public concerning the late starting date and data from additional Eastern turkey studies (Lopez 1996 and George 1997) justified moving the starting date to the Monday closest to April 14, where it has remained to date. The trend in harvest occurrence from the check station data from 1997-2003 indicates that 21% of the harvest occurs opening day and 67% occurs within the first week. Since the chronology of spring green-up in East Texas varies greatly from north to south and the season is only 14 days long, it is probable that hunter satisfaction and success is impacted by the timing of the season. When peak incubation occurs later than April 14, the season starts during the period of peak breeding, when gobblers are not as vocal or vulnerable to hunters. Hunting pressure further decreases gobbling activity and vulnerability as the season progresses. Based on these data, the season length expansion is not expected to exert a negative effect on the population, but will significantly increase hunter opportunity. Age structure is also not expected to change significantly and jake harvest may actually show a decline over

time as hunters become more experienced. With a one-bird bag limit and a 30-day season, experienced hunters are likely to be more selective. The expected benefits of the season expansion are an increase in hunter satisfaction and participation. Spring turkey hunting has never been shown to negatively impact breeding activity or associated reproductive success. Therefore, a season opening April 1 and continuing through April 30 will provide hunting access to turkey populations throughout the peak periods of gobbling activity, which should increase hunter satisfaction and success. On public lands, the season expansion should also increase hunter satisfaction by distributing hunting pressure more evenly throughout the season and decreasing hunter interference rates. A longer season may also be more attractive to potential turkey hunters who have not participated thus far.

The change to §65.71, concerning Reservoir Boundaries, alters the current definitions for Lake O'the Pines (Camp, Marion, Morris, and Upshur counties) and Pat Mayse Reservoir (Lamar County) to exclude tailrace waters. The new boundary for Lake O'the Pines comprises the impounded waters of Big Cypress Creek from Ferrell's Bridge Dam upstream to U.S. Hwy 259 bridge The new boundary for Pat Mayse Reservoir comprises all impounded waters of Sanders Creek from Pat Mayse Reservoir Dam upstream to County Road 35610. The changes to §65.72 make the bag and possession limits on each of these two reservoirs identical to the limits in downstream waters. The original purpose of the reservoir definition (i.e., the inclusion of downstream waters for the applicability of limits) was to prevent problematic enforcement situations relating to differential harvest regulations. Unscrupulous persons in possession of fish in excess of limits were claiming to have caught the fish in nearby waters where the limits were different. The equalization of limits therefore makes the current boundary definitions unnecessary. However, on Lake Murvaul (Panola County), the problem has occurred frequently enough that a boundary definition is considered necessary. The amendment defines Lake Murvaul as all impounded waters of Murvaul Bayou Creek upstream from the Lake Murvaul dam and Murvaul Bayou Creek downstream from the dam to Farm to Market Road 1970 bridge.

The change to §65.72, concerning Fish, consists of several actions that affect both fresh and salt-water regulations, as follow.

Current harvest regulations for largemouth bass on San Augustine City Lake consist of an 18-inch minimum length limit and a five fish daily bag limit (in place since 1990). The amendment implements a 14-18 inch slot length limit, and the five-fish daily bag is retained. Changing the length limit to a 14-18 inch slot should enhance harvest opportunities that, for the most part, currently do not exist. The bass population structure is dominated by fish that are smaller than 14 inches in length. Local anglers have expressed a desire to harvest these small bass. This should be beneficial to the population as intraspecific competition is decreased, which might lead to an increase in the bass growth rates.

A new reservoir in Travis County, Lake Pflugerville, is scheduled to open to angling in 2005. The amendment implements an 18-inch minimum length limit and five- fish daily bag for largemouth bass, and angling methods are restricted to pole and line angling only. Protecting largemouth bass to 18 inches on this small impoundment should protect 14-18 inch bass from over harvest and prevent a decrease in the quality of the fishery when the park is opened to the public. Restricting gear to pole and line only will increase angler opportunity for channel catfish by preventing possible over harvest with other fishing methods such as trotlines or juglines.

Current harvest regulations for community fishing lakes (CFLs-impoundments of less than 75 acres and all impoundments regardless of size totally within a state park) consist of a 12-inch minimum length limit on channel and blue catfish with a five-fish daily bag limit (the statewide standard regulation is 25 fish). The amendment eliminates the length limit for catfish and retains the five-fish daily bag limit. The management goal for small-lake fisheries such as CFLs is to provide quality angling opportunities for anglers who cannot or choose not to go to the many large reservoirs located around Texas. Removing the length limit for catfish will help promote angling to novice or infrequent anglers who are unfamiliar with harvest regulations.

The current harvest regulations for white bass and white/striped bass hybrids on Lake O'the Pines (Camp, Marion, Morris, and Upshur counties) and Pat Mayse Reservoir (Lamar County) consist of a 10-inch minimum length and 25 daily bag limit (both species combined), of which only five may be 18 inches or longer. The amendment implements the statewide standard regulations for both species (10-inch minimum length limit and 25-fish daily bag limit for white bass and an 18-inch minimum length limit and five-fish daily bag for white/striped bass hybrids). The amendment will have no effect on the population or fisheries of either species. Angling pressure for hybrids in both reservoirs was not sufficient to impact the population structure of hybrid striped bass. Abundance of hybrid striped bass has declined in these populations due to the absence of stocking, and hybrids no longer constitute a viable fishery in either reservoir. The change will also make the fishing regulations for Pat Mayse and Lake O'the Pines reservoirs consistent with those of other reservoirs in the area.

The amendment to §65.72 also allows the use of minnow traps in salt water. The department has determined that the use of minnow traps in salt water, under the same restrictions governing the use of minnow traps in freshwater, will not adversely affect any populations of marine organisms, primarily due to the small size and relative inefficiency of such devices, especially when restricted to nongame species only. The amendment also requires perch traps to be equipped with degradable panels. Research has shown that abandoned or lost traps can continue to function for years, leading to unnecessary lost and waste of marine organisms. By requiring that each perch trap be equipped with a degradable panel, the department hopes to reduce the potential of the trap to continue to function in the event it is lost or abandoned.

The amendment to §65.78, concerning Crabs and Ghost Shrimp, allows the use of certain folding panel-type traps to take crabs. Current gear restrictions do not address the use of folding panel traps, which are similar in effect and efficiency to hoop-type traps that have been designated as lawful devices. To prevent angler confusion, the department proposes to allow the use of folding panel traps, provided the maximum volume of the trap does not exceed that prescribed for the hoop-type traps.

The amendment to §65.82, concerning Other Aquatic Life, allows the take by hand of aquatic life the take of which is not specifically addressed by the other provisions of the subchapter, except for threatened or endangered species. The action is taken in order to allow persons to take by hand such organisms as they may encounter, and the department has determined that

such take will not result in depletion or waste because of the limited success of hand take and the overall impact that hand take would have on marine life.

The amendment to §65.3 will function by defining 'folding panel trap' for purposes of legal differentiation from other devices.

The amendment to §65.30 will function by allowing antelope permits to be used anywhere within the herd unit for which it was issued.

The amendment to §65.42 will function by standardizing the Youth-Only seasons to reduce confusion and increase participation and by implementing four 'doe days' in Brazos, Cherokee, Gregg, Grimes, Houston, Madison, Rusk, and Robertson counties to reduce the impact of the deer herd upon the habitat, improve the sex ratio, and increase hunter opportunity.

The amendment to §65.60 will function by establishing an opening date and season length for the take of pheasant in Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties.

The amendment to §65.64 will function by creating additional hunter opportunity through the implementation of a fall season for Rio Grande turkey in Denton and Johnson counties and a spring season for Eastern turkey in Hardin and Liberty counties, by making the spring season for Eastern turkey effective for the entire county in Montgomery and Tyler counties, and by extending the spring season for Eastern turkey to run from April 1 through April 30 of each year.

The amendment to §65.71 will function by adjusting reservoir boundaries for Lake O'the Pines (Camp, Marion, Morris, and Upshur counties) and Pat Mayse Reservoir (Lamar County) to eliminate enforcement anomalies caused by differential bag limits.

The amendment to §65.72 will function by altering harvest regulations for largemouth bass on San Augustine City Lake to enhance harvest opportunities that; by implementing gear restrictions and length and bag limits on Lake Pflugerville (Travis County) to increase angler opportunity for channel catfish and protect largemouth bass; by eliminating the length limit for catfish on community fishing lakes to provide additional angling opportunity; by implementing the statewide standard regulations for white bass and white/striped bass hybrids) on Lake O'the Pines (Camp, Marion, Morris, and Upshur counties) and Pat Mayse Reservoir (Lamar County) to be consistent with those of other reservoirs in the area; by requiring degradeable panels to be installed on perch traps to minimize mortalities from abandoned or lost traps; and by allowing minnow traps to be used in salt water to standardize regulations governing similar types of gear.

The amendment to §65.78 will function by allowing the use of certain folding panel-type traps to take crabs in order to standardize regulations governing similar types of gear.

The amendment to §65.82 will function by allowing the hand-take of certain aquatic life in order to eliminate a regulatory anomaly.

The department received two comments opposing the change to antelope regulations to clarify that a permit may be used anywhere within the herd unit for which it was issued. Specific comments and the department's response are noted as follows.

COMMENT: Antelope permits should be public domain (the commenter did not elaborate).

RESPONSE: The department is unable to infer the exact intent of the comment, but responds that issuing permits to the landowner or landowner's agent is the most efficient and reliable method of distributing permits. The alternative is to issue permits to individual hunters (which would necessitate some form of lottery, since demand for permits is greater than supply) and let that person locate a landowner willing to allow the hunt. The department feels that such a system would be more complicated and less effective than the current method. No changes were made as a result of the comments. The department received 81 comments in support of adoption of the proposed amendment.

The department received 137 comments opposing the implementation of four 'doe days' in Brazos, Cherokee, Gregg, Grimes, Houston, Madison, Rusk, and Robertson counties. Of the 137 comments received, 128 specifically opposed the inclusion of Grimes County in the proposal. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposed adoption of the proposal with respect to Grimes County on the basis that a previous rule action allowing the take of does without a permit had resulted in population reduction where it was not needed and no population reduction where it was needed.

RESPONSE: The department disagrees with the comment. The only hunting seasons in Grimes County during which does could be taken without a permit occurred in 1988 and 1989. Those seasons allowed either-sex hunting for the entire general season and the population in fact declined. With respect to the assertion that deer were harvested where no harvest was necessary and vice versa, the department responds that harvest data was collected by means of hunter surveys that record only the county of take, so it is impossible to ascertain the specific area of the county where deer were harvested. Thus, it is impossible to state categorically that the assertion is true or false. The department further responds that the rule as adopted is based on biological survey data and harvest survey data collected in Grimes County, as well as data from other counties in the ecoregion that recently have been transitioned from no 'doe days' to four 'doe days.' In analyzing the data, the department concluded that implementation of four 'doe days' in Grimes County (as well as in the other seven counties affected by the rule 1) will offer landowners and land managers a tool to increase habitat quality on specific tracts of land; 2) will provide a method to landowners and land managers to manage sex ratios more effectively, and 3) will likely not result in a harvest increase detrimental to the overall health of the deer herd. No changes were made as a result of the comments.

COMMENT: One commenter opposing adoption stated that the deer population in Houston County did not need additional harvest.

RESPONSE: The department disagrees with the comment and responds that the sex ratio in the eight-county area is greatly skewed towards the doe segment of the deer herd and has remained above 4.9 does per buck for the past eight years (stabilized at around 5.6 does per buck for the last three years). Fawn production has declined over the past eight years, and the values remain very low. The overall trend during the past eight years indicates a slightly increasing density, with a dramatic increase over the past three years. According to hunter harvest surveys for the 2002-2003 hunting season, hunters killed only 1.5 does

per 1,000 acres of deer range in the eight counties. Increased doe harvest during the general season would help reduce the impact of the deer herd upon the habitat, improve the sex ratio, improve fawning success, and shorten the breeding season. The improved habitat resulting from this change should improve herd health by improving the quantity, quality, and diversity of food resources. No changes were made as a result of the comment. The department received 136 comments supporting adoption of the proposed amendment.

The department received 13 comments opposing the adoption of the proposal to simplify the Youth-Only deer seasons. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposed adoption on the basis the rules are too confusing.

RESPONSE: The department agrees with the commenter, but responds that the intent of the rulemaking is to simplify the provisions governing youth-only seasons. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption by stating that buck harvest by youth should not be allowed in counties with late antlerless and spike-buck seasons, because quality bucks should be left in the population and properties benefit from the harvest of antlerless and spike-buck deer.

RESPONSE: While not disagreeing that additional harvest of antlerless and spike-buck deer can be beneficial in many cases, the department responds that the overall impact of harvest during the late youth-only season is expected to be minimal, and notes that the decision of which deer to harvest is up to the landowner. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption by stating that the inclusion of buck deer in the late youth-only season would allow unscrupulous adults to take bucks after the general season was closed to everyone else.

RESPONSE: The department disagrees that the adopted rule will encourage or lead to violations. Many regulations can be and are violated on purpose by unscrupulous people, and the rule as adopted is not believed to offer an advantage to such people. No changes were made as a result of the comment.

COMMENT: Two commenters opposed adoption and stated that there should be no youth seasons at all.

RESPONSE: The department disagrees with the comment and responds that the youth season is intended to offer youth the opportunity to participate in a special opportunity that fosters the hunting tradition and encourages adults to mentor youth in hunting. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption on the basis of opposition to the late youth-only season, stating that the does are already bred.

RESPONSE: The department disagrees with the comment and responds that the decision to allow additional harvest during the late youth-only season is up to the individual landowner/land manager, and that the overall impact of harvest during the youth seasons is negligible. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption on the basis that youth seasons should be restricted to antlerless deer.

RESPONSE: The department disagrees with the comment and responds that the overall impact of harvest during the youth seasons is negligible. No changes were made as a result of the comment.

COMMENT: One commenter opposed adoption by stating bucks are already stressed and difficult to locate in the late season and that it would be better to allow youth to take antlerless without a permit.

RESPONSE: The department disagrees with the comment and responds that the intent of the rulemaking is to simplify the current rules. Since the overall impact of harvest during the youth seasons is negligible, the addition of bucks to the bag composition simply offers more opportunity. The department also notes that the rule as adopted allows youth to take antlerless deer without a permit in all counties except those where antlerless deer may not be hunted at any time during the general season except by permit.

COMMENT: One commenter opposed adoption by stating that youth should be allowed to take antlerless deer without a permit in counties where antlerless deer may not be hunted at any time during the general season except by permit.

RESPONSE: The department disagrees with the comment and responds that the counties in question are characterized by high hunting pressure and fragmented habitat, which necessitates a conservative doe harvest in order to maximize reproductive potential. No changes were made as a result of the comment. The department received 112 comments supporting adoption of the proposed amendment.

The department received eight comments opposing adoption of the proposal to open a fall season for Rio Grande turkey in Denton and Johnson counties. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that the fall season should be eliminated, the spring season should be lengthened by two weeks placed at the beginning of the current season, and a 6-inch minimum beard length should be established, with an exemption for a youth's first bird of the year.

RESPONSE: The department disagrees with the comment and responds, respectively, that: there is currently no fall season in either county; starting the season earlier in the spring would interfere with reproductive potential, since breeding chronologies indicate that the majority of hens will not have been bred by that time; and that minimum beard-length restrictions are unnecessary within the current season structure and make it difficult for hunters to determine whether or not birds are legal. No changes were made as a result of the comment.

COMMENT: Four commenters opposing the adoption stated that the bag limits were too high.

RESPONSE: The department disagrees with the comment and responds that harvest and population data from surrounding counties with similar habitat and hunting pressure indicate that the population can withstand the bag limit as adopted. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption stated that the turkeys should be allowed to continue to grow.

RESPONSE: The department disagrees with the comment and responds that harvest and population data from surrounding counties with similar habitat and hunting pressure indicate that the population can sustain an open season.

COMMENT: One commenter opposing adoption stated that the counties in question have large urban areas and that the decision should be based on turkey populations instead of the fact that the habitat is similar to surrounding counties.

RESPONSE: The department responds that constraints on manpower and budget make it impossible to do population surveys in every area of the state, and that in executing the commission policy to provide maximum hunting opportunity possible, it is necessary in some cases to rely on data extrapolation from areas with similar habitat types and hunting pressure. The department also notes that the only suitable habitat in the counties in question are not near major population centers and are located in areas characterized by relatively large tracts of land. No changes were made as a result of the comment. The department received 92 comments supporting adoption of the proposed amendment.

The department received six comments opposing adoption of some or all of the components of the proposed amendment to open a spring season for Eastern turkey in Hardin and Liberty counties, make the open spring season for Eastern turkey effective for the entire county in Montgomery and Tyler counties (each of which under current regulations enjoys a spring season for Eastern turkey in only a portion of the county), and extends the spring season for Eastern turkey to run from April 1 through April 30 of each year in all counties with a spring season for Eastern turkey. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that the season was long enough and did not need to be lengthened.

RESPONSE: The department disagrees with the comment and responds that the season structure adopted was selected because data indicate that all of the breeding has occurred prior to the season opener and gobblers are entering a second peak in gobbling activity, coinciding with a decrease in hen availability. The trend in harvest occurrence from the check station data from 1997-2003 indicates that 21% of the harvest occurs opening day and 67% occurs within the first week. Since the chronology of spring green-up in East Texas varies greatly from north to south and the season is only 14 days long, it is probable that hunter satisfaction and success is impacted by the timing of the season. Based on these data, the season length expansion is not expected to exert a negative effect on the population, but will significantly increase hunter opportunity. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption stated that turkey populations in Tyler County are not large enough to withstand hunting pressure and three commenters opposing adoption stated that the same was true for Hardin County.

RESPONSE: The department disagrees with the comments and responds that the spring season in Tyler County (north of U.S. Hwy. 190) was opened during the 2000 season. Tyler County was last stocked in 1997. Therefore, continued closed-season protection is unnecessary and opening the southern half of Tyler County would expand recreational opportunity and simplify regulations. Hardin County was stocked with Eastern turkey at three sites along the Big Thicket Corridor. One site was stocked in 1994 and two sites were stocked in 2001. The original stocking was in a remote area and Hardin County has few cooperators for the annual statewide brood survey, so little data exists regarding the success of this site. However, the remaining two sites, approximately 30 miles from the original release site, reported observing scattered individuals prior to release. Post-release, groups of turkeys (5-10 birds, including juveniles) have been observed on a regular basis during the fall of 2001 and 2002. It is therefore evident that an established population exists along the Big Thicket Corridor. The Big Thicket Corridor population will have been protected from harvest from 4-12 breeding seasons prior to the opening of the proposed season and further protection from harvest is no longer necessary. Harvest regulations currently governing Eastern turkey hunting in East Texas are the most conservative in the nation. These regulations allow limited hunting opportunity as soon as populations are established and are designed not to interfere with expansion. No changes were made as a result of the comment. The department received 99 comments supporting adoption of the proposed amendment.

The department received four comments opposing adoption of the proposal to implement a 14-18 inch slot length limit for largemouth bass on San Augustine City Lake. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that the department's motivation was to create larger fish for tournament anglers.

RESPONSE: The department disagrees with the comment and responds that implementation of the slot limit is intended to enhance harvest opportunities and is in response to requests from local anglers to harvest small bass. No changes were made as a result of the comment. The department received 37 comments supporting adoption of the proposed rule.

The department received one comment opposing adoption of the proposal to implement an 18-inch minimum length limit and five-fish daily bag for largemouth bass and restrict angling methods to pole-and-line only on Lake Pflugerville. Specific comments and the department's response are noted as follows.

COMMENT: The commenter stated that the department's motivation was to create larger fish for tournament anglers.

RESPONSE: The department disagrees with the comment and responds that the intent of the regulation is to protect 14-18 inch bass from over harvest and prevent a decrease in the quality of the fishery when the park is opened to the public. The pole-and-line only restriction will increase angler opportunity for channel catfish by preventing possible over harvest with other fishing methods such as trotlines or juglines, and is not intended to have any other effect. No changes were made as a result of the comment. The department received 40 comments supporting adoption of the proposed amendment.

The department received 13 comments opposing adoption of the proposed amendment to eliminate the length limit for catfish on community fishing lakes (CFLs-impoundments of less than 75 acres and all impoundments regardless of size totally within a state park). Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that regulations shouldn't be changed just to make it easier for novices and people unfamiliar with regulations.

RESPONSE: The department agrees with the comment but responds that CFLs represent a special case. Typically, such lakes do not attract highly experienced and adventurous anglers and are more often than not located quite near or within urban areas, places where incidental fishing activity is highest. Since the department wishes to encourage people to experience and enjoy angling, CFLs are a unique resource for introducing novices and

the curious to the angling experience. No changes were made as a result of the comment.

COMMENT: Two commenters opposing adoption stated that the statewide standard bag limit (25 fish) should be implemented; one of the commenters stated that the proposed bag limit would lead to waste because at five fish, people would discard fish instead of eating them.

RESPONSE: The department disagrees with the comments and responds that the 25-fish bag limit is biologically inappropriate on such small impoundments that experience high angling pressure. The department also responds that fish can be refrigerated or frozen, so if the number caught in a given day is not sufficient, additional angling can lead to a sufficient number of fish. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption stated that the proposed bag limit was too high and that catfish should be protected until they were large enough to provide a family meal.

RESPONSE: The department disagrees with the comment in the context of bag limits on CFLs and responds that CFLs are a good resource for introducing urban dwellers and the curious to recreational angling and are relatively unproductive with respect to sustainable food production in comparison to larger reservoirs. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption stated that catfish populations maintain their numbers with any size limit and that small lake fisheries offer better fishing for youngsters.

RESPONSE: The department agrees with the comment that small lake fisheries are great places for kids, but disagrees that catfish populations remain stable under any size restrictions, primarily because populations are impacted by many other variables, such as angling pressure, species composition, interspecies competition, and water levels, to name a few. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption stated that the proposal would confuse people.

RESPONSE: The department disagrees with the comment and responds that experienced anglers should have no trouble understanding the regulation, which is intended and designed to prevent confusion among newcomers to the angling experience.

COMMENT: One commenter opposing adoption stated that infrequent and novice anglers are the most susceptible to breaking fishing laws, and that the regulation would probably cause them to retain small fish from non-CFL waters, too.

RESPONSE: The department disagrees with the comment and responds that it is reasonable to assume that as novice and infrequent anglers become more proficient and knowledgeable about angling, they likely also will come to understand that bag and length limits can vary from lake to lake. No changes were made as a result of the comment. The department received 36 comments supporting adoption of the proposed rule.

The department received one comment opposing adoption of the proposed amendment to implement the statewide standard regulations for white bass and white/striped bass hybrids (10-inch minimum length limit and 25-fish daily bag limit for white bass and an 18-inch minimum length limit and five-fish daily bag for white/striped bass hybrids) on Lake Pat Mayse and Lake O'the Pines. Specific comments and the department's response are noted as follows.

COMMENT: The commenter stated that it has become increasingly difficult to distinguish between white bass and white/striped hybrids, and that the aggregate bag limit should be retained.

RESPONSE: The department is sympathetic to the comment and responds that since hybrids no longer constitute a viable fishery in either reservoir, the identification problem will soon be moot. No changes were made as a result of the comment. The department received 35 comments supporting adoption of the proposed amendment.

The department received no comments opposing adoption of the amendment to redefine the reservoir boundaries of Lake Murvaul (Panola County). The department received 32 comments supporting adoption of the proposed amendment.

The department received three comments opposing adoption of the proposal to require perch traps to be equipped with degradable panels. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that he didn't know of many anglers who lose or abandon their perch traps and that bait inside perch traps is likely to degrade/be eaten before the panels actually degrade, thus making the need for a degradable panel a moot point.

RESPONSE: The department disagrees with the comment and responds that lost and abandoned traps of all kinds are a resource problem, and that research has shown that abandoned or lost traps can continue to function for years, leading to unnecessary lost and waste of marine organisms. By requiring that each perch trap be equipped with a degradable panel, the department hopes to reduce the potential of the trap to continue to function in the event it is lost or abandoned. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption asked if there was research to support the proposal and if a biohazard is created by the occasional loss of a recreational trap.

RESPONSE: The department responds that research conducted in Louisiana conclusively proves that abandoned and lost crab traps have an impact by creating needless mortality. Thus, any trap that is abandoned or lost will continue to function, and all resulting mortalities are needless. Additionally, the number of traps and the organisms found in traps during the department's crab trap cleanup efforts are evidence that traps continue to function after being lost or abandoned. No changes were made as a result of the comment. The department received 42 comments supporting adoption of the proposed amendment.

The department received five comments opposing adoption of the amendment to allow the use of minnow traps in salt water. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that minnow traps should not be lawful for use by commercial fishermen.

RESPONSE: The department disagrees with the comment and responds that at least initially, the department is comfortable with allowing anyone to use minnow traps in salt water; however, if the department determines that commercial use is leading to increased numbers of lost and abandoned traps, the department

will certainly consider measures to reduce loss and abandonment. The department also notes that commercial finfish fishermen are regulated by the agency under a different set of regulations, and that access to nongame fish for the purpose of sale is limited. No changes were made as a result of the comment.

COMMENT: One commenter opposing adoption stated that the regulation as currently written did not provide for the seizure of lost or abandoned traps, and recommended the regulation require that a gear tag be attached to each trap.

RESPONSE: The department agrees with the comment and responds that a gear tag requirement has been proposed in a separate rulemaking that appears in the April 23, 2004, issue of the Texas Register (29 TexReg 3939). The department received 38 comments supporting adoption of the proposed amendment.

The department received six comments opposing adoption of the proposed amendment to legalize folding panel traps. Specific comments and the department's response are noted as follows.

COMMENT: One commenter opposing adoption stated that are too few crabs as it is, and allowing additional means of take would reduce populations even further.

RESPONSE: The department disagrees with the comment and responds that the intent of the rule is to standardize regulations for similar types of taking devices. Since the rule allows the use of folding panel traps only if the trap conforms to existing size requirements for hoop traps, and since these types of traps are similarly efficient, the department sees no reason for folding panel traps to be prohibited. No changes were made as a result of the comment.

COMMENT: Two commenters opposing adoption stated that there are too many abandoned crab traps as it is, and additional means of take should not be allowed.

RESPONSE: The department agrees that there are too many abandoned crab traps, but disagrees that inclusion of the folding panel trap as legal gear will lead to additional marine mortality, primarily because the design of folding traps is such that they require the angler to be physically present and manipulating the device in order to be fished. No changes were made as a result of the comment. The department received 31 comments supporting adoption of the proposed amendment.

The Texas Wildlife Association and Sportsmen Conservationists of Texas supported adoption of the proposed amendments.

The Grimes County Wildlife Committee opposed adoption of the proposed amendment to add four 'doe days' in Grimes County.

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.3, §65.30

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life.

This agency 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. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.60, 65.64

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life.

§65.42. Deer.

(a) No person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer (MLD) Permits);

(2) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(3) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(5) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows. No person may take more than two bucks, in the aggregate, from the counties listed in paragraphs (1), (2), and (6) of this subsection.

(1) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLD permits have been issued for the tract of land.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton,

Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLD antlerless permits have been issued for the tract of land.

(3) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLD antlerless permits have been issued for the tract of land.

(4) No person may take or attempt to take more than one buck deer per license year from the counties (or portions of counties), in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits). For counties appearing both in this paragraph and paragraph (5) of this subsection, the bag limit is one buck deer, irrespective of the portion of the county in which take or attempted take occurs.

(A) The following counties are in the West 1-buck Zone. In Archer, Baylor, Bosque, Callahan, Clay, Comanche, Coryell, Eastland, Erath, Hamilton, Hood, Jack, Lampasas, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wise, and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) No permit is required to hunt antlerless deer unless MLD antlerless permits have been issued for the tract of land.

(B) The following counties are in the West 1-Buck Zone. In Armstrong, Borden, Briscoe, Carson, Crosby, Fisher, Floyd, Foard, Hall, Hansford, Hardeman, Hutchinson, Jones, Knox, Ochiltree, Randall, Stonewall, Swisher, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first 16 days, antlerless deer may be taken only by MLD antlerless permits.

(C) The following counties are in the West 1-Buck Zone. In Childress, Collingsworth, Cottle, Dickens, Donley, Garza, Gray, Haskell, Hemphill, Kent, King, Lipscomb, Motley, Roberts, Scurry, and Wheeler counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD antlerless permits have been issued for the tract of land. If MLD antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLD antlerless permit.

(D) The following counties are in the West 1-Buck Zone. In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(E) The following counties are in the West 1-Buck Zone. In Crane, Ector, Loving, Midland, Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), and Ward counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(5) No person may take or attempt to take more than one buck deer per license year from the counties (or portions of counties), in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits). For counties appearing both in this paragraph and paragraph (4) of this subsection, the bag limit is one buck deer, irrespective of the portion of the county in which take or attempted take occurs.

(A) The following counties are in the East 1-Buck Zone. In Bell (west of IH 35), Grayson, McLennan, and Williamson (west of IH 35) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) No permit is required to hunt antlerless deer unless MLD antlerless permits have been issued for the tract of land.

(iv) Special regulation. In Grayson County:

(I) lawful means are restricted to lawful archery equipment and crossbows only, including MLD properties; and

(II) antlerless deer shall be taken by MLD permit only, except on the Hagerman National Wildlife Refuge.

(B) The following counties are in the East 1-Buck Zone. In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits.

(C) The following counties are in the East 1-Buck Zone. In Cooke, Denton, Hill, Johnson, and Tarrant counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(D) The following counties are in the East 1-Buck Zone. In Anderson, Bowie, Burleson, Camp, Delta, Fannin, Franklin, Freestone, Henderson, Hopkins, Hunt, Lamar, Leon, Limestone, Morris, Navarro, Rains, Red River, Smith, Titus, Upshur, Van Zandt, and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest lands, the take of antlerless deer shall be by permit only.

(E) The following counties are in the East 1-Buck Zone. In Brazos, Cass, Cherokee, Gregg, Grimes, Harrison, Houston, Madison, Marion, Nacogdoches, Panola, Robertson, Rusk, Sabine, San Augustine and Shelby counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD, LAMPS, or Wildlife Management Area permits have been issued for the tract of land. On National Forest, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits.

(F) The following counties are in the East 1-Buck Zone. In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), DeWitt, Ellis, Falls, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Milam, Travis (east of Interstate 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(iv) Special regulation. Except on properties for which MLD level II or III permits have been issued, no person may take a buck deer in Austin, Colorado, Lavaca, Fayette, Lee, and Washington counties unless the deer meets one of the following criteria:

(I) one unbranched antler;

(II) one antler with at least six antler points; or

(III) a distance between the main antler beams of 13 inches or greater.

(6) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving, antlerless deer may be taken without antlerless deer permits unless MLD, LAMPS, or Wildlife Management Area permits have been issued for the tract of land. On National Forest, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If MLD or

LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(7) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(8) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLD permits have been issued for the property.

(9) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that portion located both south of U.S. Highway 67 and east of state highway 349) counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLD permits or Wildlife Management Area permits have been issued for the property.

(10) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: the third weekend (Saturday and Sunday) in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1)-(6) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (5)(E) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph, except in Grayson County, where legal means are restricted to crossbow and lawful archery equipment.

(F) A licensed hunter 16 years of age or younger may hunt any deer on any property (including MLD properties) during the seasons established by subparagraphs (A) and (B) of this paragraph.

(G) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

This agency 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. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §§65.71, 65.72, 65.78, 65.82

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Commission adopts the repeal of §65.29, concerning Bonus Tags, and amendments to §§65.7, concerning Harvest Log; 65.10, concerning Possession of Wildlife Resources; 65.26, concerning Managed Lands Deer (MLD) Permits; 65.28, concerning Landowner Assisted Management Permit System (LAMPS) Permits, and 65.38, concerning Game Animals - Open Seasons and Bag Limits. Section 65.26 is adopted with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2252). The repeal of §65.29 and the amendments to §§65.7, 65.10, 65.28, and 65.38 are adopted without changes and will not be republished.

The change to §65.26 makes nonsubstantive grammatical alterations, changing the term 'MLD permit' to 'MLD Permit' throughout the rule; replacing the word 'applies' in subsection (b)(1) with the word 'apply,' so that subject and verb agree in number; and replacing the word 'does' with the word 'do' in subsection (b)(2)(B) and (b)(3)(A) for the same reason.

Under current regulations, a hunter upon killing a deer is required to fill out the harvest log on the back of the hunting license and attach a properly executed tag from his or her hunting license to the deer. The information on the harvest log and the license tag attest to the identity of the person who killed the deer, the date the deer was killed, and the location where the deer was killed. This information is sampled by department biologists to develop and maintain harvest data to be used in determining appropriate regulatory and management strategies, and by law enforcement personnel in enforcing harvest regulations. Also under current rules, and for the same uses as previously noted, if the a deer is taken under a LAMPS permit, MLD Permit, department special permit, or Wildlife Management Area (WMA) special antlerless permit, the hunter is also required to attach a completed permit to the carcass. The department's current rules thus require deer in certain situations to be tagged twice with identical information. The proposed rule changes are in part undertaken to eliminate this so-called 'double tagging' requirement. In addition, the proposed rules would eliminate personal bag limits for deer taken by LAMPS and MLD Permits, and would extend the period of validity for MLD Permits to make the ending date of validity concurrent with that of Antlerless and Spike-buck Deer Control Permits.

The repeal of §65.29, concerning Bonus Tags, is necessary because the proposed amendment to §65.26, concerning Managed Lands Deer (MLD) permits, eliminates personal bag limits for deer taken by MLD Permit, which makes the bonus tag superfluous. The bonus tag was created primarily as a mechanism for land managers participating in department permit programs to achieve harvest goals by allowing individual hunters to exceed the statewide bag limit through the use of bonus tags in conjunction with LAMPS and MLD Permits. The rationale for creating this mechanism was that since permits were issued on the basis of a specific harvest quota established for each property (i.e., a controlled harvest), the number of deer taken by individual hunters was immaterial. A secondary purpose for the creation of bonus tags was to allow hunters selected for participation in special hunts on department lands to avoid having to use license tags, particularly in counties with a one-buck bag limit, where the

use of a license tag on a department hunt would preclude that hunter from taking a buck in any other one-buck county.

The amendment to §65.7, concerning Harvest Log, removes the requirement that the harvest log be filled out for deer killed under a LAMPS permit, MLD Permit, department special permit, or WMA special antlerless permit. The proposed amendment also removes a reference to bonus tags, which are being eliminated. The amendment is necessary because the information entered on a harvest log is identical to the information contained on a department-issued permit, and the department sees no reason to require a hunter to complete and attach two separate documents containing the same information.

The amendment to §65.10, concerning Possession of Wildlife Resources, exempts a person who takes a deer by LAMPS permit, MLD Permit, department special permit, or WMA special antlerless permit from the tagging requirements of Parks and Wildlife Code, §42.018, which requires a person to attach a tag from their hunting license to all deer taken by that person. Under Parks and Wildlife Code, §42.0177, the commission is authorized to modify or eliminate the tagging requirements of §42.018. The intent of this rulemaking is to eliminate requirements that cause hunters to attach identical information in multiple forms to a single deer. The proposed amendment also clarifies that a bird or animal taken under circumstances that require the bird or animal to be tagged must be tagged immediately upon take. The amendment is necessary to establish with certainty when a person's legal obligations begin with respect to tagging requirements.

The amendment to §65.26, concerning Managed Lands Deer (MLD) Permits, eliminates personal bag limits for antlerless deer on Level I MLDP properties and personal bag limits for both antlerless and buck deer on Level II and Level III MLDP properties; makes Level II buck permits valid for the take of fork-antlered bucks during the early youth-only season; eliminates references to stamp requirements for deer taken during the muzzleloader-only open season; removes references to bonus tags and the statutory requirement that a license tag be attached to all deer taken by MLD Permit; and stipulates that deer not immediately tagged by a MLD Permit upon take are to be taken by the most direct route to a location where a MLD Permit can be attached to the deer. The removal of personal bag limits is being implemented because MLD Permits are issued on the basis of a specific harvest articulated in a wildlife management plan, which is a controlled harvest agreed upon by the landowner. Proper management of deer populations is essential to maintaining the habitat quality, upon which many species of wildlife depend for sustenance. By its very nature, hunter success is unpredictable, and the department desires to provide a mechanism to land managers that will provide them a greater probability of achieving the harvest quota specified in the wildlife management plan. Thus, if the harvest on a given property is in danger of not fulfilling the goal stipulated by the wildlife management plan, the landowner has the option of giving more permits to the remaining hunters, or themselves using the permits to achieve the harvest quota. The provision for the take of fork-antlered bucks by youth during the youth-only open season on Level II MLDP properties is part of the department's efforts to simplify and make consistent the regulations governing youth-only hunts. Under current rule, Level II MLD Permits are valid only for spike-antlered bucks prior to the general open season. Since the early youth-only season takes places one week prior to the opening of the general season, and since fork-antlered can be taken by youth during that season on non-MLDP properties, Level I MLDP properties, and Level III MLDP properties, the department sees no reason to exclude youth on Level II MLDP properties from the same opportunity. The removal of references to the stamp requirement for hunting during the muzzleloader-only season is necessary because the legislature eliminated the muzzleloader stamp during the most recent legislative session. The elimination of the provision requiring deer taken on MLDP properties to be tagged with a license tag or bonus tag is necessary because the intent of this rulemaking is to eliminate requirements that cause hunters to have to attach the same information in multiple forms to a single deer. Since deer on MLDP properties must be tagged with an MLD Permit, the license tag is superfluous. The bonus tag is being eliminated for reasons set forth in elsewhere in this rulemaking in the discussion of the proposed repeal of §65.29. The stipulation that deer taken by MLD Permit (but not immediately tagged by MLD Permit) are to be taken by the most direct route to a location where a MLD Permit can be attached to the deer is necessary for clarification purposes. The current rule acknowledges that landowners face logistical problems related to permit allotment and use. Hunters are not always successful, and to require each hunter to have a permit on their person in the field means that unused permits would have to be returned to the landowner and reissued to subsequent hunters, which is inefficient, particularly on larger properties that might entertain dozens of hunters in a season. The department thus allows hunters to harvest a deer and then take it to a location on the property where the MLD Permit can then be attached to the carcass. The language requiring deer to be taken by the most direct route to a tagging station is intended to reduce potential enforcement problems that could arise when law enforcement personnel encounter hunters with untagged deer, since another element of this rulemaking eliminates the requirement that deer taken on MLDP properties be tagged with a license tag. The amendment also makes the period of validity for MLD Permits end on the same date as that for Antlerless and Spike-buck Deer Control permits. The department finds that it is inconsistent to have one permit period ending several days before another, and the potential for confusion among landowners, hunters, and law enforcement is eliminated by making the two periods end at the same time. Finally, the amendment would allow the department to deny permit issuance for a period of one year to a person who exceeds the harvest quota specified by the wildlife management plan. The amendment follows a recommendation from the department's White-tailed Deer Advisory Committee (WTDAC), which felt that one year was an appropriate period of time because it would be enough of a punishment to demonstrate the importance of harvest quotas, but not so severe as to discourage people from returning to the program.

The amendment to §65.28, concerning Landowner Assisted Management Permit System (LAMPS), eliminates personal bag limits for antlerless deer on LAMPS properties and removes references to both the bonus tag and the statutory requirement that a license tag be attached to all deer immediately upon take. LAMPS permits are valid only for antlerless deer. The removal of personal bag limits is being implemented because when LAMPS permits are issued there is no other lawful way for antlerless deer to be harvested on the receiving property (except during the archery-only season). In light of a finite antlerless harvest, the department wishes to provide land managers with a flexible and efficient method of removing antlerless deer in order to facilitate maximum permit utilization. The elimination of the provision requiring deer taken on LAMPS properties to be tagged with a license tag or bonus tag is necessary because the intent of this rulemaking is to eliminate

requirements that cause hunters to attach identical information in multiple forms to a single deer. Since antlerless deer on LAMPS properties must be tagged with a LAMPS permit, the license tag is superfluous. The bonus tag is being eliminated for reasons set forth elsewhere in this rulemaking in the discussion of the repeal of §65.29.

The amendment to §65.38, concerning Game Animals-Open Seasons and Bag Limits, adds language to allow bag limits to be exceeded. The amendment is necessary because other elements of this rulemaking allow persons under certain circumstances to exceed the statewide bag limit for white-tailed deer.

The repeal of §65.29 will function by eliminating Bonus Tags.

The amendment to §65.7 will function by eliminating a hunter's harvest log requirement for deer killed under a LAMPS permit, MLD Permit, department special permit, or WMA special antlerless permit.

The amendment to §65.10 will function by eliminating a hunter's tagging requirements for deer taken by LAMPS permit, MLD Permit, department special permit, or WMA special antlerless permit.

The amendment to §65.26 will function by eliminating personal bag limits for antlerless deer on Level I MLDP properties and personal bag limits for both antlerless and buck deer on Level II and Level III MLDP properties; by making buck permits on Level II properties valid for take during the early youth-only season; by eliminating stamp requirements for deer taken during the muzzleloader-only open season; by removing references to bonus tags and the statutory tagging requirements; and by stipulating that deer not immediately tagged by MLD Permit upon take are to be taken by the most direct route to a location where a MLD Permit can be attached to the deer.

The amendment to §65.28 will function by eliminating personal bag limits for antlerless deer on LAMPS properties and by removing references to both the bonus tag and statutory tagging requirements.

The amendment to §65.38 will function by explicitly stating that statewide and personal bag limits for deer may be exceeded under certain circumstances.

The department received one comment opposing adoption of the proposed amendments to eliminate 'double tagging' requirements; however, the commenter did not elaborate the reasons for opposition. The department disagrees and responds that there is no need for the department to require identical information on two different pieces of paper to be attached to harvested deer and believes that the amendments as adopted are beneficial to hunters. No changes were made as a result of the comment. The department received seven comments supporting adoption of the proposed amendment.

The department received three comments opposing adoption of the proposed amendment to extend the period of validity for Level II and Level III MLD Permits. One commenter stated that deer seasons are too long and should be shortened, preferably to open on the last Saturday in November and close on the third Sunday in December. The department disagrees with the comment and responds that the proposal altered the period of validity of tags used on specified properties under conditions mutually agreed to by the landowner and the department. If the commenter's intent was to recommend the suggested season structure for MLDP properties (rather than as a general open season), the department disagrees and responds that since an MLDP cooperator has agreed to harvest a specific number of deer (as reflected in the wildlife management plan) from a given property, there is no biological significance attached to the point in time or span of time when those animals are removed, provided the removal is consistent with the goals of the wildlife management plan. No changes were made as a result of the comments. The department received seven comments supporting adoption of the proposed amendment.

One commenter stated that all properties should be under the same season lengths and bag limits, and that department regulations unfairly favored landowners of 'officially' managed lands. The department disagrees with the comment and responds that although MLDP regulations offer extended harvest periods and enhanced bag limits, a cooperating landowner is obligated, by acceptance of MLD Permits, to a finite harvest quota and to the performance of specified habitat enhancements. The department also responds that the notion of 'officially' managed lands is inaccurate. The wildlife management plan required for MLD Permit issuance may be prepared by anyone. Although the WMP must be approved by the department, it is only logical that there be standards. The standards set forth in department rules are a result of a widespread collaborative effort involving advisory groups, landowners, and hunters, and were subject to public comment from any interested person. Thus, the department believes that the existing and amended rules governing Wildlife Management Plans and MLD Permits reflect a broad consensus as to what is appropriate. No changes were made as a result of the comment.

Texas Wildlife Association commented in favor of adoption of the proposed rules.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.7, 65.10, 65.26, 65.28

The amendments are adopted under the authority of Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; and Parks and Wildlife Code, §61.054, which authorizes the commission to establish the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; the means or method that may be used to hunt, take, or possess the game animals, game birds, or aquatic animal life; and the region, county, area, body of water, or portion of a county where the game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.26. Managed Lands Deer (MLD) Permits.

(a) MLD Permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan). In the case that a landowner is otherwise in fulfillment of the provisions of §65.25 of this title but does not have current population data, the department may conditionally authorize partial issuance of MLD Permits, not to exceed 30 per cent of the total MLD Permits to be issued for that property during the affected license year, with the balance of MLD Permits to be issued upon submission of the required population data.

(b) An applicant may request the issuance of any type of MLD Permit listed in this section.

(1) Level 1. Level 1 MLD Permits authorize only the take of antlerless white-tailed or antlerless mule deer. A Level 1 MLD Permit is valid during any open deer season in the county for which it

is issued and the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I apply. There is no bag limit for antlerless deer on properties for which Level I permits have been issued; however, the county and statewide bag limits for buck deer apply.

(2) Level 2.

(A) Level 2 MLD Permits authorize the take of buck or antlerless white-tailed deer as specified by the permit.

(i) A Level 2 antlerless permit is valid from the Saturday closest to September 30 through the last day in February on the property for which it is issued;

(ii) A Level 2 buck permit is valid:

(I) for spike bucks taken by any lawful means, for all bucks taken by means of lawful archery equipment, and for any buck taken by a hunter 16 years of age or younger during a youth-only open deer season: from the Saturday closest to September 30 through the last day in February on the property for which it is issued; and

(II) for any buck, irrespective of means: from the opening day of the general open deer season in the county for which it is issued through the last day in February on the property for which it is issued.

(B) On all tracts of land for which Level 2 MLD Permits have been issued there is no bag limit for buck or antlerless deer and the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I do not apply.

(C) By acceptance of Level 2 MLD Permits a landowner agrees to accomplish at least two habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 2 permits are accepted thereafter. A landowner who fails to accomplish at least two habitat management recommendations of the WMP within three years is not eligible for Level 2 permits the following year, but is eligible for Level 1 MLD Permits or may choose to cease accepting MLD Permits.

(3) Level 3. Level 3 MLD Permits authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 MLD Permit is valid from the Saturday nearest September 30 through the last day in February on the property for which it is issued. On all tracts of land for which Level 3 MLD Permits have been issued:

(A) there is no bag limit for buck or antlerless deer and the provisions of §65.42(b)(8) of this title, §65.42(b)(9) of this title, and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I do not apply.

(B) By acceptance of Level 3 MLD Permits a landowner agrees to accomplish at least four habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 3 permits are accepted thereafter. A landowner who fails to accomplish at least four habitat management recommendations of the WMP within three years is not eligible for Level 3 permits the following year, but may be eligible for other levels of MLD Permits or may choose to cease accepting MLD Permits.

(c) The number of MLD Permits distributed to a hunter shall be at the discretion of the landowner.

(d) A deer killed under the authority of a MLD Permit must be tagged with a MLD Permit immediately by the person who killed the deer or the person who killed the deer shall immediately take the carcass by the most direct route to a tagging station (location where permits are maintained on the permitted property) where an appropriate MLD Permit shall be attached.

(e) If a landowner in possession of MLD Permits does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLD Permits to the department by the Saturday closest to September 30.

(f) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

(g) The department reserves the right to deny issuance of MLD Permits:

(1) for one year for a property upon which the harvest quota specified by the WMP has been exceeded; and

(2) for three years for a property that otherwise is not in compliance with the WMP.

(h) Administratively complete applications received by the department before August 15 of each year shall be approved or denied by October 1 of the same year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §65.29

The repeal is adopted under the authority of Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; and parks and Wildlife Code, §61.054, which authorizes the commission to establish the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; the means or method that may be used to hunt, take, or possess the game animals, game birds, or aquatic animal life; and the region, county, area, body of water, or portion of a county where the game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.38

The amendment is adopted under the authority of Parks and Wildlife Code, §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; and parks and Wildlife Code, §61.054, which authorizes the commission to establish the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; the means or method that may be used to hunt, take, or possess the game animals, game birds, or aquatic animal life; and the region, county, area, body of water, or portion of a county where the game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.103

The Texas Parks and Wildlife Commission adopts an amendment to §65.103, concerning Trap, Transport, and Transplant Permit, with changes to the proposed text as published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2257). The change to §65.103 is that the proposed language in subsection (a)(1), concerning so-called 'inconsequential' releases, was not adopted. The current regulation allows for the 'inconsequential' release of deer without site inspections by department personnel, but stipulates that no further releases may take place once the accumulated releases on a given property reach a ratio of one deer to 200 acres. The commission decided not to adopt the proposed provisions, which would have allowed additional releases upon change of ownership or at four years following the previous release, as a result of public comment. The change also makes nonsubstantive grammatical alterations, changing the term 'MLD permit' to 'MLD Permits' throughout the rule.

In 1995, the Texas Legislature enacted the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, which authorized the Texas Parks and Wildlife Commission to issue permits for the trapping, transporting, and transplanting of game animals and game birds from the wild to allow adjustments in game populations for better wildlife management. Under rules adopted by the Texas Parks and Wildlife Commission since that time, the department has issued permits (popularly referred to as 'Triple T' permits) for that purpose. In general, the overarching policy of the commission has been to recognize habitat conservation and management as the cornerstones of good wildlife management. To that end, the rules adopted with respect to Triple T permits have been predicated on the exercise of sound habitat management while respecting both a landowner's desire to improve game populations on their property and the right of other landowners to expect that such activities result in no adverse impacts on either the areas adjoining those where game animals and game birds are trapped or the areas adjoining those where game animals or game birds are released.

Under the direction of the commission, the department convened the White-tailed Deer Advisory Committee (WTDAC) to investigate and make recommendations concerning all aspects of the department's regulatory activities concerning white-tailed deer, including those relating to the Triple T permit. The WTDAC's recommendations were the basis for the rulemaking.

The Managed Lands Deer (MLD) Permit system was created in 1996 as an incentive-driven program to encourage landowners and land managers to practice sound habitat management techniques. The program offers special harvest periods and enhanced bag limits to landowners who voluntarily place their property under a wildlife management plan, accept specific harvest quotas for deer, and agree to perform certain habitat management practices. Under the current rules, only those properties receiving Level III MLD Permits could qualify for releases without a site inspection, provided the properties were 1) in compliance with the requirements of the wildlife management plan, 2) the release(s) involved only antlerless deer, 3) the number of deer to be trapped did not exceed the number of unused MLD Permits for the trap site property (which would cause a population density lower than that specified by the wildlife management plan), 4) the harvest quota at the release site would not result in a population reduction greater than half of the recruitment below the total population specified by the wildlife management plan, and 5) the property in question had received Level III MLD Permits within the previous three years. Permit issuance without a site inspection under these criteria is based on the rationale that Level III cooperators are required under current MLDP rules to provide three years of population and two years of harvest data (in addition to the data required for initial permit issuance), enabling department biologists to have a good idea of the probable impact of both trapping and release on habitat. The WTDAC noted that although Level II MLDP properties do not have to meet the higher standard for population and harvest data required for Level III properties (for initial permit issuance), a Level II property after two years would have accumulated enough data to meet the Level III standard. Therefore, the WTDAC recommended that Level II properties with at least three years of population data and two years of harvest data be allowed to conduct releases without site inspections, provided the properties in question also meet all other criteria established for releases on Level III properties. The WTDAC also recommended a clarification of the current provision requiring a property to have received MLD Permits within the three years prior to a release without a

site inspection. The current rule was intended to complement another existing provision that creates a three-year 'window' for cooperators to accomplish required habitat management practices, which is an acknowledgement that circumstances beyond the control of the cooperator (natural disasters, unusual climatic conditions, etc.) sometimes make it impossible or impractical to accomplish required management practices in a given year. Thus, a cooperator is not held to a 'year-to-year' standard for accomplishing habitat management practices, but must do so within a three-year period in order to remain in the program. Confusion has arisen because the current wording can be construed to mean that a property may qualify for a release-without-inspection if MLD Permits have been issued at any time during the previous three years, even if the property in question is not currently in the MLDP program. The amendment is intended to make it clear that current participation in the MLDP program is required for approval of a release without a site inspection.

The WTDAC also recommended eliminating the provision prohibiting a population reduction of greater than 50% of recruitment below the total population specified for the property in the wildlife management plan. The current rule was intended to prevent wholesale removal and replacement of deer herds on properties, but it has been pointed out that this is sometimes necessary for genetic enhancement, and that in any event, it shouldn't matter because as long as the total population doesn't exceed that specified in the management plan, there would be no negative impacts on habitat quality.

Further, the WTDAC recommended that buck deer be allowed to be released via 'inconsequential' release and release-without-inspection (on Level II and Level III MLDP properties). The rationale for the recommendation is that the gender of released animals is unimportant with respect to habitat impact.

Finally, the WTDAC recommended that the antlers be removed from all buck deer released under a Triple T permit prior to transport from the trap site. The rationale for the recommendation is to prevent injuries to deer during transport and to prevent buck deer from being moved for purpose of being hunted immediately.

The rule will function by allowing Level II MLDP cooperators to release deer on their properties without a site inspection, provided they meet the data requirements for Level III permit issuance; by requiring an MLDP property to have received MLD Permits in the year of a prospective release-without-inspection; by allowing landowners to remove and replace as many deer as they wish; by allowing buck deer to be included in so-called 'inconsequential releases;' and by requiring the antlers to be removed from all buck deer transported under a Triple T permit.

The department received four comments opposing adoption of the provisions that would allow 'inconsequential' releases on properties where such releases have not occurred for at least four years, and on properties that have undergone a change in ownership. One of the commenters stated opposition to 'inconsequential' releases in any form, stating that such releases violate the department's stocking policy. The Parks and Wildlife Commission after deliberation did not adopt this aspect of the proposed amendment, and directed staff to continue working with all concerned parties to arrive at consensus concerning 'inconsequential' releases, including the question of consistency with the department's stocking policy. The department received two comments in favor of adoption of the proposed provision.

The department received three comments opposing adoption of the proposed provision to allow Level II MLD properties to receive deer without a site inspection. One commenter stated that the provision conflicted with the department's stocking policy. The department disagrees with the commenter and responds that authorization for this type of release is contingent on required harvest and population data, and is possible only so long as the number of deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in the department-approved wildlife management plan for the property. Additionally, it must be remembered that a site inspection is required when a property enters the MLD program. The department's stocking policy requires, among other things, that the department shall consider the impacts of any stocking on the existing biological ecosystem and that releases be made only to areas of suitable natural habitat capable of sustaining the animals. As a matter of policy, department biologists will not write or approve a wildlife management plan or authorize issuance of permits under a wildlife management plan that would allow populations to exceed the carrying capacity of a property's habitat. This, in fact, is the underlying assumption of the provision currently in effect, that a release ratio of one deer to 200 acres will not result in overpopulation or habitat degradation on a property that is under a department-approved management plan. No changes were made as a result of the comment. The department received seven comments in favor of adoption of the proposed amendment.

The department received five comments opposed to adoption of the provision that would eliminate the requirement for a site inspection on properties where a proposed release would replace a population reduction of greater than 50% of recruitment below the total population specified for a property in the wildlife management plan. One commenter stated a concern that the provision would allow for the evasion of site inspections. The department disagrees and responds that in order to be enrolled and remain in the MLD program, a property must undergo both an initial and periodic site inspection by department personnel. From the time a property is enrolled, annual harvest and population data must be supplied to the department in order to receive MLD Permits, and further site visitations occur in order for the department to verify that the permittee is accomplishing the habitat management practices specified in the management plan. No changes were made as a result of the comment. The department received nine comments supporting adoption of the proposed amendment.

Another commenter stated that the rule as adopted would allow ranches to be completely restocked with deer that might not be genetically adapted to or suitable for the environment to which they are relocated. The department disagrees with the comment. The department acknowledges genetic enhancement as a legitimate use of the Triple T program, but also notes that there are instances in which Triple T permit applications must be disapproved on the basis of potential or actual negative impacts to biological systems. The department's position is that any given Triple T activity is not detrimental, provided it is consistent with the relevant provisions of the Parks and Wildlife Code, department regulations, and the wildlife management plan for the property. No changes were made as a result of the comment. The department received five comments supporting adoption of the proposed amendment.

One commenter opposed adoption of all provisions authorizing the relocation of deer, stating that deer should not be trapped and moved because such activities create the potential for the spread of disease. The department disagrees with the comment and responds that it believes the current protocols developed in

conjunction with the Texas Animal Health Commission (TAHC) are sufficient to enable detection of the disease of greatest concern, chronic wasting disease, if it exists in wild populations. The department also notes that TAHC regulations generally govern disease detection and management in the state. No changes were made as a result of the comment.

The department received seven comments in support of adoption of the provision to require the removal of antlers from all buck deer prior to being transported under a permit to trap, transport, and transplant permit.

The department received one comment opposed to the adoption of the provision to allow buck deer to be included in releases conducted without a site inspection. The commenter did not elaborate. The department disagrees with the comment and responds that in striving to maintain habitat management as the focal point of the rulemaking, it notes that although buck deer tend to have a larger body mass than do does and therefore consume slightly more food, pregnant does on the other hand have very high nutritional demands as well. Therefore, the sex of released deer is probably not a major factor in habitat impacts. The department also notes that in every case that a ranch receives deer, it has been inspected at some point by the department and has submitted population and harvest data to the department, which are the bases for department approval of the release. The department received five comments supporting adoption of the proposed amendment. No changes were made as a result of the comments.

The amendments are adopted under the authority of Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the content of wildlife stocking plans and the trapping, transporting, and transplanting of game animals and game birds.

§65.103. Trap, Transplant, and Transport Permit.

(a) For the purposes of this subchapter, the content of a wildlife stocking plan for a release site shall be the same as that required for a wildlife management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan). Applications may be approved without an inspection, provided:

(1) the release will not exceed a ratio of one white-tailed deer per 200 acres at the release site; however, when the accumulated releases on a tract result in a ratio of one deer to 200 acres (counting released deer only), no further releases shall take place unless a site inspection has been performed by the department; or

(2) the property has been issued Level II or Level III MLD Permits during the year of the release, the landowner furnishes a minimum of three years of population data and two years of harvest data, and is in compliance with all requirements of the wildlife management plan for the property; and

(A) the number of deer to be trapped (in addition to the number of deer harvested) does not exceed the population reduction specified in the wildlife management plan for the trap site; and

(B) the number of deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in a management plan under the provisions of §65.25 of this title.

(b) Applications received by the department between September 1 and November 15 in a calendar year shall be approved or denied within 45 days of receipt.

(c) The department may deny a permit application if the department determines that:

(1) the removal of game animals or game birds from the trap site may be detrimental to existing populations or systems;

(2) the removal of game animals or game birds may detrimentally affect the population status on neighboring properties;

(3) the release of game animals or game birds at the release site may be detrimental to existing populations or systems;

(4) the release site is outside of the suitable range of the game animal or game bird;

(5) the applicant has misrepresented information on the application or associated wildlife stocking plan;

(6) the activity identified in the permit application does not comply with the provisions of the department's stocking policy; or

(7) the trapping activity would involve deer held under a Deer Management Permit.

(d) A buck deer transported under the provisions of this subchapter shall have its antlers removed prior to transport.

(e) The department may establish trapping periods, based on biological criteria, when the trapping, transporting, and transplanting of game animals and game birds under this section by individuals will be permitted.

(f) The department may, at its discretion, require the applicant to supply additional information concerning the proposed trapping, transporting, and transplanting activity when deemed necessary to carry out the purposes of this subchapter.

(g) Game animals and game birds killed in the process of conducting permitted activities shall count as part of the total number of game animals or game birds authorized by the permit to be trapped.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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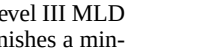

PART 5. BOARDS FOR LEASE OF STATE-OWNED LANDS

CHAPTER 201. OPERATIONS OF THE TEXAS PARKS AND WILDLIFE DEPARTMENT AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD FOR LEASE

31 TAC §201.4

The Texas General Land Office adopts the amendment to §201.4 of Title 31, Part 5, Chapter 201 of the Texas Administrative Code, relating to disposition of payments received by a Board for Lease, without changes to the proposed text as published in the April 9,

2004 issue of the *Texas Register* (29 TexReg 3602). The text will not be republished.

The amendment conforms the rule to an amendment to Texas Natural Resources Code §34.018 by Acts 1993, 73rd Leg., ch. 679, §62, eff. Sept. 1, 1993. The change is made pursuant to §2001.039 (Agency Review of Existing Rules) of the Government Code.

The General Land Office has received no comments on the proposed amendment.

The amendment to this section is adopted under Texas Natural Resources Code §31.051, which authorizes the Commissioner of the Texas General Land Office to make and enforce suitable rules consistent with the law and Texas Natural Resources Code §32.062 which grants rulemaking authority to the School Land Board.

The adopted amendment affects Section 34.018 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 June 21, 2004.

TRD-200404063
Larry L. Laine
Chief Clerk, Deputy Commissioner
Boards for Lease of State-Owned Lands
Effective date: July 11, 2004
Proposal publication date: April 9, 2004
For further information, please call: (512) 305-8598

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 367. AGRICULTURAL WATER CONSERVATION PROGRAM

31 TAC §§367.1 - 367.3, 367.12, 367.15 - 367.20

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 367, Agricultural Water Conservation Program (AWCP). The board adopts amendments to §§367.1 - 367.3, and §367.12 and adopts new §§367.15 - 367.20 relating to the creation of the Agricultural Water Conservation Linked Deposit Program without changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4420) and will not be republished. The amendments and new sections reflect changes to the Texas Water Code enacted by the 78th Legislature that authorized the creation of the Agricultural Water Conservation Linked Deposit Program (AWCLDP).

The board adopts amendment to §367.1, Policy Statement, to include linked deposits as part of its financial assistance that it will be the policy of the board to provide in order to conserve and protect the state's water resources and provide resulting benefits to all of the state's citizens.

The board adopts amendment to §367.2, Definitions of Terms, to provide definitions for eligible lending institution, linked deposit, and linked deposit agreement in order to implement the AWCLDP. The board adopts a definition of eligible lending institution that refers to a commercial lending institution that is either designated a depository of state funds by the Texas comptroller of public accounts or an institution of the Farm Credit System headquartered in this state, that agrees to participate in a linked deposit program established under Water Code §17.905, and that is willing to agree to provide collateral equal to the amount of linked deposits placed with it. This definition follows the language of the new legislation in order to maximize the number of institutions that are eligible to participate. The board adopts a definition for linked deposit to be a deposit governed by a linked deposit agreement which requires that: 1) the lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement; 2) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this chapter; and 3) the institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent. This definition follows the language of the new legislation in order to implement the program to maximize extent possible under the legislation. The board adopts a definition for linked deposit agreement as a written agreement between the board and an eligible lending institution that provides for the deposit of money from the agricultural water conservation fund (fund) with the lending institution according to the conditions of this chapter. By defining linked deposit agreement in this manner, the rules have a ready reference to the contract while leaving the details of the terms of the contract to be more fully explained in this chapter related to the AWCLDP.

The board amends §367.3, Eligible Uses of the Fund, to include a new subsection (3) that specifically authorizes the fund to be used to provide a linked deposit to an eligible lending institution that agrees to provide a loan to a person for a conservation project.

The board amends §367.12, Construction Requirements, to include the phrase "financed by the board through a grant or loan and" so that the requirements of the section are explicitly limited to the grant and loan programs and not the linked deposit program.

The board adopts new §367.15, Authorization to Execute Agreements, to provide the specific authorization to the executive administrator to execute linked deposit agreements with eligible lending institutions for the purpose of providing money from the fund to be used for the purposes set forth in these amendments. Pursuant to new Water Code §17.907, the board is authorized to approve or disapprove an application for a linked deposit agreement submitted by an eligible lending institution. Water Code §15.907 specifically authorizes the board to delegate to the executive administrator the authority to approve or disapprove such applications. Water Code §17.908 provides that upon approval of the application by the board, the board and the eligible lending institution shall enter into a linked deposit agreement. Execution of an agreement of any sort only requires that one person actually sign, or execute, the agreement. As a six-member board, only one individual need take the action necessary to execute the agreement. The term "execute", in the broader sense of ensuring performance, is a matter that requires more time and attention than the board members can perform. Therefore, as a

matter of necessity, the board delegates the function of executing financial assistance agreements to the executive administrator, both in the narrow and broad sense. As a matter of necessity, the board delegates the function of executing financial assistance agreements to the executive administrator. New §367.15, in conjunction with new §375.16(b), is adopted to delegate to the executive administrator the function of reviewing applications for linked deposit agreements and, if approved, executing such agreements. In addition to the contract provisions required pursuant to the other sections in this chapter, new §367.15 provides the executive administrator with the discretion to include any additional provisions in such agreements, as the executive administrator may deem necessary to fulfill the purposes and intent of the program.

The board adopts new §367.16, Conditions Prior to Execution, to set forth the minimum requirements that the board has determined must be met prior to the eligible lending institution and the executive administrator executing a linked deposit agreement. New §367.16(a) identifies the minimum requirements that the board has determined must be met by an eligible lending institution when submitting a request to the executive administrator for a linked deposit agreement. These requirements are prescribed by the statute or are considered prudent application requirements. New §367.16(a)(1) requires the submission of the loan application from the person who will be constructing the conservation project. This subsection requires the lending institution determine that the submitted loan application to be creditworthy according to the criteria of the lending institution prior to its submission to the executive administrator. New §367.16(a)(2) requires submission of a draft loan agreement between the lending institution and its borrower that identifies the amount of the loan, identifies the interest rate applied to the loan, sets forth the repayment schedule, limits the use of the loan proceeds to an eligible project, and contains all such other terms as determined in the sole discretion of the lending institution to be appropriate for its loan agreement. New §367.16(a)(1)(A) limits the total amount of the loan to $250,000 as required by statute. New §367.16(a)(1)(B) limits the interest rate under the agreement to no more than four percentage points above the interest rate charged by the board to the lending institution as required by statute. New §367.16(a)(3) requires two certifications. New §367.16(a)(3)(A) requires a certification by the lending institution setting the interest rate that will be charged to its borrower for the proposed project. New §367.16(a)(3)(B) requires that the lending institution provide a certification from a director of the soil and water conservation district for the district in which the project is located as to two facts: 1) that the loan recipient has a soil and water conservation approved by the district; and 2) that the project furthers or implements such plan. This certification is required by statute to insure that the project will implement agricultural water conservation project. New §367.16(a)(4) requires the lending institution to submit such other documentation that the executive administrator determines is necessary in order to insure that the linked deposit, if approved, will fulfill the objectives of the program. This provision is adopted because the board believes that the executive administrator should have the discretion to request additional information that may only be able to be identified as the program develops or after the initial review of the documents submitted by a lending institution. This provision allows the executive administrator the discretion to adapt the application requirements in order to fulfill the objectives of the program. New §367.16(b) identifies the minimum requirements that the board has determined to be appropriate before the executive administrator is authorized to execute a linked deposit agreement. This subsection requires the executive administrator to review the documentation submitted by the lending institution and determine that the institution is eligible to participate in the program, that the documents submitted comply with the requirements of this section, and that executing the agreement will effectuate the purposes of the program.

The board adopts new §367.17, Board Obligations in Linked Deposit Agreements, to identify the minimum responsibilities that the board will assume if the executive administrator executes a linked deposit agreement. The responsibilities of the board adopted in new §367.17(a) are to provide money in the amount identified in the linked deposit agreement to the eligible lending institution from the fund and to otherwise fulfill the obligations set forth in the linked deposit agreement. It is proposed to include these requirements by rule because these are the minimum requirements that the board is expected to fulfill and which may be enforceable pursuant to a rule of the board. By this section, eligible lending institutions are informed of the minimum obligations undertaken by the board with the execution of such an agreement and receive assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies available to the lending institution in event of default. New §367.17(b) also authorizes the board or the executive administrator to withdraw money deposited with a lending institution either according to the terms of the linked deposit agreement or in the event that the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state. This rule implements the requirement set forth in Water Code §17.911.

The board adopts new §367.18, Lending Institution Obligations in Linked Deposit Agreements, to identify the minimum requirements that an eligible lending institution will assume upon its execution of a linked deposit agreement authorized by this section. New §367.18(a) provides that upon execution of the agreement, the lending institution shall provide collateral equal to the amount of the money from the fund placed on deposit with it, provide the loan for the project substantially according to the draft loan agreement provided with the application, pay interest on the deposit to the board at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity, submit compliance reports on a yearly basis to the executive administrator, return the funds to the board according to the terms of the linked deposit agreement, and otherwise comply with the linked deposit agreement, these rules, and applicable federal and state law. These requirements are generally set forth in the new Water Code provisions as requirements for the linked deposit agreement. By this section, eligible lending institutions are informed of the minimum obligations undertaken in executing such an agreement and the board receives assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies that may be available to the board in event of default. New §367.18(b) specifies that payment delays or defaults by the recipient of the loan do not affect the liability of the lending institution to the board under the linked deposit agreement. This rule implements the requirement set forth in Water Code §17.908.

The board adopts new §367.19, Requirements after Execution, to identify the reporting requirements of the executive administrator to the board. Having delegated the authority to approve and execute linked deposit agreements, by new §367.19(1) the executive administrator is required to report monthly to the board the linked deposit agreements that have been executed and the

status of each loans made by the lending institutions. This provision will allow the board to routinely review the administration and performance of the program. By new §367.19(2) the executive administrator is required to report any instances of noncompliance by a participating lending institution to the board as well as to the Texas comptroller of public accounts. The comptroller is included in the reporting requirement for instances of noncompliance because the board has deemed the lending institution eligible in part due to the comptroller using the lending institution as a state depository. By reporting the instance of noncompliance to the comptroller, the board potentially will be assisting the comptroller in the protection of other funds of the state. This rule implements the requirement set forth in Water Code §17.909.

The board adopts new §367.20, State Liability, to establish as clearly as possible that the state does not assume any liability to the lending institutions for any payments that may be due by a borrower of the lending institution and that the linked deposit is not an extension of credit within the meaning of the state constitution. This rule implements the requirement set forth in Water Code §17.910.

There were no comments received on the proposed amendments and new sections.

The amendments and new sections are adopted under the authority of the Texas Water Code §6.101 and §17.912 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code, other laws of the State, and the agricultural water conservation program.

The statutory provisions affected by the amendments and new sections are Texas Water Code Chapter 17, Subchapter J.

This agency 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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Suzanne Schwartz
General Counsel
Texas Water Development Board
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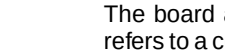
For further information, please call: (512) 475-2052



CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) adopts the repeal of 31 TAC Chapter 375, Subchapter C, §§375.301 - 375.306, concerning the Nonpoint Source Pollution Loan and Estuary Management Program from the Clean Water State Revolving Fund. The board also adopts new Subchapter C, Division 1, §375.301 - §375.302, Division 2, §§375.325 - 375.329, and Division 3, §§375.350 - 375.357, concerning Nonpoint Source Pollution Control Project and Estuary Management Financial Assistance Programs from the Clean Water State Revolving Fund without changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4424) and will not be republished. The repeal and new sections reflect changes to the Texas Water Code enacted by the 78th Legislature that authorized the creation of the Nonpoint Source Pollution Control Linked Deposit Program (NPSLDP).

The current Subchapter C, Nonpoint Source Pollution Loan and Estuary Management Program, §§375.301 - 375.306 sets out the provisions of the Nonpoint Source Loan Program (NPSLP) and the Estuary Management Program (EMP). The NPSLP is currently the only program of the board which provides financial assistance to individuals and others for nonpoint source pollution control projects. In the current NPSLP, the board provides loans directly to individuals and other private or public entities for nonpoint source pollution control projects using funds from the Clean Water State Revolving Fund, defined in §375.2 as the CWSRF Program Account. Under the repeal and new sections, the NPSLP and EMP will continue as currently written. The new NPSLDP will provide financial assistance for nonpoint source pollution control projects in the form of depositing funds from the CWSRF Program Account into local lending institutions conditioned on, or linked to, the institution making a loan to an individual for a nonpoint source pollution control project. The NPSLP and the NPSLDP share common elements and similar scopes in that both programs provide financial assistance for nonpoint source pollution control projects.

Therefore, the board adopts new Division 1 for the purpose of identifying the common scope of the subchapter, which is providing financial assistance for nonpoint source pollution control projects and estuary management projects, and to define common terminology. The board adopts new Division 2 to contain the provisions appropriate for the NPSLP and EMP. The board adopts new Division 3 to contain the provisions appropriate for the NPSLDP.

The board adopts new §375.301, Scope of Subchapter, for the purpose of identifying the programs covered by the subchapter, which are the NPSLP, EMP, and the NPSLDP using funds from the CWSRF Program Account. Since all these programs will be using funds in the CWSRF program account, this section also states that the other provisions in Subchapter A may apply unless a provision in this subchapter specifically applies.

The board adopts new §375.302, Definitions of Terms, to provide definitions of common terminology used in the subchapter. The board adopts a definition of Best Management Practices, BMP, to refer to those measures that are the most efficient, practical, and cost effective means to guide a particular activity or address a particular problem. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed. The board adopts a definition of eligible lending institution that refers to a commercial lending institution that is either designated a depository of state funds by the Texas comptroller of public accounts or an institution of the Farm Credit System headquartered in this state, that agrees to participate in a linked deposit program established under Water Code §15.611, and that is willing to agree to provide collateral equal to the amount of linked deposits placed with it. This definition follows the language of the new legislation in order to maximize the number of institutions that are eligible to participate. The board defines individual water quality management plan as a land management plan that is developed and approved to conserve or improve water resources of a particular site after having considered characteristics such as soil types, slope, climate, vegetation and land usage. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed. The board adopts a definition for linked deposit to be a deposit governed by a linked deposit agreement which requires that: 1) the lending institution

pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement; 2) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this chapter; and 3) the institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent. This definition follows the language of the new legislation in order to implement the program to maximize extent possible under the legislation. The board adopts a definition for linked deposit agreement as a written agreement between the board and an eligible lending institution that provides for the deposit of funds from the CWSRF program account with the lending institution according to the conditions of this subchapter. By defining linked deposit agreement in this manner, the rules have a ready reference to the contract while leaving the details of the terms of the contract to be more fully explained in the division of this subchapter related to the NPSLDP. The board adopts a definition of the national estuary program to refer to the program created by the Water Quality Act of 1987. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed. The board adopts a definition of NPS Loan Program to refer to the Nonpoint Source Pollution Loan Program which is set forth in Division 2 of this subchapter. The definition is currently used for the NPSLP but is amended here for the purpose of reflecting that provisions of the program are proposed to be set forth in Division 2 of this subchapter. The board defines NPS management report as the most recent Texas Nonpoint Source Pollution Assessment Report and Management Program adopted by the commission. This term is currently defined for the NPSLP but is amended here for the purpose of referring to the most recent version of the commission's report because the report is amended from time to time by the commission. This definition, as amended, will therefore clarify which report is being referred to. The board adopts a definition of person to include an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, and that explicitly coincides with the definition of the Clean Water Act. This term is currently used in the NPSLP and EMP and no amendments to the definition are proposed.

The board adopts new Division 2, Nonpoint Source Pollution Loan and Estuary Management Program, to contain the provisions previously used for the NPSLP and EMP. The board adopts new §375.325, Purpose, to clearly state that the purpose of this division is to set forth the terms of the program by which the board will make a loan from funds in the CWSRF program account to a person for the purposes set forth in this division.

The board adopts new §375.326, Eligible Projects; §375.327, Application for Assistance; §375.328, Promissory Notes and Loan Agreements; and §375.329, Lending Rates, to contain the exact same provisions as the former §375.303, Eligible Projects; §375.304, Application for Assistance; §375.305, Promissory Notes and Loan Agreements; and §375.306, Lending Rates, respectively.

The board adopts new Division 3, Nonpoint Source Pollution Link Deposit Program, to implement the newly enacted provisions of Water Code §15.601 et seq. The board adopts new §375.350, Purpose, to identify the purpose as providing linked deposits from the CWSRF program account to eligible lending institution so that those institutions will provide loans to persons for the purpose of nonpoint source pollution control projects.

The board adopts new §375.351, Authorization to Execute Agreements, to provide the specific authorization to the executive administrator to execute linked deposit agreements with eligible lending institutions for the purpose of providing funds from the CWSRF program account to be used for the purposes set forth in this division. Pursuant to new Water Code §15.614, the board is authorized to approve or disapprove an application for a linked deposit agreement submitted by an eligible lending institution. Water Code §15.614 specifically authorizes the board to delegate to the executive administrator the authority to approve or disapprove such applications. Water Code §15.615 provides that upon approval of the application by the board, the board and the eligible lending institution shall enter into a linked deposit agreement. Execution of an agreement of any sort only requires that one person actually sign, or execute, the agreement. As a six-member board, only one individual need take the action necessary to execute the agreement. The term "execute", in the broader sense of ensuring performance, is a matter that requires more time and attention than the board members can perform. Therefore, as a matter of necessity, the board delegates the function of executing financial assistance agreements to the executive administrator, both in the narrow and broad sense. New §375.351, in conjunction with new §375.352(b), is adopted to delegate to the executive administrator the function of reviewing applications for linked deposit agreements and, if approved, executing such agreements. In addition to the contract provisions required pursuant to the other sections in this division, new §375.351 provides the executive administrator with the discretion to include any additional provisions in such agreements, as the executive administrator may deem necessary to fulfill the purposes and intent of the program.

The board adopts new §375.352, Conditions Prior to Execution, to set forth the minimum requirements that the board has determined must be met prior to the eligible lending institution and the executive administrator executing a linked deposit agreement. New §375.352(a) identifies the minimum requirements that the board has determined must be met for an eligible lending institution to submit a request to the executive administrator for a linked deposit agreement. These requirements are prescribed by the statute or are considered prudent application requirements. New §375.352(a)(1) requires that submission of the loan application from the person who will be constructing the nonpoint source pollution control project. This paragraph requires that the lending institution determine that the submitted loan application is creditworthy according to the criteria of the lending institution. New §375.352(a)(2) requires submission of a draft loan agreement between the lending institution and its borrower that identifies the amount of the loan, identifies the interest rate applied to the loan, sets forth the repayment schedule, limits the use of the loan proceeds to an eligible project, and contains all such other terms as determined in the sole discretion of the lending institution to be appropriate for its loan agreement. New §375.352(a)(1)(A) limits the total amount of the loan to $250,000 as required by statute. New §375.352(a)(1)(B) limits the interest rate under the agreement to no more than four percentage points above the interest rate charged by the board to the lending institution as required by statute. New §375.352(a)(3) requires two certifications. New §375.352(a)(3)(A) requires a certification by the lending institution setting the interest rate that will be charged to its borrower for the proposed project. New §375.352(a)(3)(B) requires that

the lending institution provide a certification as identified in new §375.353(a) or (b). These certifications are required by statute to accurately identify the interest charged to the borrower and to insure that the project will implement nonpoint source pollution control projects. New §375.352(a)(4) requires the lending institution to submit such other documentation that the executive administrator determines is necessary in order to insure that the linked deposit, if approved, will fulfill the objectives of the program. This provision is adopted because the board believes that the executive administrator should have the discretion to request additional information that may only be able to be identified as the program develops or after the initial review of the documents submitted by a lending institution. This provision allows the executive administrator the discretion to adapt the application requirements in order to fulfill the objectives of the program. New §375.352(b) identifies the minimum requirements that the board has determined to be appropriate before the executive administrator is authorized to execute a linked deposit agreement. This subsection requires the executive administrator to review the documentation submitted by the lending institution and determine that institution is eligible to participate in the program, that the documents submitted comply with the requirements of this section, and that executing the agreement will effectuate the purposes of the program.

The board adopts new §375.353, Project Certifications, for the purpose of insuring the proposed project receiving a loan backed by a linked deposit will be constructing a nonpoint source pollution control project. New §375.353(a) applies to projects that are proposed for agricultural or silvicultural projects. For these projects, new §375.353(a) requires that a director of the soil and water conservation district for the district in which the project is located must certify to two facts: 1) that the loan recipient has a water quality management plan that has been certified by the State Soil and Water Conservation Board; and 2) that the project furthers or implements such plan. New §375.353(b) applies to proposed projects that are not agricultural or silvicultural projects. In this instance, the executive director must certify that the loan recipient's proposed project implements or furthers the most recent nonpoint source pollution management plan. Both of these subsections are adopted to implement the requirement set forth in Water Code §15.613.

The board adopts new §375.354, Board Obligations in Linked Deposit Agreements, to identify the minimum responsibilities that the board will assume if the executive administrator executes a linked deposit agreement. The responsibilities of the board in new §375.354(a) are to provide funds in the amount identified in the linked deposit agreement to the eligible lending institution from the CWSRF program account and to otherwise fulfill the obligations set forth in the linked deposit agreement. It is proposed to include these requirements by rule because there are the minimum requirements that the board is expected to fulfill and which may be enforceable pursuant to a rule of the board. By this section, eligible lending institutions are informed of the minimum obligations undertaken by the board with the execution of such an agreement and receive assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies available to the lending institution in event of default. New §375.354(b) also authorizes the board or the executive administrator to withdraw funds deposited with a lending institution either according to the terms of the linked deposit agreement or in the event that the institution ceases to be either designated a state depository by the Texas comptroller of public accounts or a Farm Credit System institution headquartered in this state. This rule is adopted to implement the requirement set forth in Water Code §15.618.

The board adopts new §375.355, Lending Institution Obligations in Linked Deposit Agreements, to identify the minimum requirements that an eligible lending institution will assume upon its execution of a linked deposit agreement authorized by this division. New §375.355(a) provides that upon execution of the agreement, the lending institution shall provide collateral equal to the amount of the funds from the CWSRF program account placed on deposit with it, provide the loan for the project substantially according to the draft loan agreement provided with the application, pay interest on the deposit to the board at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity, submit compliance reports on a yearly basis to the executive administrator, return the funds to the board according to the terms of the linked deposit agreement, and otherwise comply with the linked deposit agreement, these rules, and applicable federal and state law. These requirements are generally set forth in the new Water Code provisions as requirements for the linked deposit agreement. By this section, eligible lending institutions are informed of the minimum obligations undertaken in executing such an agreement and the board receives assurance of compliance with the statutory provisions through enforcement of this section in addition to contractual remedies that may be available to the board in event of default. New §375.355(b) specifies that payment delays or defaults by the recipient of the loan do not affect the liability of the lending institution to the board under the linked deposit agreement. This rule is adopted to implement the requirement set forth in Water Code §15.617.

The board adopts new §375.356, Requirements after Execution, to identify the reporting requirements of the executive administrator to the board. Having delegated the authority to approve and execute linked deposit agreements, by new §375.356(1) the executive administrator is required to report monthly to the board the linked deposit agreements that have been executed and the status of each loans made by the lending institutions. This provision will allow the board to routinely review the administration and performance of the program. By new §375.356(2) the executive administrator is required to report any instances of noncompliance by a participating lending institution to the board as well as to the Texas comptroller of public accounts. The comptroller is included in the reporting requirement for instances of noncompliance because the board has deemed the lending institution eligible in part due to the comptroller using the lending institution as a state depository. By reporting the instance of noncompliance to the comptroller, the board potentially will be assisting the comptroller in the protection of other funds of the state. This rule is adopted also to implement the requirement set forth in Water Code §15.616(b).

The board adopts new §375.357, State Liability, to establish as clearly as possible that the state does not assume any liability to the lending institutions for any payments that may be due by a borrower of the lending institution and that the linked deposit is not an extension of credit within the meaning of the state constitution. This rule is adopted also to implement the requirement set forth in Water Code §15.617.

There were no comments received on the proposed repeal and new sections.

SUBCHAPTER C. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §§375.301 - 375.306

The repeal is adopted 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 and of the state revolving loan funds.

The statutory provisions affected by the repeal are Texas Water Code Chapter 15, Subchapter J.

This agency 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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Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-2052

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SUBCHAPTER C. NONPOINT SOURCE POLLUTION CONTROL PROJECT AND ESTUARY MANAGEMENT FINANCIAL ASSISTANCE PROGRAMS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.301, §375.302

These new sections are adopted under the authority of Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board, Texas Water Code, §15.605 which requires the board to adopt rules for Subchapter J, Chapter 15, Water Code including the nonpoint source loan program and estuary management program, and rules to establish the nonpoint source linked deposit program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Suzanne Schwartz
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For further information, please call: (512) 475-2052

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DIVISION 2. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §§375.325 - 375.329

These new sections are adopted under the authority of Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board and Water Code, §15.605 which requires the board to adopt rules establishing the nonpoint source loan program and estuary management program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Suzanne Schwartz
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DIVISION 3. NONPOINT SOURCE POLLUTION LINK DEPOSIT PROGRAM

31 TAC §§375.350 - 375.357

These new sections are adopted under the authority of Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board, and Texas Water Code, §15.605 which authorizes the board to adopt rules relating to the nonpoint source linked deposit program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200403972
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: July 6, 2004
Proposal publication date: May 7, 2004
For further information, please call: (512) 475-2052

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 61. COMMUNITY SERVICES--VOLUNTEER SERVICES

The Texas Department of Human Services (DHS) adopts the repeals of §§61.9001 - 61.9013 and new §§61.1 - 61.16 without changes to the proposed text published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4135).

DHS undertook the repeals and new sections as a result of its review of Chapter 61 as mandated by the Government Code, §2001.039, and as part of an agency-wide initiative to reorganize and rewrite its rules in plain English to make them easier for the public to navigate and understand.

DHS received no comments regarding adoption of the repeals and new sections.

40 TAC §§61.1 - 61.16

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs; and the Government Code, Chapter 2109, which authorizes DHS to implement a volunteer program.

The new sections implement the Human Resources Code, §§22.0001-22.040; and the Government Code, §§2109.001-2109.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200403964
Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
Effective date: July 6, 2004
Proposal publication date: April 30, 2004
For further information, please call: (512) 438-3734

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40 TAC §§61.9001 - 61.9013

The repeals are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs; and the Government Code, Chapter 2109, which authorizes DHS to implement a volunteer program.

The repeals implement the Human Resources Code, §§22.0001-22.040; and the Government Code, §§2109.001-2109.006.

This agency 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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Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Department of Human Services (DHS) adopts amendments to §§92.3, 92.41, 92.62, and 92.559; and adopts new §92.129 in its Licensing Standards for Assisted Living Facilities chapter. New §92.129 is adopted with changes to the proposed text published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2281). The amendments to §§92.3, 92.41, 92.62, and 92.559 are adopted without changes to the proposed text.

Justification for the amendments and new section is to implement changes mandated by the 78th Texas Legislature and correct references within the chapter. Justification for the amendments to §92.3, §92.559, and new §92.129 is to comply with the Health and Safety Code, §247.003, as amended by Senate Bill 1012, which requires assisted living facilities to administer and enforce the same standards required in nursing facilities for electronic monitoring of residents' rooms. The amendments and new section, therefore, add the requirement that authorized electronic monitoring (AEM) be allowed in assisted living facilities and outline procedures to follow for electronic monitoring in assisted living facilities. In order to provide facilities with accurate information in DHS's rule base, the amendment to §92.41 corrects a reference to the Nursing Practice Act. The amendment to §92.62 implements House Bill 867 by adopting a minimum standard that requires nursing facilities constructed or licensed after August 1, 2004, to have a central air conditioning system, or a substantially similar air conditioning system, capable of maintaining a temperature suitable for resident comfort within areas used by residents.

DHS received one written comment from the Texas Association of Residential Care Communities. A summary of the comment and DHS's response follow.

Comment: The proposed regulations are very well crafted and we have detected but one deficiency. Although you talk all around it, you never state categorically that, in the case of other residents in a room, AEM cannot be performed unless the other residents consent.

Response: DHS does not agree with this comment. The rule clearly states that the consent of other residents in the room is required, as mandated by state law, before AEM can be conducted. However, a statement that AEM cannot be conducted without the consent of other residents in the room has been added to §92.129(e).

DHS has also initiated a minor editorial change to Figure: 40 TAC §92.129(c) to clarify the form.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.3

The amendment is adopted under the Health and Safety Code, Chapter 247, which authorizes DHS to license and regulate assisted living facilities.

The amendment implements the Health and Safety Code, §§247.001-247.068.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §92.41

The amendment is adopted under the Health and Safety Code, Chapter 247, which authorizes DHS to license and regulate assisted living facilities.

The amendment implements the Health and Safety Code, §§247.001-247.068.

This agency 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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Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §92.62

The amendment is adopted under the Health and Safety Code, Chapter 247, which authorizes DHS to license and regulate assisted living facilities.

The amendment implements the Health and Safety Code, §§247.001-247.068.

This agency 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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Carey Smith
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Texas Department of Human Services
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SUBCHAPTER G. MISCELLANEOUS PROVISIONS

40 TAC §92.129

The new section is adopted under the Health and Safety Code, Chapter 247, which authorizes DHS to license and regulate assisted living facilities.

The new section implements the Health and Safety Code, §§247.001-247.068.

§92.129. Authorized Electronic Monitoring (AEM).

(a) A facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices.

(b) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.

(c) The Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents by October 1, 2004. A copy of the form must be maintained in the active portion of the resident's clinical record.
Figure: 40 TAC §92.129(c)

(d) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated DHS Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(2) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(3) If a resident does not have the capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

(A) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.

(B) When a resident's physician determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

(i) a person named in the resident's medical power of attorney or other advance directive;

(ii) the resident's spouse;

(iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(iv) a majority of the resident's reasonably available adult children;

(v) the resident's parents; or

(vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(e) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM also must obtain the consent of other residents in the room, using the DHS Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record. AEM cannot be conducted without the consent of other residents in the room.

(1) Consent to AEM may be given only by:

(A) the other resident or residents in the room;

(B) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(C) the legal representative of the other resident, determined by following the same procedure established under subsection (d)(3) of this section.

(2) Another resident in the room may condition consent on:

(A) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and

(B) limiting or prohibiting the use of an audio electronic monitoring device.

(3) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, or the roommate's guardian or legal representative, assumes responsibility for assuring AEM is conducted according to the designated limitations.

(4) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(f) When the completed DHS Request for Authorized Electronic Monitoring form and the DHS Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(1) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(2) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(3) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(4) The facility must make reasonable physical accommodation for AEM, which includes providing:

(A) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(B) access to power sources for the video surveillance camera or other electronic monitoring device.

(g) All facilities, regardless of whether AEM is being conducted, must post an 8 1/2-inch by 11- inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(h) A facility may:

(1) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;

(2) require AEM to be conducted in plain view; and

(3) place a resident in a different room to accommodate a request for AEM.

(i) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §92.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(j) All instances of abuse or neglect must be reported to DHS, as required by §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to the Texas Department of Human Services (DHS) by Facilities). For purposes of the duty to report abuse or neglect, the following apply:

(1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.

(3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the tape or recording are transferred from the original technological format, a qualified professional must do the transfer.

(5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

This agency 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-200404045

Carey Smith
Deputy Commissioner, Legal Services
Texas Department of Human Services
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SUBCHAPTER H. ENFORCEMENT
DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.559

The amendment is adopted under the Health and Safety Code, Chapter 247, which authorizes DHS to license and regulate assisted living facilities.

The amendment implements the Health and Safety Code, §§247.001-247.068.

This agency 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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Carey Smith
Deputy Commissioner, Legal Services
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For further information, please call: (512) 438-3734

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Department of Human Services

Rule Transfer

Effective October 1, 2003, the Texas Health and Human Services Commission (HHSC) transferred operation of the Refugee Cash Assistance and Medical Assistance, Refugee Social Services, and Family Violence programs from the Texas Department of Human Services (DHS) to HHSC. The Texas Register is renumbering and moving the associated program rules from *Texas Administrative Code*, Title 40, Part 1, Chapters 7, 9, and 54 to Title 1, Part 15, Chapters 375, 376, and 379.

Effective April 1, 2004, HHSC transferred operation of the following programs and their associated rules from DHS to HHSC: Presumptive Medicaid for Pregnant Women; Medically Needy and Children and Pregnant Women; Texas Works; Temporary Assistance for Needy Families; Emergency Medicaid for Aliens Ineligible for Regular Medicaid; Medical Assistance for Breast and Cervical Cancer; Medicaid for Transitioning Foster Care Youth; Food Distribution and Processing; and Special Nutrition Programs. The Texas Register is renumbering and moving the associated program rules under *Texas Administrative Code*, Title 40, Part 1, Chapters 1, 2, 3, 4, 5, 8, 10, 11, and 12 to Title 1, Part 15, Chapters 354, 372, 374, 377, and 378.

The transfers are pursuant to §1.03 and §1.18(a)(4) of House Bill 2292, 78th Legislature, Regular Session (2003).

Please refer to Figure: 1 TAC Part 15 to see the complete conversion chart.

TRD-200404085

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Texas Health and Human Services Commission

Rule Transfer

Effective October 1, 2003, the Texas Health and Human Services Commission (HHSC) transferred operation of the Refugee Cash Assistance and Medical Assistance, Refugee Social Services, and Family Violence programs from the Texas Department of Human Services (DHS) to HHSC. The Texas Register is renumbering and moving the associated program rules from *Texas Administrative Code*, Title 40, Part 1, Chapters 7, 9, and 54 to Title 1, Part 15, Chapters 375, 376, and 379.

Effective April 1, 2004, HHSC transferred operation of the following programs and their associated rules from DHS to HHSC: Presumptive Medicaid for Pregnant Women; Medically Needy and Children and Pregnant Women; Texas Works; Temporary Assistance for Needy Families; Emergency Medicaid for Aliens Ineligible for Regular Medicaid; Medical Assistance for Breast and Cervical Cancer; Medicaid for Transitioning Foster Care Youth; Food Distribution and Processing; and Special Nutrition Programs. The Texas Register is renumbering and moving the associated program rules under *Texas Administrative Code*, Title 40, Part 1, Chapters 1, 2, 3, 4, 5, 8, 10, 11, and 12 to Title 1, Part 15, Chapters 354, 372, 374, 377, and 378.

The transfers are pursuant to §1.03 and §1.18(a)(4) of House Bill 2292, 78th Legislature, Regular Session (2003).

Please refer to Figure: 1 TAC Part 15 to see the complete conversion chart.

Figure: 1 TAC Part 15

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 1, Presumptive Medicaid for Pregnant Women Program			**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 354, Medicaid Health Services**		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		Eligibility Requirements	D		Presumptive Medicaid for Pregnant Women Program
	§1.1	Client Eligibility Requirements		§354.1530	Client Eligibility Requirements
	§1.3	Eligibility Requirements for Medical Providers		§354.1531	Eligibility Requirements for Medical Providers
	§1.5	Monitoring Medical Providers		§354.1533	Monitoring Medical Providers

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 2, Medically Needy and Children and Pregnant Women Programs			**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 354, Medicaid Health Services**			
Subchapter	Section	Heading	Subchapter and Division		Section	Heading
A		Definitions	E			Medically Needy and Children and Pregnant Women Programs
				1		Definitions
	§2.1	Definitions			§354.1550	Definitions
B		Medically Needy Program Requirements		2		Medically Needy Program Requirements
	§2.11	Eligible Groups			§354.1555	Eligible Groups
	§2.12	Application Procedures			§354.1556	Application Procedures
	§2.13	Income Eligibility Requirements			§354.1557	Income Eligibility Requirements
	§2.14	Eligibility Requirements Other Than Income			§354.1558	Eligibility Requirements Other Than Income
	§2.15	Medicaid Eligibility Dates			§354.1559	Medicaid Eligibility Dates
	§2.16	Information from Other Agencies			§354.1560	Information from Other Agencies
	§2.17	Requirement to Report Changes			§354.1561	Requirement to Report Changes
	§2.18	Right to Appeal			§354.1562	Right to Appeal
	§2.19	Availability of Funding			§354.1563	Availability of Funding
C		Children and Pregnant Women Program Requirements		3		Children and Pregnant Women Program Requirements
	§2.31	Eligible Groups			§354.1574	Eligible Groups
	§2.32	Application Procedures			§354.1575	Application Procedures
	§2.33	Income Eligibility Requirements			§354.1576	Income Eligibility Requirements
	§2.34	Eligibility Requirements Other Than Income			§354.1577	Eligibility Requirements Other Than Income
	§2.35	Medicaid Eligibility Dates			§354.1578	Medicaid Eligibility Dates
	§2.36	Information from Other Agencies			§354.1579	Information from Other Agencies
	§2.37	Requirement to Report Changes			§354.1580	Requirement to Report Changes
	§2.38	Right to Appeal			§354.1581	Right to Appeal
	§2.39	Availability of Funding			§354.1582	Availability of Funding

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 3, Texas Works				**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 372, Texas Works**			
Subchapter and Division		Section	Heading	Subchapter and Division		Section	Heading
A			Overview and Purpose	A			Overview and Purpose
		§3.1	What assistance programs does this chapter cover?			§372.1	What assistance programs does this chapter cover?
		§3.2	What do certain words and terms in this chapter mean?			§372.2	What do certain words and terms in this chapter mean?

		§3.3	What is the legal basis for this chapter's assistance programs?			§372.3	What is the legal basis for this chapter's assistance programs?
		§3.4	What are the purposes of this chapter's assistance programs?			§372.4	What are the purposes of this chapter's assistance programs?
		§3.5	Who provides the money for this chapter's assistance programs?			§372.5	Who provides the money for this chapter's assistance programs?
		§3.6	Who administers this chapter's assistance programs?			§372.6	Who administers this chapter's assistance programs?
B			Eligibility	B			Eligibility
	1		TANF Certified Groups		1		TANF Certified Groups
		§3.101	Whom does the TANF Program benefit?			§372.101	Whom does the TANF Program benefit?
		§3.102	Who is a caretaker under the TANF Program?			§372.102	Who is a caretaker under the TANF Program?
		§3.103	Whom may DHS include in a certified group?			§372.103	Whom may DHS include in a certified group?
		§3.104	Whom does DHS require be included in a certified group?			§372.104	Whom does DHS require be included in a certified group?
		§3.105	When does DHS include a stepparent who lives in the household in the certified group?			§372.105	When does DHS include a stepparent who lives in the household in the certified group?
		§3.106	Does DHS include the spouse of a caretaker in the certified group?			§372.106	Does DHS include the spouse of a caretaker in the certified group?
		§3.107	Whom does DHS exclude from the certified group?			§372.107	Whom does DHS exclude from the certified group?
	2		Food Stamp Households		2		Food Stamp Households
		§3.151	Whom does the Food Stamp Program benefit?			§372.151	Whom does the Food Stamp Program benefit?
		§3.152	Does DHS require people who live together to apply for food stamps together?			§372.152	Does DHS require people who live together to apply for food stamps together?
		§3.153	How does DHS determine the food stamp eligibility of various other types of households?			§372.153	How does DHS determine the food stamp eligibility of various other types of households?
	3		Citizenship		3		Citizenship
		§3.201	What are the citizenship requirements for the TANF Program?			§372.201	What are the citizenship requirements for the TANF Program?
		§3.202	Does DHS require TANF applicants to prove eligibility under §3.201 of this chapter?			§372.202	Does DHS require TANF applicants to prove eligibility under §3.201 of this chapter?
		§3.203	What are the citizenship requirements for the Food Stamp Program?			§372.203	What are the citizenship requirements for the Food Stamp Program?
		§3.204	Does DHS require Food Stamp Program applicants to prove eligibility under §3.203 of this chapter?			§372.204	Does DHS require Food Stamp Program applicants to prove eligibility under §3.203 of this chapter?
		§3.205	Does DHS report to the Immigration and Naturalization Service (INS) undocumented aliens who apply for assistance?			§372.205	Does DHS report to the Immigration and Naturalization Service (INS) undocumented aliens who apply for assistance?
	4		Residency		4		Residency
		§3.251	What are the residency requirements for the TANF Program?			§372.251	What are the residency requirements for the TANF Program?
		§3.252	What are the residency requirements for the Food Stamp Program?			§372.252	What are the residency requirements for the Food Stamp Program?
	5		Domicile		5		Domicile
		§3.301	What are the domicile requirements for the TANF Program?			§372.301	What are the domicile requirements for the TANF Program?
	6		Resources		6		Resources
		§3.351	What are resources in the TANF and Food Stamp programs?			§372.351	What are resources in the TANF and Food Stamp programs?

		§3.352	How do resources affect eligibility in the TANF and Food Stamp programs?			§372.352	How do resources affect eligibility in the TANF and Food Stamp programs?
		§3.353	How does DHS determine the value of a non-cash resource?			§372.353	How does DHS determine the value of a non-cash resource?
		§3.354	What are the countable resource limits of the TANF and Food Stamp programs?			§372.354	What are the countable resource limits of the TANF and Food Stamp programs?
		§3.355	Whose resources does DHS count in determining TANF and Food Stamp program eligibility?			§372.355	Whose resources does DHS count in determining TANF and Food Stamp program eligibility?
		§3.356	What resources does DHS count in the TANF Program?			§372.356	What resources does DHS count in the TANF Program?
		§3.357	What resources does DHS count in the Food Stamp Program?			§372.357	What resources does DHS count in the Food Stamp Program?
		§3.358	May members of a household transfer resources without affecting their eligibility for assistance under this chapter?			§372.358	May members of a household transfer resources without affecting their eligibility for assistance under this chapter?
	7		Income		7		Income
		§3.401	What is income in the TANF and Food Stamp programs?			§372.401	What is income in the TANF and Food Stamp programs?
		§3.402	How does income affect eligibility in the TANF and Food Stamp programs?			§372.402	How does income affect eligibility in the TANF and Food Stamp programs?
		§3.403	Whose income does DHS count in the TANF Program?			§372.403	Whose income does DHS count in the TANF Program?
		§3.404	What income does DHS count when determining TANF eligibility?			§372.404	What income does DHS count when determining TANF eligibility?
		§3.405	Whose income does DHS count when determining food stamp eligibility?			§372.405	Whose income does DHS count when determining food stamp eligibility?
		§3.406	What income does DHS count when determining food stamp eligibility?			§372.406	What income does DHS count when determining food stamp eligibility?
		§3.407	May members of a TANF or food stamp household fail to pursue or accept income without affecting their eligibility for assistance?			§372.407	May members of a TANF or food stamp household fail to pursue or accept income without affecting their eligibility for assistance?
		§3.408	How does DHS determine income eligibility for the TANF and Food Stamp programs?			§372.408	How does DHS determine income eligibility for the TANF and Food Stamp programs?
		§3.409	What does DHS deduct from countable income in the TANF and Food Stamp programs?			§372.409	What does DHS deduct from countable income in the TANF and Food Stamp programs?
		§3.410	How does DHS estimate how much income a household will receive in the future?			§372.410	How does DHS estimate how much income a household will receive in the future?
	8		Time Limits		8		Time Limits
		§3.451	What are time limits in the TANF and Food Stamp programs?			§372.451	What are time limits in the TANF and Food Stamp programs?
		§3.452	To whom does DHS apply time limits in the TANF and Food Stamp programs?			§372.452	To whom does DHS apply time limits in the TANF and Food Stamp programs?
		§3.453	What happens when a TANF recipient exhausts a time limit?			§372.453	What happens when a TANF recipient exhausts a time limit?
		§3.454	What are the exemptions from the TANF time limit requirements?			§372.454	What are the exemptions from the TANF time limit requirements?
		§3.455	When must a TANF recipient request a time limit exemption?			§372.455	When must a TANF recipient request a time limit exemption?
		§3.456	Who is subject to the 60-month lifetime limit for the receipt of TANF cash assistance?			§372.456	Who is subject to the 60-month lifetime limit for the receipt of TANF cash assistance?
		§3.457	How may a TANF household remain eligible after reaching the 60-month lifetime limit?			§372.457	How may a TANF household remain eligible after reaching the 60-month lifetime limit?

		§3.458	What are the exemptions from the Food Stamp Program's time limit requirements?			§372.458	What are the exemptions from the Food Stamp Program's time limit requirements?
		§3.459	How does a food stamp recipient who is disqualified because of time limits become eligible again?			§372.459	How does a food stamp recipient who is disqualified because of time limits become eligible again?
	9		Criminal Activity		9		Criminal Activity
		§3.501	What criminal activities disqualify a person from receiving TANF benefits?			§372.501	What criminal activities disqualify a person from receiving TANF benefits?
C			Associated Programs	C			Associated Programs
	1		Food Stamps in Disaster Situations		1		Food Stamps in Disaster Situations
		§3.601	Are food stamp benefits available to victims of disasters who might not otherwise be eligible?			§372.601	Are food stamp benefits available to victims of disasters who might not otherwise be eligible?
	2		Simplified Nutritional Assistance Program (SNAP)		2		Simplified Nutritional Assistance Program (SNAP)
		§3.651	What is the Simplified Nutritional Assistance Program (SNAP)?			§372.651	What is the Simplified Nutritional Assistance Program (SNAP)?
		§3.652	Who is eligible for SNAP?			§372.652	Who is eligible for SNAP?
		§3.653	What is the SNAP application process?			§372.653	What is the SNAP application process?
		§3.654	What is the SNAP certification process?			§372.654	What is the SNAP certification process?
		§3.655	Does DHS require SNAP recipients to report changes?			§372.655	Does DHS require SNAP recipients to report changes?
		§3.656	How does DHS determine the amount of SNAP benefits?			§372.656	How does DHS determine the amount of SNAP benefits?
	3		TANF Non-Cash Program		3		TANF Non-Cash Program
		§3.701	What is the TANF Non-Cash Program and what services does the program provide?			§372.701	What is the TANF Non-Cash Program and what services does the program provide?
		§3.702	What are the eligibility requirements for the TANF Non-Cash Program?			§372.702	What are the eligibility requirements for the TANF Non-Cash Program?
	4		TANF State Program		4		TANF State Program
		§3.751	What is the TANF State Program?			§372.751	What is the TANF State Program?
		§3.752	What are the requirements of TANF-SP?			§372.752	What are the requirements of TANF-SP?
		§3.753	Is there any difference in determining eligibility for TANF-SP as compared to the TANF Program?			§372.753	Is there any difference in determining eligibility for TANF-SP as compared to the TANF Program?
		§3.754	Is there any difference in determining the amount of benefits in TANF-SP as compared to the TANF Program?			§372.754	Is there any difference in determining the amount of benefits in TANF-SP as compared to the TANF Program?
	5		One-Time TANF (OTTANF)		5		One-Time TANF (OTTANF)
		§3.801	What is One-Time TANF (OTTANF)?			§372.801	What is One-Time TANF (OTTANF)?
		§3.802	What are the requirements for One-Time TANF (OTTANF)?			§372.802	What are the requirements for One-Time TANF (OTTANF)?
D			Application Process	D			Application Process
	1		Application		1		Application
		§3.901	How does a person apply for TANF or food stamps?			§372.901	How does a person apply for TANF or food stamps?
		§3.902	Does DHS accept incomplete applications?			§372.902	Does DHS accept incomplete applications?
		§3.903	What is the application file date?			§372.903	What is the application file date?
		§3.904	What is the time frame for processing TANF or food stamp applications?			§372.904	What is the time frame for processing TANF or food stamp applications?
		§3.905	When may TANF and food stamp applicants or clients designate an authorized representative?			§372.905	When may TANF and food stamp applicants or clients designate an authorized representative?
		§3.906	Is the TANF Program the best choice for families seeking assistance?			§372.906	Is the TANF Program the best choice for families seeking assistance?

	2		Interview		2		Interview
		§3.951	Where does DHS conduct TANF and food stamp eligibility interviews?			§372.951	Where does DHS conduct TANF and food stamp eligibility interviews?
		§3.952	How does DHS schedule and notify applicants of the date and location of an interview?			§372.952	How does DHS schedule and notify applicants of the date and location of an interview?
		§3.953	What happens at the interview?			§372.953	What happens at the interview?
		§3.954	What action does DHS take at the end of the interview?			§372.954	What action does DHS take at the end of the interview?
		§3.955	What procedure does DHS follow when delaying an eligibility decision?			§372.955	What procedure does DHS follow when delaying an eligibility decision?
		§3.956	How does DHS process food stamp applications from applicants who need food immediately?			§372.956	How does DHS process food stamp applications from applicants who need food immediately?
		§3.957	How often does DHS review eligibility in TANF and food stamp cases?			§372.957	How often does DHS review eligibility in TANF and food stamp cases?
		§3.958	How do TANF or food stamp recipients know when it is time to reapply for benefits?			§372.958	How do TANF or food stamp recipients know when it is time to reapply for benefits?
	3		Case Disposition		3		Case Disposition
		§3.1001	What types of eligibility notices does DHS provide to TANF and food stamp applicants?			§372.1001	What types of eligibility notices does DHS provide to TANF and food stamp applicants?
		§3.1002	May TANF and food stamp households appeal DHS's decisions affecting their benefits?			§372.1002	May TANF and food stamp households appeal DHS's decisions affecting their benefits?
		§3.1003	Does DHS reopen denied applications without requiring a household to file a new application?			§372.1003	Does DHS reopen denied applications without requiring a household to file a new application?
E			Participation Requirements	E			Participation Requirements
	1		Social Security Numbers		1		Social Security Numbers
		§3.1101	Are TANF and food stamp applicants required to provide Social Security numbers?			§372.1101	Are TANF and food stamp applicants required to provide Social Security numbers?
	2		The TANF Personal Responsibility Agreement (PRA)		2		The TANF Personal Responsibility Agreement (PRA)
		§3.1151	What is the TANF personal responsibility agreement (PRA) and to whom does it apply?			§372.1151	What is the TANF personal responsibility agreement (PRA) and to whom does it apply?
		§3.1152	What happens if a person who is required to sign a PRA fails or refuses to do so?			§372.1152	What happens if a person who is required to sign a PRA fails or refuses to do so?
		§3.1153	What are the PRA requirements?			§372.1153	What are the PRA requirements?
		§3.1154	How does a person cooperate with each PRA requirement?			§372.1154	How does a person cooperate with each PRA requirement?
		§3.1155	What happens when a person fails or refuses to cooperate with a requirement of a PRA that the person has signed?			§372.1155	What happens when a person fails or refuses to cooperate with a requirement of a PRA that the person has signed?
		§3.1156	What are good cause reasons for noncooperation with a PRA requirement?			§372.1156	What are good cause reasons for noncooperation with a PRA requirement?
	3		Finger Imaging		3		Finger Imaging
		§3.1201	What is finger imaging and what is its purpose?			§372.1201	What is finger imaging and what is its purpose?
		§3.1202	Who must comply with finger-imaging requirements?			§372.1202	Who must comply with finger-imaging requirements?
		§3.1203	Who is exempt from the finger-imaging requirement?			§372.1203	Who is exempt from the finger-imaging requirement?
		§3.1204	What happens if a household member fails to comply with the finger-imaging requirement?			§372.1204	What happens if a household member fails to comply with the finger-imaging requirement?
	4		TANF Workforce Orientation		4		TANF Workforce Orientation

		§3.1251	What is the TANF workforce orientation requirement and who must comply with it?			§372.1251	What is the TANF workforce orientation requirement and who must comply with it?
		§3.1252	Does DHS exempt some TANF members from the workforce orientation requirement?			§372.1252	Does DHS exempt some TANF members from the workforce orientation requirement?
		§3.1253	What penalty does DHS apply if a person fails to comply with the workforce orientation requirement?			§372.1253	What penalty does DHS apply if a person fails to comply with the workforce orientation requirement?
	5		Third-Party Resources		5		Third-Party Resources
		§3.1301	What is a third-party resource?			§372.1301	What is a third-party resource?
		§3.1302	Who must comply with third-party resource requirements?			§372.1302	Who must comply with third-party resource requirements?
		§3.1303	What are the third-party resource requirements?			§372.1303	What are the third-party resource requirements?
		§3.1304	What happens when an individual fails to comply with the third-party resource requirements?			§372.1304	What happens when an individual fails to comply with the third-party resource requirements?
	6		Work		6		Work
		§3.1351	What are the food stamp work requirements?			§372.1351	What are the food stamp work requirements?
		§3.1352	What happens if a non-exempt household member fails to comply with food stamp work requirements?			§372.1352	What happens if a non-exempt household member fails to comply with food stamp work requirements?
		§3.1353	What happens if a parent in a TANF household participates in a strike?			§372.1353	What happens if a parent in a TANF household participates in a strike?
	7		Reporting Changes		7		Reporting Changes
		§3.1401	What changes must a TANF household report?			§372.1401	What changes must a TANF household report?
		§3.1402	What changes must a food stamp household report?			§372.1402	What changes must a food stamp household report?
		§3.1403	How long does a household have to report a change?			§372.1403	How long does a household have to report a change?
		§3.1404	How soon does DHS take action on a reported change?			§372.1404	How soon does DHS take action on a reported change?
F			Benefits	F			Benefits
	1		Benefits in General		1		Benefits in General
		§3.1501	What do certain words and terms in this division mean?			§372.1501	What do certain words and terms in this division mean?
		§3.1502	What are the maximum benefit amounts in the TANF and Food Stamp programs?			§372.1502	What are the maximum benefit amounts in the TANF and Food Stamp programs?
		§3.1503	What are the minimum benefit amounts in the TANF and Food Stamp Programs?			§372.1503	What are the minimum benefit amounts in the TANF and Food Stamp Programs?
		§3.1504	In what dollar amounts does DHS issue food stamp benefits?			§372.1504	In what dollar amounts does DHS issue food stamp benefits?
		§3.1505	How does DHS determine the monthly amount of benefits in the TANF and Food Stamp programs?			§372.1505	How does DHS determine the monthly amount of benefits in the TANF and Food Stamp programs?
		§3.1506	When do TANF and food stamp benefits begin?			§372.1506	When do TANF and food stamp benefits begin?
		§3.1507	How are benefits affected if a TANF recipient stops participating in the work subsidy program?			§372.1507	How are benefits affected if a TANF recipient stops participating in the work subsidy program?
		§3.1508	What is a TANF supplemental grandparent payment?			§372.1508	What is a TANF supplemental grandparent payment?
		§3.1509	Does DHS require a TANF or food stamp household to repay benefits for a month a member dies or leaves the home?			§372.1509	Does DHS require a TANF or food stamp household to repay benefits for a month a member dies or leaves the home?
		§3.1510	What may recipients purchase with food stamp and TANF benefits?			§372.1510	What may recipients purchase with food stamp and TANF benefits?
		§3.1511	May recipients use food stamp benefits to purchase prepared meals?			§372.1511	May recipients use food stamp benefits to purchase prepared meals?

		§3.1512	What is Electronic Benefit Transfer (EBT)?			§372.1512	What is Electronic Benefit Transfer (EBT)?
		§3.1513	What is an EBT card?			§372.1513	What is an EBT card?
		§3.1514	Who controls access to the EBT account?			§372.1514	Who controls access to the EBT account?
		§3.1515	How does a primary cardholder use the EBT card?			§372.1515	How does a primary cardholder use the EBT card?
		§3.1516	Which households must have authorized representatives?			§372.1516	Which households must have authorized representatives?
		§3.1517	Does DHS allow access to EBT benefits by anyone other than the primary cardholder?			§372.1517	Does DHS allow access to EBT benefits by anyone other than the primary cardholder?
		§3.1518	How does DHS put TANF and food stamp benefits into a household's EBT account?			§372.1518	How does DHS put TANF and food stamp benefits into a household's EBT account?
		§3.1519	Where may TANF and food stamp households use their EBT benefits?			§372.1519	Where may TANF and food stamp households use their EBT benefits?
		§3.1520	Do food retailers give change in cash to food stamp households purchasing food with EBT food account benefits?			§372.1520	Do food retailers give change in cash to food stamp households purchasing food with EBT food account benefits?
		§3.1521	Do businesses charge EBT accounts when the EBT card is used?			§372.1521	Do businesses charge EBT accounts when the EBT card is used?
		§3.1522	What happens to the benefits in an EBT food account if a food stamp household moves out of Texas?			§372.1522	What happens to the benefits in an EBT food account if a food stamp household moves out of Texas?
		§3.1523	What happens to the benefits in a TANF cash account if the TANF household moves out of Texas?			§372.1523	What happens to the benefits in a TANF cash account if the TANF household moves out of Texas?
		§3.1524	What is DHS's procedure if EBT benefits cannot be used because of a disaster like a hurricane or flood?			§372.1524	What is DHS's procedure if EBT benefits cannot be used because of a disaster like a hurricane or flood?
		§3.1525	What happens if the EBT card is lost or stolen?			§372.1525	What happens if the EBT card is lost or stolen?
		§3.1526	Does DHS replace lost or stolen TANF or food stamp benefits?			§372.1526	Does DHS replace lost or stolen TANF or food stamp benefits?
		§3.1527	What happens to EBT benefits a TANF or food stamp household does not use?			§372.1527	What happens to EBT benefits a TANF or food stamp household does not use?
		§3.1528	Under what circumstances does DHS cancel and remove benefits from a TANF or food stamp household's EBT account?			§372.1528	Under what circumstances does DHS cancel and remove benefits from a TANF or food stamp household's EBT account?
		§3.1529	Who answers questions about EBT cash and food balances for TANF and food stamp households?			§372.1529	Who answers questions about EBT cash and food balances for TANF and food stamp households?
	2		Overpayments		2		Overpayments
		§3.1551	What happens if a TANF household is overpaid?			§372.1551	What happens if a TANF household is overpaid?
		§3.1552	What are the reasons a TANF household may be overpaid?			§372.1552	What are the reasons a TANF household may be overpaid?
		§3.1553	How do TANF households repay benefits?			§372.1553	How do TANF households repay benefits?
		§3.1554	What are the rules governing repayment of food stamp benefits?			§372.1554	What are the rules governing repayment of food stamp benefits?
	3		Restoration		3		Restoration
		§3.1601	When does DHS restore TANF benefits?			§372.1601	When does DHS restore TANF benefits?
		§3.1602	Does DHS restore TANF benefits to households that no longer receive benefits?			§372.1602	Does DHS restore TANF benefits to households that no longer receive benefits?
		§3.1603	When does DHS restore food stamp benefits?			§372.1603	When does DHS restore food stamp benefits?
G			Retailer Requirements	G			Retailer Requirements
		§3.1701	What do certain words and terms in this subchapter mean?			§372.1701	What do certain words and terms in this subchapter mean?

		§3.1702	What are DHS's requirements for retailers and third-party processors to participate in the EBT system?			§372.1702	What are DHS's requirements for retailers and third-party processors to participate in the EBT system?
		§3.1703	What are the general conditions for retailers and third-party processors to participate in the EBT system?			§372.1703	What are the general conditions for retailers and third-party processors to participate in the EBT system?
		§3.1704	What are POS requirements for retailers operating terminals supplied by the retailer management EBT contractor?			§372.1704	What are POS requirements for retailers operating terminals supplied by the retailer management EBT contractor?
		§3.1705	What are DHS's requirements for retailers that redeem food stamp benefits to deploy POS terminals?			§372.1705	What are DHS's requirements for retailers that redeem food stamp benefits to deploy POS terminals?
		§3.1706	What are the procedures for off-line (manual) transactions?			§372.1706	What are the procedures for off-line (manual) transactions?
		§3.1707	What process is followed for off-line (manual) vouchers with delayed telephone verification or preliminary telephone verification?			§372.1707	What process is followed for off-line (manual) vouchers with delayed telephone verification or preliminary telephone verification?
		§3.1708	What are DHS's off-line (manual) procedures for retailers with electronic voucher transaction capacity?			§372.1708	What are DHS's off-line (manual) procedures for retailers with electronic voucher transaction capacity?
		§3.1709	What are the liability implications for off-line (manual) transactions?			§372.1709	What are the liability implications for off-line (manual) transactions?
		§3.1710	How do retailers choose qualified third-party EBT processors?			§372.1710	How do retailers choose qualified third-party EBT processors?
		§3.1711	How does DHS reimburse retailers and third-party processors for EBT transactions?			§372.1711	How does DHS reimburse retailers and third-party processors for EBT transactions?
		§3.1712	How are EBT account discrepancies of settlement totals and the corresponding adjustments handled?			§372.1712	How are EBT account discrepancies of settlement totals and the corresponding adjustments handled?
		§3.1713	What does a retailer or third-party processor do if it did not receive or disagrees with the amount of an individual EBT transaction reimbursement to its bank account?			§372.1713	What does a retailer or third-party processor do if it did not receive or disagrees with the amount of an individual EBT transaction reimbursement to its bank account?
		§3.1714	What are some reasons that could lead to a dispute?			§372.1714	What are some reasons that could lead to a dispute?
		§3.1715	How long does a retailer or third-party processor have to dispute a transaction?			§372.1715	How long does a retailer or third-party processor have to dispute a transaction?
		§3.1716	How are transaction disputes resolved?			§372.1716	How are transaction disputes resolved?
		§3.1717	When are transaction disputes resolved?			§372.1717	When are transaction disputes resolved?
		§3.1718	What action does a retailer or third-party processor take if it disagrees with the resolution of a transaction dispute?			§372.1718	What action does a retailer or third-party processor take if it disagrees with the resolution of a transaction dispute?
		§3.1719	What option does a retailer or third-party processor have if it is dissatisfied with the decision from Lone Star Technology Department's informal review?			§372.1719	What option does a retailer or third-party processor have if it is dissatisfied with the decision from Lone Star Technology Department's informal review?
		§3.1720	How do retailers or third-party processors outside of Texas accept TANF and food stamp benefits issued by the state of Texas?			§372.1720	How do retailers or third-party processors outside of Texas accept TANF and food stamp benefits issued by the state of Texas?

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 4, Temporary Assistance for Needy Families (TANF)-Level Medical Assistance			Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 374, Temporary Assistance for Needy Families (TANF)-Level Medical Assistance		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		Program Requirements	A		Program Requirements
	§4.1	Eligibility Requirement		§374.1	Eligibility Requirement
	§4.2	Resources		§374.2	Resources
	§4.3	Three Months Prior Medicaid Coverage		§374.3	Three Months Prior Medicaid Coverage
	§4.4	Four Months Post-Medicaid Eligibility		§374.4	Four Months Post-Medicaid Eligibility
	§4.5	Twelve-Month Transitional Medicaid		§374.5	Twelve-Month Transitional Medicaid
	§4.6	Third-Party Resources		§374.6	Third-Party Resources
	§4.7	Failure to Comply with Third-Party Resources		§374.7	Failure to Comply with Third-Party Resources
	§4.8	Medical Support		§374.8	Medical Support
	§4.9	Failure to Comply with Medical Support		§374.9	Failure to Comply with Medical Support
	§4.10	Work Requirement		§374.10	Work Requirement
	§4.11	Failure to Comply with Work Requirements		§374.11	Failure to Comply with Work Requirements

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 5, Emergency Medicaid for Aliens Ineligible for Regular Medicaid			Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 354, Medicaid Health Services		
Subchapter	Section	Heading	Subchapter	Section	Heading
			G		Emergency Medicaid for Aliens Ineligible for Regular Medicaid
	§5.1	Legal Basis		§354.2101	Legal Basis
	§5.2	Eligibility Requirements		§354.2103	Eligibility Requirements

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 7, Refugee Cash Assistance and Medical Assistance Programs			Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 375, Refugee Cash Assistance and Medical Assistance Programs		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		Program Purpose and Scope	A		Program Purpose and Scope
	§7.101	What is the scope of the chapter?		§375.101	What is the scope of the chapter?
	§7.102	What is the purpose of this chapter?		§375.102	What is the purpose of this chapter?
	§7.103	How are the terms in this chapter defined?		§375.103	How are the terms in this chapter defined?
B		Contractor Requirements for the Refugee Cash Assistance Program (RCA)	B		Contractor Requirements for the Refugee Cash Assistance Program (RCA)
	§7.201	What is the purpose of this subchapter?		§375.201	What is the purpose of this subchapter?
	§7.203	Who can apply for a RCA contract?		§375.203	Who can apply for a RCA contract?
	§7.205	What is the financial responsibility of the contractor's board of directors?		§375.205	What is the financial responsibility of the contractor's board of directors?

	§7.207	Are there accounting requirements the contractor must meet to receive a contract?		§375.207	Are there accounting requirements the contractor must meet to receive a contract?
	§7.209	Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?		§375.209	Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?
	§7.211	What are the confidentiality requirements of a contract?		§375.211	What are the confidentiality requirements of a contract?
	§7.213	Are contractors responsible for having a nepotism policy?		§375.213	Are contractors responsible for having a nepotism policy?
	§7.215	Are contractors responsible for having a conflict of interest policy?		§375.215	Are contractors responsible for having a conflict of interest policy?
	§7.217	Are contractors required to comply with the Limited English Proficiency (LEP) provisions of Title VI of the Civil Rights Act?		§375.217	Are contractors required to comply with the Limited English Proficiency (LEP) provisions of Title VI of the Civil Rights Act?
	§7.219	What are the record keeping requirements of the contract?		§375.219	What are the record keeping requirements of the contract?
	§7.221	How long are contractors required to keep records?		§375.221	How long are contractors required to keep records?
C		Program Administration for the Refugee Cash Assistance Program (RCA)	C		Program Administration for the Refugee Cash Assistance Program (RCA)
	§7.301	What is the purpose of this subchapter?		§375.301	What is the purpose of this subchapter?
	§7.303	Who is eligible for Refugee Cash Assistance (RCA) benefits?		§375.303	Who is eligible for Refugee Cash Assistance (RCA) benefits?
	§7.305	What is the income eligibility standard for months one through four of the eight months of eligibility?		§375.305	What is the income eligibility standard for months one through four of the eight months of eligibility?
	§7.307	What is the income eligibility standard for months five through eight of the eight months of eligibility?		§375.307	What is the income eligibility standard for months five through eight of the eight months of eligibility?
	§7.309	What income must be disregarded when determining eligibility?		§375.309	What income must be disregarded when determining eligibility?
	§7.311	Are contractors required to report changes in a participant's income to the Texas Department of Human Services (DHS)?		§375.311	Are contractors required to report changes in a participant's income to the Texas Department of Human Services (DHS)?
	§7.313	Who determines a refugee's eligibility for Refugee Cash Assistance (RCA) benefits?		§375.313	Who determines a refugee's eligibility for Refugee Cash Assistance (RCA) benefits?
	§7.315	Are there special provisions when enrolling families with children in Refugee Cash Assistance?		§375.315	Are there special provisions when enrolling families with children in Refugee Cash Assistance?
	§7.317	How long can a participant receive Refugee Cash Assistance (RCA) benefits?		§375.317	How long can a participant receive Refugee Cash Assistance (RCA) benefits?
	§7.319	What is the beginning date of the eligibility period for Refugee Cash Assistance (RCA) benefits?		§375.319	What is the beginning date of the eligibility period for Refugee Cash Assistance (RCA) benefits?
	§7.321	How does the contractor determine eligibility for a refugee who has moved from another state to Texas?		§375.321	How does the contractor determine eligibility for a refugee who has moved from another state to Texas?

	§7.323	What happens if a participant has a child after arriving in the U.S.?		§375.323	What happens if a participant has a child after arriving in the U.S.?
	§7.325	Can a contractor consider participants as a family unit if they do not live together?		§375.325	Can a contractor consider participants as a family unit if they do not live together?
	§7.327	If two or more unrelated participants live together, are they considered a family unit?		§375.327	If two or more unrelated participants live together, are they considered a family unit?
	§7.329	What is the start date for benefits for approved applicants entering the program?		§375.329	What is the start date for benefits for approved applicants entering the program?
	§7.331	What payment levels and types of payments will the contractor use when providing cash assistance?		§375.331	What payment levels and types of payments will the contractor use when providing cash assistance?
	§7.333	Who is eligible to receive an incentive payment?		§375.333	Who is eligible to receive an incentive payment?
	§7.335	How is the incentive payment disbursed for a family unit larger than one?		§375.335	How is the incentive payment disbursed for a family unit larger than one?
	§7.337	What happens if a participant is underpaid?		§375.337	What happens if a participant is underpaid?
	§7.339	What happens if a participant is overpaid?		§375.339	What happens if a participant is overpaid?
	§7.341	Are contractors responsible for translating materials for participants?		§375.341	Are contractors responsible for translating materials for participants?
	§7.343	What information and materials must a contractor provide to the participant upon enrollment?		§375.343	What information and materials must a contractor provide to the participant upon enrollment?
	§7.345	What procedures must a contractor follow when authorizing or denying an applicant benefits?		§375.345	What procedures must a contractor follow when authorizing or denying an applicant benefits?
	§7.347	When may a contractor reduce, suspend, or terminate benefits?		§375.347	When may a contractor reduce, suspend, or terminate benefits?
	§7.349	What must a contractor do when reducing, suspending, or terminating benefits?		§375.349	What must a contractor do when reducing, suspending, or terminating benefits?
	§7.351	Can a contractor reduce, suspend, or terminate cash assistance if the participant requests a hearing?		§375.351	Can a contractor reduce, suspend, or terminate cash assistance if the participant requests a hearing?
	§7.353	How must contractors participate in coordination activities with other refugee providers?		§375.353	How must contractors participate in coordination activities with other refugee providers?
D		Refugee Cash Assistance Participant Requirements	D		Refugee Cash Assistance Participant Requirements
	§7.401	What is the purpose of this subchapter?		§375.401	What is the purpose of this subchapter?
	§7.403	Are there employment requirements for participants in this program?		§375.403	Are there employment requirements for participants in this program?
	§7.405	What are the exemptions for employment participation requirements?		§375.405	What are the exemptions for employment participation requirements?
	§7.407	What are the temporary good cause exemptions from employment participation requirements?		§375.407	What are the temporary good cause exemptions from employment participation requirements?

	§7.409	What happens if a non-exempt participant fails to meet employment requirements?		§375.409	What happens if a non-exempt participant fails to meet employment requirements?
	§7.411	What happens to a family unit's benefits if one member of a family unit fails to meet employment requirements?		§375.411	What happens to a family unit's benefits if one member of a family unit fails to meet employment requirements?
	§7.413	What action does a contractor take if an applicant voluntarily quits employment within 30 days of applying for Refugee Cash Assistance (RCA) benefits?		§375.413	What action does a contractor take if an applicant voluntarily quits employment within 30 days of applying for Refugee Cash Assistance (RCA) benefits?
	§7.415	What action does a contractor take if a participant voluntarily quits employment after enrolling in Refugee Cash Assistance (RCA) benefits?		§375.415	What action does a contractor take if a participant voluntarily quits employment after enrolling in Refugee Cash Assistance (RCA) benefits?
	§7.417	If a Refugee Cash Assistance (RCA) contractor denies, terminates, or reduces benefits, how may an applicant or participant appeal the decision?		§375.417	If a Refugee Cash Assistance (RCA) contractor denies, terminates, or reduces benefits, how may an applicant or participant appeal the decision?
	§7.419	If a participant's benefits are denied, terminated, or reduced because the employment provider has reported that the participant is not meeting the employment requirements of the program, how can a participant appeal the decision?		§375.419	If a participant's benefits are denied, terminated, or reduced because the employment provider has reported that the participant is not meeting the employment requirements of the program, how can a participant appeal the decision?
E		Refugee Medical Assistance	E		Refugee Medical Assistance
	§7.501	What is the purpose of this subchapter?		§375.501	What is the purpose of this subchapter?
	§7.503	Who is eligible for Refugee Medical Assistance (RMA) benefits?		§375.503	Who is eligible for Refugee Medical Assistance (RMA) benefits?
	§7.505	How does a person apply for Refugee Medical Assistance (RMA)?		§375.505	How does a person apply for Refugee Medical Assistance (RMA)?
	§7.507	Are Refugee Medical Assistance (RMA) applicants required to apply for Refugee Cash Assistance (RCA)?		§375.507	Are Refugee Medical Assistance (RMA) applicants required to apply for Refugee Cash Assistance (RCA)?
	§7.509	Are there special considerations when Refugee Cash Assistance (RCA) participants apply for Refugee Medical Assistance (RMA)?		§375.509	Are there special considerations when Refugee Cash Assistance (RCA) participants apply for Refugee Medical Assistance (RMA)?
	§7.511	Who determines eligibility for Refugee Medical Assistance (RMA)?		§375.511	Who determines eligibility for Refugee Medical Assistance (RMA)?
	§7.513	What documentation is needed to determine eligibility?		§375.513	What documentation is needed to determine eligibility?
	§7.515	How is the beginning date of the eight-month period of eligibility for Refugee Medical Assistance (RMA) benefits determined?		§375.515	How is the beginning date of the eight-month period of eligibility for Refugee Medical Assistance (RMA) benefits determined?
	§7.517	What are the financial eligibility limits for Refugee Medical Assistance (RMA)?		§375.517	What are the financial eligibility limits for Refugee Medical Assistance (RMA)?

	§7.519	What are the income and resource considerations for Refugee Medical Assistance (RMA) eligibility?		§375.519	What are the income and resource considerations for Refugee Medical Assistance (RMA) eligibility?
	§7.521	How does marriage affect Refugee Medical Assistance (RMA) benefits?		§375.521	How does marriage affect Refugee Medical Assistance (RMA) benefits?
	§7.523	How does having a child after arrival affect Refugee Medical Assistance (RMA) benefits?		§375.523	How does having a child after arrival affect Refugee Medical Assistance (RMA) benefits?
	§7.525	Can applicants who do not live together be certified as a family unit?		§375.525	Can applicants who do not live together be certified as a family unit?
	§7.527	If two or more unrelated applicants live together, can they be certified as a family unit?		§375.527	If two or more unrelated applicants live together, can they be certified as a family unit?
	§7.529	Are benefits continued if a participant's income increases due to employment?		§375.529	Are benefits continued if a participant's income increases due to employment?
	§7.531	Is a refugee who has been terminated from Medicaid because of earnings eligible for Refugee Medical Assistance (RMA)?		375.531	Is a refugee who has been terminated from Medicaid because of earnings eligible for Refugee Medical Assistance (RMA)?
	§7.533	What changes are Refugee Medical Assistance (RMA) participants required to report?		§375.533	What changes are Refugee Medical Assistance (RMA) participants required to report?
	§7.535	What services are provided under Refugee Medical Assistance (RMA)?		§375.535	What services are provided under Refugee Medical Assistance (RMA)?
	§7.537	What happens if the refugee becomes covered by employer-provided insurance?		§375.537	What happens if the refugee becomes covered by employer-provided insurance?
	§7.539	What notices will the Texas Department of Human services (DHS) provide to Refugee Medical Assistance (RMA) participants?		§375.539	What notices will the Texas Department of Human services (DHS) provide to Refugee Medical Assistance (RMA) participants?

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 8, Medical Assistance for Breast and Cervical Cancer			**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 354, Medicaid Health Services**		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		Program Requirements	H		Medical Assistance for Breast and Cervical Cancer
	§8.1	Client Eligibility Requirements		§354.2120	Client Eligibility Requirements
	§8.5	Right to Appeal		§354.2125	Right to Appeal

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 9, Refugee Social Services			**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 376, Refugee Social Services**		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		Purpose and Scope	A		Purpose and Scope
	§9.101	What is the basis of this chapter?		§376.101	What is the basis of this chapter?
	§9.102	What is the purpose of this chapter?		§376.102	What is the purpose of this chapter?
	§9.103	How are the terms in this chapter defined?		§376.103	How are the terms in this chapter defined?

	§9.104	Is the term "refugee" used throughout this chapter to designate all those eligible for refugee social services?		§376.104	Is the term "refugee" used throughout this chapter to designate all those eligible for refugee social services?
B		Contractor Requirements	B		Contractor Requirements
	§9.201	What is the purpose of this subchapter?		§376.201	What is the purpose of this subchapter?
	§9.203	Who can apply for a refugee social services contract?		§376.203	Who can apply for a refugee social services contract?
	§9.205	How are refugee social services contracts awarded?		§376.205	How are refugee social services contracts awarded?
	§9.207	What is the financial responsibility of the contractor's board of directors?		§376.207	What is the financial responsibility of the contractor's board of directors?
	§9.209	What accounting requirements must the contractor meet?		§376.209	What accounting requirements must the contractor meet?
	§9.211	Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?		§376.211	Does the Texas Department of Human Services (DHS) require contractors to have a fidelity bond?
	§9.213	What are the confidentiality requirements of a contractor?		§376.213	What are the confidentiality requirements of a contractor?
	§9.215	Are contractors responsible for having a nepotism policy?		§376.215	Are contractors responsible for having a nepotism policy?
	§9.217	Are contractors responsible for having a conflict of interest policy?		§376.217	Are contractors responsible for having a conflict of interest policy?
	§9.219	What issues must the conflict of interest policy address?		§376.219	What issues must the conflict of interest policy address?
	§9.221	Are contractors required to comply with the Limited English Proficiency provisions of Title VI of the Civil Rights Act?		§376.221	Are contractors required to comply with the Limited English Proficiency provisions of Title VI of the Civil Rights Act?
	§9.223	With what Limited English Proficiency (LEP) provisions is a contractor required to comply?		§376.223	With what Limited English Proficiency (LEP) provisions is a contractor required to comply?
	§9.225	What are the staffing requirements for contractors?		§376.225	What are the staffing requirements for contractors?
	§9.227	Are there requirements for hiring bilingual or bicultural women?		§376.227	Are there requirements for hiring bilingual or bicultural women?
	§9.229	What are the record keeping requirements of the contract?		§376.229	What are the record keeping requirements of the contract?
	§9.231	How long are contractors required to keep records?		§376.231	How long are contractors required to keep records?
	§9.233	What are the reporting requirements for contractors?		§376.233	What are the reporting requirements for contractors?
	§9.235	If a refugee is receiving services under another program funded by the Office of Refugee Resettlement, can similar services be provided under a contract funded by a Refugee Social Services Grant (RSS) or a Targeted Assistance Grant (TAG)?		§376.235	If a refugee is receiving services under another program funded by the Office of Refugee Resettlement, can similar services be provided under a contract funded by a Refugee Social Services Grant (RSS) or a Targeted Assistance Grant (TAG)?
	§9.237	Can a contractor subcontract services?		§376.237	Can a contractor subcontract services?
C		General Program Administration	C		General Program Administration
	§9.301	What is the purpose of this subchapter?		§376.301	What is the purpose of this subchapter?
	§9.303	What services may be provided to assist refugees with employability skills?		§376.303	What services may be provided to assist refugees with employability skills?
	§9.305	Can additional services be provided?		§376.305	Can additional services be provided?
	§9.307	Who is eligible for refugee social services?		§376.307	Who is eligible for refugee social services?

	§9.309	Are individuals applying for asylum through the Immigration and Naturalization Service eligible for refugee social services assistance?		§376.309	Are individuals applying for asylum through the Immigration and Naturalization Service eligible for refugee social services assistance?
	§9.311	Can refugees younger than 16 years of age receive refugee social services?		§376.311	Can refugees younger than 16 years of age receive refugee social services?
	§9.313	Who determines a refugee's eligibility for refugee social services benefits?		§376.313	Who determines a refugee's eligibility for refugee social services benefits?
	§9.315	Are there equal opportunity requirements for refugee women?		§376.315	Are there equal opportunity requirements for refugee women?
	§9.317	How long can a participant receive refugee social services?		§376.317	How long can a participant receive refugee social services?
	§9.319	Can employability services be provided after a refugee finds a job?		§376.319	Can employability services be provided after a refugee finds a job?
	§9.321	How does a contractor determine eligibility for a refugee who has moved to Texas from another state?		§376.321	How does a contractor determine eligibility for a refugee who has moved to Texas from another state?
	§9.323	Is coordination with other refugee providers required?		§376.323	Is coordination with other refugee providers required?
	§9.325	Can participants who do not speak English participate in employment services?		§376.325	Can participants who do not speak English participate in employment services?
	§9.327	Are contractors required to report changes in a participant's income or address to the Texas Department of Human Services (DHS)?		§376.327	Are contractors required to report changes in a participant's income or address to the Texas Department of Human Services (DHS)?
	§9.329	What information and materials must a contractor provide to the participant upon or during intake for services?		§376.329	What information and materials must a contractor provide to the participant upon or during intake for services?
	§9.331	Can an applicant or recipient appeal an adverse determination by a contractor?		§376.331	Can an applicant or recipient appeal an adverse determination by a contractor?
	§9.333	What should the contractor know about applicant or participant appeals?		§376.333	What should the contractor know about applicant or participant appeals?
D		Employment Services: Refugee Social Services (RSS)	D		Employment Services: Refugee Social Services (RSS)
	§9.401	What is the purpose of this subchapter?		§376.401	What is the purpose of this subchapter?
	§9.403	What criteria should be followed when providing refugee employment services?		§376.403	What criteria should be followed when providing refugee employment services?
	§9.405	How are refugees prioritized for employment services under Refugee Social Services (RSS) grants?		§376.405	How are refugees prioritized for employment services under Refugee Social Services (RSS) grants?
	§9.407	How must Refugee Social Services (RSS) employment services be designed?		§376.407	How must Refugee Social Services (RSS) employment services be designed?
	§9.409	What types of services are appropriate employment services?		§376.409	What types of services are appropriate employment services?
	§9.411	Can a contractor consider participants as a family unit if they do not live together?		§376.411	Can a contractor consider participants as a family unit if they do not live together?
	§9.413	If two or more unrelated participants live together, are they considered a family unit?		§376.413	If two or more unrelated participants live together, are they considered a family unit?
	§9.415	Is a Family Self-Sufficiency Plan (FSSP) required for all employable participants?		§376.415	Is a Family Self-Sufficiency Plan (FSSP) required for all employable participants?
	§9.417	What does an Individual Employability Plan include and how is it developed?		§376.417	What does an Individual Employability Plan include and how is it developed?

	§9.419	Are refugees required to accept job offers?		§376.419	Are refugees required to accept job offers?
	§9.421	What criteria must employment training services meet?		§376.421	What criteria must employment training services meet?
	§9.423	Can employment training be provided beyond one year?		§376.423	Can employment training be provided beyond one year?
	§9.425	Do participants in vocational employment training programs have to work while receiving training?		§376.425	Do participants in vocational employment training programs have to work while receiving training?
	§9.427	Can a contractor enroll a refugee in a professional recertification program?		§376.427	Can a contractor enroll a refugee in a professional recertification program?
E		Employment Services: Refugee Cash Assistance (RCA)	E		Employment Services: Refugee Cash Assistance (RCA)
	§9.501	What is the purpose of this subchapter?		§376.501	What is the purpose of this subchapter?
	§9.503	What regulations govern the Refugee Cash Assistance (RCA) program?		§376.503	What regulations govern the Refugee Cash Assistance (RCA) program?
	§9.505	What are the employment requirements for participants in the Refugee Cash Assistance (RCA) program?		§376.505	What are the employment requirements for participants in the Refugee Cash Assistance (RCA) program?
	§9.507	Can an applicant for refugee cash assistance claim adverse effects of accepting employment?		§376.507	Can an applicant for refugee cash assistance claim adverse effects of accepting employment?
	§9.509	What are the employment requirements for Refugee Cash Assistance participants living outside of refugee resettlement areas?		§376.509	What are the employment requirements for Refugee Cash Assistance participants living outside of refugee resettlement areas?
	§9.511	When must Refugee Cash Assistance (RCA) participants register for employment services?		§376.511	When must Refugee Cash Assistance (RCA) participants register for employment services?
	§9.513	Do contractors need to schedule and provide services for Refugee Cash Assistance (RCA) recipients?		§376.513	Do contractors need to schedule and provide services for Refugee Cash Assistance (RCA) recipients?
	§9.515	What are the requirements for Refugee Cash Assistance (RCA) recipients who are employed fewer than 30 hours per week?		§376.515	What are the requirements for Refugee Cash Assistance (RCA) recipients who are employed fewer than 30 hours per week?
	§9.517	Are there coordination requirements between employment services and Refugee Cash Assistance (RCA) providers?		§376.517	Are there coordination requirements between employment services and Refugee Cash Assistance (RCA) providers?
	§9.519	What procedures must a contractor follow when authorizing or denying an applicant benefits?		§376.519	What procedures must a contractor follow when authorizing or denying an applicant benefits?
F		English as a Second Language (ESL) Services	F		English as a Second Language (ESL) Services
	§9.601	What is the purpose of this subchapter?		§376.601	What is the purpose of this subchapter?
	§9.602	Can English as a Second Language (ESL) be provided as a stand-alone service?		§376.602	Can English as a Second Language (ESL) be provided as a stand-alone service?
G		Other Employability Services	G		Other Employability Services
	§9.701	What is the purpose of this subchapter?		§376.701	What is the purpose of this subchapter?
	§9.703	What other employability services may be provided under Refugee Social Services and Targeted Assistance grant-funded programs?		§376.703	What other employability services may be provided under Refugee Social Services and Targeted Assistance grant-funded programs?
	§9.705	What are outreach services?		§376.705	What are outreach services?
	§9.707	What are emergency services?		§376.707	What are emergency services?
	§9.709	What are health services?		§376.709	What are health services?
	§9.711	What are home management services?		§376.711	What are home management services?

	§9.713	When can child day care services be provided?		§376.713	When can child day care services be provided?
	§9.715	What standards must child day care meet?		§376.715	What standards must child day care meet?
	§9.717	When can transportation services be provided?		§376.717	When can transportation services be provided?
	§9.719	What are citizenship and naturalization services?		§376.719	What are citizenship and naturalization services?
	§9.721	Can immigration fee payments be made under Refugee Social Services (RSS) contracts?		§376.721	Can immigration fee payments be made under Refugee Social Services (RSS) contracts?
H		Targeted Assistance Grant (TAG) Services	H		Targeted Assistance Grant (TAG) Services
	§9.801	What is the purpose of this subchapter?		§376.801	What is the purpose of this subchapter?
	§9.802	What is a Targeted Assistance Grant (TAG)?		§376.802	What is a Targeted Assistance Grant (TAG)?
	§9.803	Are Targeted Assistance Grant (TAG) programs subject to the same regulations as other Refugee Social Services (RSS) programs?		§376.803	Are Targeted Assistance Grant (TAG) programs subject to the same regulations as other Refugee Social Services (RSS) programs?
	§9.804	What services are allowable under Targeted Assistance Grant (TAG) programs?		§376.804	What services are allowable under Targeted Assistance Grant (TAG) programs?
	§9.805	Which refugee groups receive priority for services under Targeted Assistance Grant (TAG) programs?		§376.805	Which refugee groups receive priority for services under Targeted Assistance Grant (TAG) programs?
	§9.806	Can Targeted Assistance Grant (TAG) and Refugee Social Services (RSS) assistance be provided to a refugee at the same time?		§376.806	Can Targeted Assistance Grant (TAG) and Refugee Social Services (RSS) assistance be provided to a refugee at the same time?
I		Unaccompanied Refugee Minor (URM) Program	I		Unaccompanied Refugee Minor (URM) Program
	§9.901	What is the purpose of this subchapter?		§376.901	What is the purpose of this subchapter?
	§9.902	Who provides care and services for unaccompanied refugee minors (URM)?		§376.902	Who provides care and services for unaccompanied refugee minors (URM)?
	§9.903	What services are available to unaccompanied refugee minors?		§376.903	What services are available to unaccompanied refugee minors?
	§9.904	How long can an unaccompanied refugee minor (URM) receive services?		§376.904	How long can an unaccompanied refugee minor (URM) receive services?
	§9.905	How are services provided to unaccompanied refugee minors (URM) who move to or from another state?		§376.905	How are services provided to unaccompanied refugee minors (URM) who move to or from another state?
	§9.906	Are unaccompanied refugee minors (URM) eligible for adoption?		§376.906	Are unaccompanied refugee minors (URM) eligible for adoption?
	§9.907	How is adult legal responsibility for an unaccompanied refugee minor established?		§376.907	How is adult legal responsibility for an unaccompanied refugee minor established?

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 10, Medicaid for Transitioning Foster Care Youth			**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 354, Medicaid Health Services**			
Subchapter	Section	Heading	Subchapter and Division		Section	Heading
A		Overview and Purpose	L			Medicaid for Transitioning Foster Care Youth
				1		Overview and Purpose
	§10.1	Purpose			§354.2451	Purpose
	§10.2	Program Administration			§354.2452	Program Administration
	§10.3	Legal Basis			§354.2453	Legal Basis

B		Eligibility Requirements		2		Eligibility Requirements
	§10.11	Eligible Group			§354.2461	Eligible Group
	§10.12	Age Requirement			§354.2462	Age Requirement
	§10.13	Citizenship Requirement			§354.2463	Citizenship Requirement
	§10.14	Resource Requirements			§354.2464	Resource Requirements
	§10.15	Income Eligibility			§354.2465	Income Eligibility
	§10.16	Residency Requirements			§354.2466	Residency Requirements
C		Certification and Coverage		3		Certification and Coverage
	§10.31	Initial Certification			§354.2481	Initial Certification
	§10.32	Medicaid Eligibility Dates			§354.2482	Medicaid Eligibility Dates
D		Appeals		4		Appeals
	§10.41	Right to Appeal			§354.2491	Right to Appeal

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 11, Food Distribution and Processing			**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 377, Food Distribution and Processing**		
Subchapter	Section	Heading	Subchapter	Section	Heading
A		Food Distribution Program	A		Food Distribution Program
	§11.101	Definitions of Program Terms		§377.101	Definitions of Program Terms
	§11.102	Eligible Distributing and Subdistributing Agencies		§377.102	Eligible Distributing and Subdistributing Agencies
	§11.103	Eligibility Determination for Recipient Agencies and Recipients		§377.103	Eligibility Determination for Recipient Agencies and Recipients
	§11.104	Agreements and Contracts		§377.104	Agreements and Contracts
	§11.105	Contractor Sanctions, Termination, and Appeal Rights		§377.105	Contractor Sanctions, Termination, and Appeal Rights
	§11.106	Distribution and Control of Donated Foods		§377.106	Distribution and Control of Donated Foods
	§11.107	Warehousing and Distribution of Donated Foods		§377.107	Warehousing and Distribution of Donated Foods
	§11.108	Financial Management		§377.108	Financial Management
	§11.109	Recordkeeping		§377.109	Recordkeeping
	§11.110	Audits		§377.110	Audits
	§11.111	Reviews		§377.111	Reviews
	§11.112	Civil Rights		§377.112	Civil Rights
	§11.113	Requirement to Buy American Products		§377.113	Requirement to Buy American Products
	§11.114	State Processing of Donated Foods		§377.114	State Processing of Donated Foods
	§11.115	Nonprofit Summer Camps for Children		§377.115	Nonprofit Summer Camps for Children
	§11.116	Charitable Institutions		§377.116	Charitable Institutions
	§11.117	Nutrition Programs for the Elderly		§377.117	Nutrition Programs for the Elderly
	§11.118	Disaster Organizations		§377.118	Disaster Organizations
	§11.119	Special Food Assistance Programs		§377.119	Special Food Assistance Programs
	§11.120	School Food Authorities and Commodity Schools		§377.120	School Food Authorities and Commodity Schools
	§11.121	Nonresidential Child and Adult Care Institutions		§377.121	Nonresidential Child and Adult Care Institutions
	§11.122	Services Institutions		§377.122	Services Institutions
B		The Texas Commodity Assistance Program (TEXCAP)	B		The Texas Commodity Assistance Program (TEXCAP)
	§11.6001	Purpose		§377.6001	Purpose
	§11.6002	Eligibility Requirements		§377.6002	Eligibility Requirements
	§11.6003	Applicant Responsibilities		§377.6003	Applicant Responsibilities
	§11.6004	Applicant Rights		§377.6004	Applicant Rights
	§11.6005	Eligibility Guidelines		§377.6005	Eligibility Guidelines
	§11.6006	Commodity Distribution		§377.6006	Commodity Distribution
	§11.6007	Responsibilities of Contracted Agencies		§377.6007	Responsibilities of Contracted Agencies

	§11.6008	Corrective Action		§377.6008	Corrective Action
	§11.6009	Reimbursement		§377.6009	Reimbursement
	§11.6010	Selection of Contractors		§377.6010	Selection of Contractors
	§11.6011	Adverse Action, Appeal, and Complaint Procedures		§377.6011	Adverse Action, Appeal, and Complaint Procedures
C		Commodity Supplemental Food Program	C		Commodity Supplemental Food Program
	§11.7001	Purpose		§377.7001	Purpose
	§11.7002	Definitions and Terms		§377.7002	Definitions and Terms
	§11.7003	Selection of Local Agencies		§377.7003	Selection of Local Agencies
	§11.7004	Certification		§377.7004	Certification
	§11.7005	Nutrition Education		§377.7005	Nutrition Education
	§11.7006	Financial Management		§377.7006	Financial Management
	§11.7007	Administrative Costs		§377.7007	Administrative Costs
	§11.7008	Program Income		§377.7008	Program Income
	§11.7009	Responsibilities of Local Agencies		§377.7009	Responsibilities of Local Agencies
	§11.7010	Records and Reports		§377.7010	Records and Reports
	§11.7011	Procurement and Property Management		§377.7011	Procurement and Property Management
	§11.7012	Management Evaluations and Reviews		§377.7012	Management Evaluations and Reviews
	§11.7013	Audits		§377.7013	Audits
	§11.7014	Adverse Action, Appeal, and Fair Hearings		§377.7014	Adverse Action, Appeal, and Fair Hearings
	§11.7015	Nondiscrimination		§377.7015	Nondiscrimination

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 12, Special Nutrition Programs				**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 378, Special Nutrition Programs**			
Subchapter and Division		Section	Heading	Subchapter and Division		Section	Heading
A			Child and Adult Care Food Program (CACFP)	A			Child and Adult Care Food Program (CACFP)
	1		Overview and Purpose		1		Overview and Purpose
		§12.1	What is the purpose of the Child and Adult Care Food Program (CACFP)?			§378.1	What is the purpose of the Child and Adult Care Food Program (CACFP)?
		§12.2	What do certain words and terms in this subchapter mean?			§378.2	What do certain words and terms in this subchapter mean?
		§12.3	How is the CACFP authorized?			§378.3	How is the CACFP authorized?
		§12.4	How may DHS use the CACFP federal assistance?			§378.4	How may DHS use the CACFP federal assistance?
	2		Eligibility of Contractors and Facilities		2		Eligibility of Contractors and Facilities
		§12.11	What requirements must contractors and facilities meet in order to be eligible to participate in the CACFP?			§378.11	What requirements must contractors and facilities meet in order to be eligible to participate in the CACFP?
		§12.12	Must contractors and facilities be licensed or approved in order to participate in the CACFP?			§378.12	Must contractors and facilities be licensed or approved in order to participate in the CACFP?
		§12.13	Who is the licensing authority in Texas?			§378.13	Who is the licensing authority in Texas?
		§12.14	Are there any exceptions to the licensing requirements?			§378.14	Are there any exceptions to the licensing requirements?
		§12.15	When must a contractor submit copies of its license or registration?			§378.15	When must a contractor submit copies of its license or registration?
		§12.16	Must a contractor comply with training requirements in order to be eligible to participate in the CACFP?			§378.16	Must a contractor comply with training requirements in order to be eligible to participate in the CACFP?
		§12.17	Must a nonprofit contractor have tax-exempt status in order to be eligible to participate in the CACFP?			§378.17	Must a nonprofit contractor have tax-exempt status in order to be eligible to participate in the CACFP?

		§12.18	Must a proprietary for-profit organization or a sponsored for-profit facility meet specific eligibility requirements in order to be eligible to participate in the CACFP?			§378.18	Must a proprietary for-profit organization or a sponsored for-profit facility meet specific eligibility requirements in order to be eligible to participate in the CACFP?
		§12.19	Are there any exceptions to the eligibility requirements stated in 7 CFR §226.15 for a proprietary for-profit child care center or a for-profit sponsored child care facility?			§378.19	Are there any exceptions to the eligibility requirements stated in 7 CFR §226.15 for a proprietary for-profit child care center or a for-profit sponsored child care facility?
		§12.20	What is the Free/Reduced-Price Expanded Eligibility Pilot criterion?			§378.20	What is the Free/Reduced-Price Expanded Eligibility Pilot criterion?
		§12.21	Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?			§378.21	Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?
		§12.22	How does a contractor demonstrate compliance with the single audit requirements when applying to participate in the CACFP?			§378.22	How does a contractor demonstrate compliance with the single audit requirements when applying to participate in the CACFP?
		§12.23	Must child care facilities distribute information about other programs?			§378.23	Must child care facilities distribute information about other programs?
		§12.24	Are there any exceptions to the requirement regarding distribution of materials?			§378.24	Are there any exceptions to the requirement regarding distribution of materials?
		§12.25	Must an organization satisfy specific requirements in order to be eligible to participate in the CACFP as a day care home sponsor?			§378.25	Must an organization satisfy specific requirements in order to be eligible to participate in the CACFP as a day care home sponsor?
		§12.26	Where must a contractor obtain a performance bond?			§378.26	Where must a contractor obtain a performance bond?
		§12.27	How often must an organization submit a performance bond?			§378.27	How often must an organization submit a performance bond?
		§12.28	Must the dollar amount of the performance bond be adjusted?			§378.28	Must the dollar amount of the performance bond be adjusted?
		§12.29	What happens if an organization has fewer than three years of administrative and financial history?			§378.29	What happens if an organization has fewer than three years of administrative and financial history?
		§12.30	When must a representative of the organization make records available at the primary physical location?			§378.30	When must a representative of the organization make records available at the primary physical location?
		§12.31	When must a representative of the organization be available at the primary physical location?			§378.31	When must a representative of the organization be available at the primary physical location?
		§12.32	How must a contractor make itself available to DHS and providers?			§378.32	How must a contractor make itself available to DHS and providers?
		§12.33	What must happen if a contractor's primary physical location changes?			§378.33	What must happen if a contractor's primary physical location changes?
		§12.34	How do contractors and facilities qualify to participate in the CACFP At Risk Afterschool Snack program?			§378.34	How do contractors and facilities qualify to participate in the CACFP At Risk Afterschool Snack program?
		§12.35	Are supervised athletic activities ever allowed in the CACFP At Risk Afterschool Snack program?			§378.35	Are supervised athletic activities ever allowed in the CACFP At Risk Afterschool Snack program?
		§12.36	What information must contractors that operate or sponsor the participation of one or more emergency shelters provide to demonstrate that they qualify to participate in the CACFP as an emergency shelter?			§378.36	What information must contractors that operate or sponsor the participation of one or more emergency shelters provide to demonstrate that they qualify to participate in the CACFP as an emergency shelter?
		§12.37	Are there any conditions that would make a contractor ineligible to participate in the CACFP?			§378.37	Are there any conditions that would make a contractor ineligible to participate in the CACFP?
	3		Contractor Application Process		3		Contractor Application Process

		§12.61	Must a contractor submit an application to participate in the CACFP?			§378.61	Must a contractor submit an application to participate in the CACFP?
		§12.62	What must a contractor do if the information on its application changes from what was originally submitted?			§378.62	What must a contractor do if the information on its application changes from what was originally submitted?
		§12.63	What criteria does DHS use to approve or deny applications for participation?			§378.63	What criteria does DHS use to approve or deny applications for participation?
		§12.64	Because of its status as a nonprofit, is there any information a sponsor is required to include in its application to meet Internal Revenue Service requirements?			§378.64	Because of its status as a nonprofit, is there any information a sponsor is required to include in its application to meet Internal Revenue Service requirements?
		§12.65	What information must a contractor submit in its program application?			§378.65	What information must a contractor submit in its program application?
		§12.66	Does DHS conduct pre-approval visits to child care contractors applying to participate in the CACFP?			§378.66	Does DHS conduct pre-approval visits to child care contractors applying to participate in the CACFP?
		§12.67	What happens if a contractor's application is incomplete?			§378.67	What happens if a contractor's application is incomplete?
		§12.68	Can a contractor reapply if its application is denied?			§378.68	Can a contractor reapply if its application is denied?
	4		Agreements		4		Agreements
		§12.81	Is a contractor required to enter into an agreement with DHS in order to participate in the CACFP?			§378.81	Is a contractor required to enter into an agreement with DHS in order to participate in the CACFP?
		§12.82	What is the nature of this agreement?			§378.82	What is the nature of this agreement?
		§12.83	Is a facility required to enter into an agreement with a sponsoring organization to participate in the CACFP?			§378.83	Is a facility required to enter into an agreement with a sponsoring organization to participate in the CACFP?
		§12.84	Is this also a legally binding document that specifies the rights and responsibilities of both the sponsor and facility?			§378.84	Is this also a legally binding document that specifies the rights and responsibilities of both the sponsor and facility?
		§12.85	Must a contractor that purchases meals from a food service management company (FSMC) or school food authority (SFA) enter into a contract with that entity?			§378.85	Must a contractor that purchases meals from a food service management company (FSMC) or school food authority (SFA) enter into a contract with that entity?
		§12.86	What is the term of this agreement?			§378.86	What is the term of this agreement?
		§12.87	How may this agreement be extended?			§378.87	How may this agreement be extended?
		§12.88	Can an extension last more than 12 months?			§378.88	Can an extension last more than 12 months?
		§12.89	What information must a contractor include in its agreement?			§378.89	What information must a contractor include in its agreement?
		§12.90	What happens if an FSMC does not provide a contractor with monthly billing records by the specified date?			§378.90	What happens if an FSMC does not provide a contractor with monthly billing records by the specified date?
		§12.91	Can an organization have more than one agreement with DHS to participate as a CACFP day care home contractor, child care center contractor, or adult day care center contractor?			§378.91	Can an organization have more than one agreement with DHS to participate as a CACFP day care home contractor, child care center contractor, or adult day care center contractor?
		§12.92	What if the organization is legally distinct from a current CACFP contractor?			§378.92	What if the organization is legally distinct from a current CACFP contractor?
	5		Contractor Standards and Responsibilities		5		Contractor Standards and Responsibilities

		§12.111	Must a contractor follow specific procurement guidelines to obtain food, supplies, and other goods and services for the CACFP?			§378.111	Must a contractor follow specific procurement guidelines to obtain food, supplies, and other goods and services for the CACFP?
		§12.112	How must a contractor obtain the title to, use, and dispose of equipment used in the operation of the CACFP?			§378.112	How must a contractor obtain the title to, use, and dispose of equipment used in the operation of the CACFP?
		§12.113	Under what standards must a child care or adult day care center contractor determine a participant's eligibility for free and reduced-price meals?			§378.113	Under what standards must a child care or adult day care center contractor determine a participant's eligibility for free and reduced-price meals?
		§12.114	How must DHS and child care or adult day care center contractors verify the eligibility of program participants for free and reduced-price meals?			§378.114	How must DHS and child care or adult day care center contractors verify the eligibility of program participants for free and reduced-price meals?
		§12.115	Are there any restrictions on the type of meals that an adult day care center contractor can claim for reimbursement?			§378.115	Are there any restrictions on the type of meals that an adult day care center contractor can claim for reimbursement?
		§12.116	Can a contractor consider individuals who live in residential institutions and attend the adult day care center during the day as "enrolled" on the center's claim forms?			§378.116	Can a contractor consider individuals who live in residential institutions and attend the adult day care center during the day as "enrolled" on the center's claim forms?
		§12.117	Is a contractor who is approved to operate the CACFP At Risk Afterschool Snack program required to provide snacks free of charge to its participants?			§378.117	Is a contractor who is approved to operate the CACFP At Risk Afterschool Snack program required to provide snacks free of charge to its participants?
		§12.118	Will contractors be discriminated against in the CACFP?			§378.118	Will contractors be discriminated against in the CACFP?
		§12.119	Is a contractor required to prevent discrimination against participants in its CACFP operations?			§378.119	Is a contractor required to prevent discrimination against participants in its CACFP operations?
		§12.120	Are contractors and facilities required to ensure that health, safety, and sanitation standards are enforced?			§378.120	Are contractors and facilities required to ensure that health, safety, and sanitation standards are enforced?
		§12.121	Must a contractor provide training and technical assistance to its center or sponsored facility staff?			§378.121	Must a contractor provide training and technical assistance to its center or sponsored facility staff?
		§12.122	Can a contractor implement a change to its approved management plan before DHS approves the change?			§378.122	Can a contractor implement a change to its approved management plan before DHS approves the change?
	6		Budgets		6		Budgets
		§12.141	How must a contractor submit an administrative budget for DHS approval?			§378.141	How must a contractor submit an administrative budget for DHS approval?
		§12.142	What information must a day care home sponsor include when submitting its budget?			§378.142	What information must a day care home sponsor include when submitting its budget?
		§12.143	What are the program functions that should be included in a budget?			§378.143	What are the program functions that should be included in a budget?
		§12.144	What should the contractor do if the required program functions are provided at no cost to the program?			§378.144	What should the contractor do if the required program functions are provided at no cost to the program?
		§12.145	How must a contractor manage payment of costs that are not allowable uses of program funds?			§378.145	How must a contractor manage payment of costs that are not allowable uses of program funds?
		§12.146	How does DHS handle adjustments to the budget?			§378.146	How does DHS handle adjustments to the budget?

		§12.147	When must a contractor submit its budget to DHS?			§378.147	When must a contractor submit its budget to DHS?
		§12.148	Will DHS approve a budget adjustment retroactively?			§378.148	Will DHS approve a budget adjustment retroactively?
		§12.149	What happens if a day care home sponsor operates at a deficit?			§378.149	What happens if a day care home sponsor operates at a deficit?
		§12.150	What happens if a day care home sponsor exceeds the allowable amounts calculated under 7 CFR §226.12?			§378.150	What happens if a day care home sponsor exceeds the allowable amounts calculated under 7 CFR §226.12?
		§12.151	How must a contractor report donations on its budget?			§378.151	How must a contractor report donations on its budget?
		§12.152	How does DHS determine the limits of a day care home sponsor's budget?			§378.152	How does DHS determine the limits of a day care home sponsor's budget?
		§12.153	What part of the budget can DHS limit?			§378.153	What part of the budget can DHS limit?
		§12.154	What budget information must a contractor provide when it applies for start-up or expansion funds?			§378.154	What budget information must a contractor provide when it applies for start-up or expansion funds?
	7		Financial Management		7		Financial Management
		§12.161	Is a contractor required to implement a particular financial management system?			§378.161	Is a contractor required to implement a particular financial management system?
		§12.162	Must a contractor maintain financial management system records related to its participation in the CACFP?			§378.162	Must a contractor maintain financial management system records related to its participation in the CACFP?
		§12.163	Is a Day Activity and Health Services (DAHS) center that participates in the CACFP required to report any reimbursement it receives while taking part in the CACFP?			§378.163	Is a Day Activity and Health Services (DAHS) center that participates in the CACFP required to report any reimbursement it receives while taking part in the CACFP?
		§12.164	Can a contractor use CACFP funds to assist eligible unlicensed or unregistered potential day care homes to become licensed or registered?			§378.164	Can a contractor use CACFP funds to assist eligible unlicensed or unregistered potential day care homes to become licensed or registered?
		§12.165	Can a contractor use CACFP funds to assist potential day care homes to become licensed or registered if those providers have previously received CACFP funds?			§378.165	Can a contractor use CACFP funds to assist potential day care homes to become licensed or registered if those providers have previously received CACFP funds?
	8		Reporting and Record Retention		8		Reporting and Record Retention
		§12.171	How must a contractor submit reports to DHS?			§378.171	How must a contractor submit reports to DHS?
		§12.172	What information must a contractor keep to support reports submitted to DHS?			§378.172	What information must a contractor keep to support reports submitted to DHS?
		§12.173	How long must a contractor maintain records and documents pertaining to the CACFP?			§378.173	How long must a contractor maintain records and documents pertaining to the CACFP?
		§12.174	How long must a contractor maintain program-related documentation if litigation, claims, audits, or investigations involving these records occur before the end of three years and 90 days?			§378.174	How long must a contractor maintain program-related documentation if litigation, claims, audits, or investigations involving these records occur before the end of three years and 90 days?
		§12.175	When is litigation, a claim, an audit, or an investigation finding resolved?			§378.175	When is litigation, a claim, an audit, or an investigation finding resolved?
		§12.176	Must a contractor provide access to its facilities and records?			§378.176	Must a contractor provide access to its facilities and records?
		§12.177	How must a sponsoring organization with more than one approved facility maintain records?			§378.177	How must a sponsoring organization with more than one approved facility maintain records?

		§12.178	Can a sponsoring organization maintain CACFP records with other program records?			§378.178	Can a sponsoring organization maintain CACFP records with other program records?
		§12.179	Must a sponsoring organization ensure that facilities maintain certain records daily?			§378.179	Must a sponsoring organization ensure that facilities maintain certain records daily?
		§12.180	What forms must a contractor use to administer the CACFP?			§378.180	What forms must a contractor use to administer the CACFP?
		§12.181	What is the authority for maintaining and submitting records?			§378.181	What is the authority for maintaining and submitting records?
		§12.182	What management information must a day care home sponsor submit each month?			§378.182	What management information must a day care home sponsor submit each month?
		§12.183	In what form must this information be submitted?			§378.183	In what form must this information be submitted?
	9		Meal Requirements		9		Meal Requirements
		§12.191	Must a contractor ensure that all meals served and claimed for reimbursement satisfy the CACFP program requirements?			§378.191	Must a contractor ensure that all meals served and claimed for reimbursement satisfy the CACFP program requirements?
		§12.192	How much time can elapse between meals?			§378.192	How much time can elapse between meals?
		§12.193	How long can individual meal times last?			§378.193	How long can individual meal times last?
		§12.194	Are there any exceptions?			§378.194	Are there any exceptions?
		§12.195	Can a day care home sponsor require the use of pre-planned pre-printed menus?			§378.195	Can a day care home sponsor require the use of pre-planned pre-printed menus?
		§12.196	Can a day care home sponsor provide pre-planned pre-printed menus as a training tool only?			§378.196	Can a day care home sponsor provide pre-planned pre-printed menus as a training tool only?
		§12.197	Can a day care home use pre-planned menus?			§378.197	Can a day care home use pre-planned menus?
		§12.198	Can a contractor claim reimbursement for meals served to eligible program participants during field trips?			§378.198	Can a contractor claim reimbursement for meals served to eligible program participants during field trips?
	10		Day Care Homes		10		Day Care Homes
		§12.211	What materials must a day home sponsor submit in order for a day care home to be approved to participate in the CACFP?			§378.211	What materials must a day home sponsor submit in order for a day care home to be approved to participate in the CACFP?
		§12.212	Is there a time frame by which a day home sponsor must submit application materials in order for a day care home to be approved to participate in the CACFP in a given month?			§378.212	Is there a time frame by which a day home sponsor must submit application materials in order for a day care home to be approved to participate in the CACFP in a given month?
		§12.213	What constitutes a complete and correct Day Care Home Application?			§378.213	What constitutes a complete and correct Day Care Home Application?
		§12.214	Is there any information on the Day Care Home Application that DHS can complete or correct on behalf of the provider?			§378.214	Is there any information on the Day Care Home Application that DHS can complete or correct on behalf of the provider?
		§12.215	What constitutes a complete and correct Agreement Between Sponsor and Day Care Home Provider?			§378.215	What constitutes a complete and correct Agreement Between Sponsor and Day Care Home Provider?
		§12.216	Is there any information on the Agreement Between Sponsor and Day Care Home Provider that DHS can complete or correct on behalf of the provider?			§378.216	Is there any information on the Agreement Between Sponsor and Day Care Home Provider that DHS can complete or correct on behalf of the provider?
		§12.217	How does DHS determine the date a day care home can participate in the CACFP?			§378.217	How does DHS determine the date a day care home can participate in the CACFP?

		§12.218	Which days of the week does DHS approve as meal service days for day care homes?			§378.218	Which days of the week does DHS approve as meal service days for day care homes?
		§12.219	Can a day care home that is currently participating in the CACFP under one sponsor sign an agreement to participate with a different sponsor?			§378.219	Can a day care home that is currently participating in the CACFP under one sponsor sign an agreement to participate with a different sponsor?
		§12.220	Can a day care home change sponsors more than once during the program year?			§378.220	Can a day care home change sponsors more than once during the program year?
		§12.221	What is good cause for transferring?			§378.221	What is good cause for transferring?
		§12.222	Can a day care home participate with more than one sponsor in the same month?			§378.222	Can a day care home participate with more than one sponsor in the same month?
		§12.223	Can a day care home provider that participates in the CACFP actively take part in any sponsor's day-to-day operations, either full- or part-time?			§378.223	Can a day care home provider that participates in the CACFP actively take part in any sponsor's day-to-day operations, either full- or part-time?
		§12.224	Can a day care home provider be a board member of a sponsoring organization?			§378.224	Can a day care home provider be a board member of a sponsoring organization?
		§12.225	Can a day care home provider that has been found guilty of committing fraud in the CACFP still participate in the CACFP?			§378.225	Can a day care home provider that has been found guilty of committing fraud in the CACFP still participate in the CACFP?
		§12.226	Is a day care home required to attend program-related training to qualify to participate in the CACFP?			§378.226	Is a day care home required to attend program-related training to qualify to participate in the CACFP?
		§12.227	Does DHS limit the number of day care homes that a new contractor may sponsor?			§378.227	Does DHS limit the number of day care homes that a new contractor may sponsor?
		§12.228	If DHS limits the number of day care homes that a newly approved contractor can sponsor, how can the contractor gain additional homes?			§378.228	If DHS limits the number of day care homes that a newly approved contractor can sponsor, how can the contractor gain additional homes?
		§12.229	Does DHS limit the number of day care homes that a contractor currently participating in the CACFP may sponsor?			§378.229	Does DHS limit the number of day care homes that a contractor currently participating in the CACFP may sponsor?
		§12.230	Does DHS approve additional day care homes for contractors already participating in the CACFP?			§378.230	Does DHS approve additional day care homes for contractors already participating in the CACFP?
		§12.231	How does DHS notify a contractor that its total number of day care homes has been limited?			§378.231	How does DHS notify a contractor that its total number of day care homes has been limited?
		§12.232	On what does DHS base its adjustment?			§378.232	On what does DHS base its adjustment?
		§12.233	In addition to the provisions of 7 CFR §226.13 and §226.18, what other guidelines must a contractor that sponsors day care homes follow?			§378.233	In addition to the provisions of 7 CFR §226.13 and §226.18, what other guidelines must a contractor that sponsors day care homes follow?
	11		Start-Up and Expansion Payments		11		Start-Up and Expansion Payments
		§12.261	What are start-up and expansion payments?			§378.261	What are start-up and expansion payments?
		§12.262	Which contractors are eligible to request start-up and expansion payments?			§378.262	Which contractors are eligible to request start-up and expansion payments?
		§12.263	How does a contractor apply to receive start-up and expansion payments?			§378.263	How does a contractor apply to receive start-up and expansion payments?
		§12.264	How does DHS issue start-up payments to contractors that sponsor or want to sponsor day care homes?			§378.264	How does DHS issue start-up payments to contractors that sponsor or want to sponsor day care homes?

		§12.265	How does DHS issue expansion payments to day care home sponsors?			§378.265	How does DHS issue expansion payments to day care home sponsors?
		§12.266	How does DHS determine the amount of expansion payments issued to a day care home sponsor?			§378.266	How does DHS determine the amount of expansion payments issued to a day care home sponsor?
		§12.267	How must a day care home sponsor use expansion payments?			§378.267	How must a day care home sponsor use expansion payments?
		§12.268	How must a day care home sponsor use start-up payments?			§378.268	How must a day care home sponsor use start-up payments?
		§12.269	Can start-up or expansion payments awarded to day care home sponsors be used to recruit day care homes that are already participating with another DHS-approved sponsoring organization?			§378.269	Can start-up or expansion payments awarded to day care home sponsors be used to recruit day care homes that are already participating with another DHS-approved sponsoring organization?
	12		Advance Payments		12		Advance Payments
		§12.281	Does DHS issue and monitor advance payments to contractors according to a specific procedure?			§378.281	Does DHS issue and monitor advance payments to contractors according to a specific procedure?
		§12.282	How must a contractor account for advance funds?			§378.282	How must a contractor account for advance funds?
		§12.283	How does DHS issue advance payments to a contractor that has a claim history?			§378.283	How does DHS issue advance payments to a contractor that has a claim history?
		§12.284	How does DHS issue advance payments to a contractor that does not have a claim history?			§378.284	How does DHS issue advance payments to a contractor that does not have a claim history?
		§12.285	How does DHS estimate advance payment amounts?			§378.285	How does DHS estimate advance payment amounts?
		§12.286	Does DHS issue retroactive advances?			§378.286	Does DHS issue retroactive advances?
		§12.287	What happens if USDA does not provide sufficient funds for DHS to pay both advance payments and claims for reimbursement in full?			§378.287	What happens if USDA does not provide sufficient funds for DHS to pay both advance payments and claims for reimbursement in full?
		§12.288	How does DHS recoup advance payments?			§378.288	How does DHS recoup advance payments?
		§12.289	What happens if the advance payment exceeds the reimbursement earned in the month for which the advance is issued?			§378.289	What happens if the advance payment exceeds the reimbursement earned in the month for which the advance is issued?
		§12.290	What happens if a contractor who sponsors day care homes does not comply with program requirements?			§378.290	What happens if a contractor who sponsors day care homes does not comply with program requirements?
	13		Commodities and Cash-in-Lieu Assistance		13		Commodities and Cash-in-Lieu Assistance
		§12.311	Does DHS provide commodity assistance to contractors?			§378.311	Does DHS provide commodity assistance to contractors?
		§12.312	How does DHS determine whether to issue commodities or cash-in-lieu of commodities?			§378.312	How does DHS determine whether to issue commodities or cash-in-lieu of commodities?
		§12.313	If a day care home sponsor chooses to distribute bonus commodities to its day care homes, how does it determine the number of commodities to distribute to each day care home?			§378.313	If a day care home sponsor chooses to distribute bonus commodities to its day care homes, how does it determine the number of commodities to distribute to each day care home?
		§12.314	Who covers the costs of distributing bonus commodities?			§378.314	Who covers the costs of distributing bonus commodities?
		§12.315	Can a sponsoring organization include administrative costs associated with the distribution of bonus commodities in its CACFP costs?			§378.315	Can a sponsoring organization include administrative costs associated with the distribution of bonus commodities in its CACFP costs?

		§12.316	What does DHS require of a day care home sponsoring organization before that organization can submit charges to its day care homes?			§378.316	What does DHS require of a day care home sponsoring organization before that organization can submit charges to its day care homes?
		§12.317	Are facilities or centers required to receive bonus commodities?			§378.317	Are facilities or centers required to receive bonus commodities?
	14		Reimbursement				Reimbursement
		§12.331	Under what authority does DHS reimburse a contractor for its participation in the CACFP?			§378.331	Under what authority does DHS reimburse a contractor for its participation in the CACFP?
		§12.332	Under what authority must contractors reimburse facilities?			§378.332	Under what authority must contractors reimburse facilities?
		§12.333	How does DHS assign reimbursement rates for contractors?			§378.333	How does DHS assign reimbursement rates for contractors?
		§12.334	What options does DHS use to reimburse contractors?			§378.334	What options does DHS use to reimburse contractors?
		§12.335	How does DHS compute reimbursement for approved child care centers, outside-school-hours care centers, adult day care centers, and day care homes?			§378.335	How does DHS compute reimbursement for approved child care centers, outside-school-hours care centers, adult day care centers, and day care homes?
		§12.336	What are Title III benefits?			§378.336	What are Title III benefits?
		§12.337	Can independent adult day care centers and contractors that sponsor adult day care centers claim reimbursement for meals supported by Title III of the Older Americans Act?			§378.337	Can independent adult day care centers and contractors that sponsor adult day care centers claim reimbursement for meals supported by Title III of the Older Americans Act?
		§12.338	If a contractor uses a food service management company to prepare the meals served at the adult day care center, who is responsible for ensuring that neither Title III funds nor commodities were used in the meals?			§378.338	If a contractor uses a food service management company to prepare the meals served at the adult day care center, who is responsible for ensuring that neither Title III funds nor commodities were used in the meals?
		§12.339	How many snacks can a CACFP At Risk Afterschool Snack program contractor claim for reimbursement?			§378.339	How many snacks can a CACFP At Risk Afterschool Snack program contractor claim for reimbursement?
		§12.340	What are the requirements for submitting a claim for reimbursement for a snack?			§378.340	What are the requirements for submitting a claim for reimbursement for a snack?
		§12.341	What rate does DHS use to reimburse contractors who operate the CACFP At Risk Afterschool Snack program?			§378.341	What rate does DHS use to reimburse contractors who operate the CACFP At Risk Afterschool Snack program?
		§12.342	Can a contractor be reimbursed for after school snacks served to participants in an approved At Risk Afterschool program in addition to the meals provided in traditional child care?			§378.342	Can a contractor be reimbursed for after school snacks served to participants in an approved At Risk Afterschool program in addition to the meals provided in traditional child care?
		§12.343	What is the maximum number of reimbursable meals under the CACFP?			§378.343	What is the maximum number of reimbursable meals under the CACFP?
		§12.344	Are there any exceptions?			§378.344	Are there any exceptions?
		§12.345	How many meals can a contractor that sponsors or operates emergency shelters for homeless children include in a claim for reimbursement?			§378.345	How many meals can a contractor that sponsors or operates emergency shelters for homeless children include in a claim for reimbursement?
		§12.346	Are there any meals for which emergency shelters for homeless children contractors cannot claim reimbursement?			§378.346	Are there any meals for which emergency shelters for homeless children contractors cannot claim reimbursement?

		§12.347	Must a contractor claim reimbursement within a specific time period?			§378.347	Must a contractor claim reimbursement within a specific time period?
		§12.348	Who is responsible for the accuracy of the information submitted on the contractor's claim for reimbursement?			§378.348	Who is responsible for the accuracy of the information submitted on the contractor's claim for reimbursement?
		§12.349	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§378.349	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§12.350	How does DHS process a claim received later than 60 days after the end of the claim month(s)?			§378.350	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
		§12.351	What happens if DHS finds that good cause did not exist?			§378.351	What happens if DHS finds that good cause did not exist?
		§12.352	What happens if DHS finds that good cause beyond the contractor's control existed?			§378.352	What happens if DHS finds that good cause beyond the contractor's control existed?
		§12.353	What happens if USDA finds that good cause existed?			§378.353	What happens if USDA finds that good cause existed?
		§12.354	What happens if USDA finds that good cause did not exist?			§378.354	What happens if USDA finds that good cause did not exist?
		§12.355	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?			§378.355	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?
		§12.356	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?			§378.356	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
		§12.357	What guidelines must a contractor use when serving second meals?			§378.357	What guidelines must a contractor use when serving second meals?
		§12.358	How must a contractor claim reimbursement for second meals?			§378.358	How must a contractor claim reimbursement for second meals?
		§12.359	Can a contractor that serves meals family style claim reimbursement for second meals?			§378.359	Can a contractor that serves meals family style claim reimbursement for second meals?
		§12.360	Can a day care home claim CACFP reimbursement for meals served to another day care home provider's own children when both providers participate in the CACFP?			§378.360	Can a day care home claim CACFP reimbursement for meals served to another day care home provider's own children when both providers participate in the CACFP?
		§12.361	Can the day care home provider's own child be considered a nonresidential child for the purpose of claiming reimbursement for a meal service at the day care home of another provider?			§378.361	Can the day care home provider's own child be considered a nonresidential child for the purpose of claiming reimbursement for a meal service at the day care home of another provider?
		§12.362	What age group of children must an emergency shelter or homeless site serve in order to be eligible to participate as a contractor in the CACFP?			§378.362	What age group of children must an emergency shelter or homeless site serve in order to be eligible to participate as a contractor in the CACFP?
		§12.363	Are there any exceptions?			§378.363	Are there any exceptions?
	15		Overpayments		15		Overpayments
		§12.381	How does DHS manage overpayment of claims for reimbursement, advance payments, start-up, and expansion fund payments?			§378.381	How does DHS manage overpayment of claims for reimbursement, advance payments, start-up, and expansion fund payments?
		§12.382	What happens to program funds that a day care home sponsor recovers from a day care home?			§378.382	What happens to program funds that a day care home sponsor recovers from a day care home?

		§12.383	Can a day care home sponsor use CACFP funds to recruit day care homes?			§378.383	Can a day care home sponsor use CACFP funds to recruit day care homes?
	16		Program Reviews, Monitoring, and Management Evaluations		16		Program Reviews, Monitoring, and Management Evaluations
		§12.391	Is a contractor required to monitor its own program operations?			§378.391	Is a contractor required to monitor its own program operations?
		§12.392	Does DHS conduct periodic visits to CACFP contractors?			§378.392	Does DHS conduct periodic visits to CACFP contractors?
		§12.393	How does DHS determine which contractors to visit?			§378.393	How does DHS determine which contractors to visit?
		§12.394	Does DHS require sponsors of day care homes to verify participation of the children in their day care homes?			§378.394	Does DHS require sponsors of day care homes to verify participation of the children in their day care homes?
		§12.395	How must a day care home sponsor verify the participation of the children claimed?			§378.395	How must a day care home sponsor verify the participation of the children claimed?
		§12.396	How must a day care home sponsor verify a child's enrollment in a day care home?			§378.396	How must a day care home sponsor verify a child's enrollment in a day care home?
		§12.397	Can a contractor verify the participation of children in day care homes even if the day care home is neither randomly selected for verification by DHS nor requires additional verification of participation after being randomly selected by DHS?			§378.397	Can a contractor verify the participation of children in day care homes even if the day care home is neither randomly selected for verification by DHS nor requires additional verification of participation after being randomly selected by DHS?
		§12.398	How does a day care home sponsor conduct reviews of day care homes?			§378.398	How does a day care home sponsor conduct reviews of day care homes?
		§12.399	How does a center sponsor conduct reviews of its sponsored facilities?			§378.399	How does a center sponsor conduct reviews of its sponsored facilities?
		§12.400	What type of monitoring reviews must a day care home sponsor conduct?			§378.400	What type of monitoring reviews must a day care home sponsor conduct?
		§12.401	Must the day care home sponsor observe a meal service during each monitoring review?			§378.401	Must the day care home sponsor observe a meal service during each monitoring review?
		§12.402	What happens if the day care home sponsor cannot confirm program participation?			§378.402	What happens if the day care home sponsor cannot confirm program participation?
		§12.403	When must a day care home sponsor conduct monitoring reviews of day care homes that participate on weekends?			§378.403	When must a day care home sponsor conduct monitoring reviews of day care homes that participate on weekends?
		§12.404	How does a contractor that sponsors the participation of child and adult care centers conduct monitoring reviews of its sponsored facilities?			§378.404	How does a contractor that sponsors the participation of child and adult care centers conduct monitoring reviews of its sponsored facilities?
		§12.405	Is a contractor that uses a food service management company (FSMC) contract required to monitor contracts with the FSMC?			§378.405	Is a contractor that uses a food service management company (FSMC) contract required to monitor contracts with the FSMC?
		§12.406	What happens if the health and well being of a program participant is at risk because of program deficiencies identified during an FSMC review?			§378.406	What happens if the health and well being of a program participant is at risk because of program deficiencies identified during an FSMC review?
	17		Audits		17		Audits
		§12.421	Are contractors and sponsored facilities that participate in the CACFP subject to audit?			§378.421	Are contractors and sponsored facilities that participate in the CACFP subject to audit?
		§12.422	Are certain contractors exempt from the single audit requirements?			§378.422	Are certain contractors exempt from the single audit requirements?

		§12.423	When is an audit considered acceptable?			§378.423	When is an audit considered acceptable?
		§12.424	How is a contractor informed of its obligation to comply with the single audit requirements?			§378.424	How is a contractor informed of its obligation to comply with the single audit requirements?
		§12.425	Does DHS reimburse a contractor for the cost of obtaining a single audit?			§378.425	Does DHS reimburse a contractor for the cost of obtaining a single audit?
	18		Sanctions, Penalties, and Fiscal Action		18		Sanctions, Penalties, and Fiscal Action
		§12.441	Does DHS investigate and resolve program deficiencies, program irregularities, and evidence of violations of criminal law or civil fraud statutes?			§378.441	Does DHS investigate and resolve program deficiencies, program irregularities, and evidence of violations of criminal law or civil fraud statutes?
		§12.442	What does DHS do if a contractor fails to comply with the CACFP requirements in 7 CFR Part 226 and this subchapter?			§378.442	What does DHS do if a contractor fails to comply with the CACFP requirements in 7 CFR Part 226 and this subchapter?
		§12.443	What does DHS do if DHS learns that a contractor has submitted false information on its program application?			§378.443	What does DHS do if DHS learns that a contractor has submitted false information on its program application?
		§12.444	What happens to eligible day care home providers or centers when their sponsoring organization is disqualified?			§378.444	What happens to eligible day care home providers or centers when their sponsoring organization is disqualified?
		§12.445	What happens if a contractor fails to attend mandatory DHS training?			§378.445	What happens if a contractor fails to attend mandatory DHS training?
		§12.446	What happens if a day care home sponsor fails to properly monitor or train providers when program violations related to monitoring or training of providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?			§378.446	What happens if a day care home sponsor fails to properly monitor or train providers when program violations related to monitoring or training of providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?
		§12.447	What happens if DHS determines during the follow-up review that the day care home sponsor has not corrected all program noncompliances identified in the initial review?			§378.447	What happens if DHS determines during the follow-up review that the day care home sponsor has not corrected all program noncompliances identified in the initial review?
		§12.448	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?			§378.448	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?
		§12.449	What happens if a day care home sponsor fails to ensure that a claim is submitted only for eligible meals served to eligible children?			§378.449	What happens if a day care home sponsor fails to ensure that a claim is submitted only for eligible meals served to eligible children?
		§12.450	What happens if DHS determines during the test month of the initial review that 10% or more of the meals sampled and claimed for reimbursement fail to meet program requirements?			§378.450	What happens if DHS determines during the test month of the initial review that 10% or more of the meals sampled and claimed for reimbursement fail to meet program requirements?
		§12.451	What happens if DHS determines during the follow-up review that 10% or more of the meals sampled and claimed for reimbursement for the test month fail to meet program requirements?			§378.451	What happens if DHS determines during the follow-up review that 10% or more of the meals sampled and claimed for reimbursement for the test month fail to meet program requirements?

		§12.452	What happens even if less than 10% of all meals claimed for the test month of the follow-up are ineligible?			§378.452	What happens even if less than 10% of all meals claimed for the test month of the follow-up are ineligible?
		§12.453	What happens during the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?			§378.453	What happens during the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?
		§12.454	What happens if a day care home sponsor fails to disburse program funds to providers according to program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?			§378.454	What happens if a day care home sponsor fails to disburse program funds to providers according to program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?
		§12.455	What happens if DHS determines during the follow-up review that the day care home sponsor has not corrected all instances of program noncompliance identified in the initial review?			§378.455	What happens if DHS determines during the follow-up review that the day care home sponsor has not corrected all instances of program noncompliance identified in the initial review?
		§12.456	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?			§378.456	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?
		§12.457	What happens if, during a review or an audit, DHS cites a day care home sponsor for deficiencies in administrative or financial capabilities because the sponsor has too many day care homes?			§378.457	What happens if, during a review or an audit, DHS cites a day care home sponsor for deficiencies in administrative or financial capabilities because the sponsor has too many day care homes?
		§12.458	Can a day care home sponsor that is deficient in program operations add day care homes?			§378.458	Can a day care home sponsor that is deficient in program operations add day care homes?
		§12.459	What does DHS do if a contractor that is subject to the single audit requirements fails to submit an audit as required?			§378.459	What does DHS do if a contractor that is subject to the single audit requirements fails to submit an audit as required?
		§12.460	What does DHS do if a contractor fails to accomplish the required corrective action and permanently correct the serious deficiency regarding its single audit?			§378.460	What does DHS do if a contractor fails to accomplish the required corrective action and permanently correct the serious deficiency regarding its single audit?
		§12.461	Can a contractor appeal this action?			§378.461	Can a contractor appeal this action?
		§12.462	If a contractor subject to the single audit requirements fails to obtain and submit an acceptable audit by the specified due date and DHS either conducts the audit or arranges for an audit to be conducted by a third party, who must pay for the audit?			§378.462	If a contractor subject to the single audit requirements fails to obtain and submit an acceptable audit by the specified due date and DHS either conducts the audit or arranges for an audit to be conducted by a third party, who must pay for the audit?
		§12.463	Can DHS extend the deadline by which a contractor must submit an audit?			§378.463	Can DHS extend the deadline by which a contractor must submit an audit?
		§12.464	How must a contractor request an extension of its audit deadline?			§378.464	How must a contractor request an extension of its audit deadline?

		§12.465	Is DHS required to grant a contractor an extension of its audit deadline?			§378.465	Is DHS required to grant a contractor an extension of its audit deadline?
		§12.466	How is a new audit due date determined?			§378.466	How is a new audit due date determined?
		§12.467	How is the contractor informed of the decision regarding the extension of its audit due date?			§378.467	How is the contractor informed of the decision regarding the extension of its audit due date?
		§12.468	Can a contractor request more than one extension?			§378.468	Can a contractor request more than one extension?
		§12.469	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§378.469	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§12.470	Must a contractor repay any overpayments identified through an audit finding?			§378.470	Must a contractor repay any overpayments identified through an audit finding?
		§12.471	What happens if a day care home sponsor determines during a monitoring review or by other means that a provider has been seriously deficient in its operation of the CACFP?			§378.471	What happens if a day care home sponsor determines during a monitoring review or by other means that a provider has been seriously deficient in its operation of the CACFP?
		§12.472	What happens if a day care home sponsor conducts two or more unannounced monitoring reviews in a 12-month period and cannot confirm that children are enrolled for child care and participating in the program?			§378.472	What happens if a day care home sponsor conducts two or more unannounced monitoring reviews in a 12-month period and cannot confirm that children are enrolled for child care and participating in the program?
	19		Denials and Termination		19		Denials and Termination
		§12.491	What criteria does DHS use to deny applications and to terminate agreements for participation in the CACFP when a contractor fails to meet eligibility requirements?			§378.491	What criteria does DHS use to deny applications and to terminate agreements for participation in the CACFP when a contractor fails to meet eligibility requirements?
		§12.492	How does DHS notify a contractor of its denial of an application or proposal to terminate an agreement?			§378.492	How does DHS notify a contractor of its denial of an application or proposal to terminate an agreement?
		§12.493	Does DHS deny an application for participation or terminate an agreement when a contractor subject to the bonding requirement identified in 7 CFR §226.6 and Division 2 of this subchapter (relating to Eligibility of Contractors and Facilities) fails to comply with that requirement?			§378.493	Does DHS deny an application for participation or terminate an agreement when a contractor subject to the bonding requirement identified in 7 CFR §226.6 and Division 2 of this subchapter (relating to Eligibility of Contractors and Facilities) fails to comply with that requirement?
		§12.494	Can a contractor request relief from the bonding requirement?			§378.494	Can a contractor request relief from the bonding requirement?
		§12.495	What criteria must a day care home sponsor use to deny or terminate agreements with a day care home?			§378.495	What criteria must a day care home sponsor use to deny or terminate agreements with a day care home?
		§12.496	How does a day care home sponsor notify a day care home participating in the CACFP of its proposal to terminate the day care home's participation in the program?			§378.496	How does a day care home sponsor notify a day care home participating in the CACFP of its proposal to terminate the day care home's participation in the program?
		§12.497	Does DHS terminate an agreement with a contractor or deny the application of a contractor that has failed to permanently correct a serious deficiency in the administration of the CACFP?			§378.497	Does DHS terminate an agreement with a contractor or deny the application of a contractor that has failed to permanently correct a serious deficiency in the administration of the CACFP?
	20		Appeals		20		Appeals

		§12.511	How does DHS conduct contractor and day care home appeals?			§378.511	How does DHS conduct contractor and day care home appeals?
		§12.512	How does DHS conduct food service management company appeals?			§378.512	How does DHS conduct food service management company appeals?
		§12.513	Who conducts appeals based on federal audits?			§378.513	Who conducts appeals based on federal audits?
		§12.514	How must participants appeal a contractor's denial of their eligibility for free and reduced-price meal benefits?			§378.514	How must participants appeal a contractor's denial of their eligibility for free and reduced-price meal benefits?
		§12.515	Can a contractor appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim?			§378.515	Can a contractor appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim?
		§12.516	How does a contractor request an appeal?			§378.516	How does a contractor request an appeal?
		§12.517	Can a contractor appeal if USDA decides that a late claim is ineligible for payment?			§378.517	Can a contractor appeal if USDA decides that a late claim is ineligible for payment?
		§12.518	Who is responsible for creating appeal procedures for sponsored day care homes?			§378.518	Who is responsible for creating appeal procedures for sponsored day care homes?
		§12.519	When is a contractor required to provide a day care home with appeal procedures?			§378.519	When is a contractor required to provide a day care home with appeal procedures?
		§12.520	What is an adverse action?			§378.520	What is an adverse action?
B			Summer Food Service Program (SFSP)	B			Summer Food Service Program (SFSP)
	1		Overview and Purpose		1		Overview and Purpose
		§12.601	What is the purpose of the Summer Food Service Program (SFSP)?			§378.601	What is the purpose of the Summer Food Service Program (SFSP)?
		§12.602	What do certain words and terms in this subchapter mean?			§378.602	What do certain words and terms in this subchapter mean?
		§12.603	How is the SFSP authorized?			§378.603	How is the SFSP authorized?
	2		Eligibility of Sponsors and Facilities		2		Eligibility of Sponsors and Facilities
		§12.611	How do sponsors qualify to participate in the SFSP?			§378.611	How do sponsors qualify to participate in the SFSP?
		§12.612	Are public school districts required to participate in the SFSP?			§378.612	Are public school districts required to participate in the SFSP?
		§12.613	If public schools are approved to participate in the National School Lunch Program, are they eligible to participate in the SFSP?			§378.613	If public schools are approved to participate in the National School Lunch Program, are they eligible to participate in the SFSP?
		§12.614	Are any sponsors required to submit proof of tax-exempt status?			§378.614	Are any sponsors required to submit proof of tax-exempt status?
		§12.615	Can a college or university participate as an SFSP sponsor on a year-round basis?			§378.615	Can a college or university participate as an SFSP sponsor on a year-round basis?
		§12.616	Does DHS approve applications from potential sponsors that do not provide year-round service to the communities they propose to serve?			§378.616	Does DHS approve applications from potential sponsors that do not provide year-round service to the communities they propose to serve?
		§12.617	Does DHS use a priority system when approving applicants that propose to serve the same area or the same enrolled children?			§378.617	Does DHS use a priority system when approving applicants that propose to serve the same area or the same enrolled children?
		§12.618	What documentation is a sponsor required to submit to show compliance with the Single Audit Act?			§378.618	What documentation is a sponsor required to submit to show compliance with the Single Audit Act?
	3		Application Process		3		Application Process
		§12.641	How does a sponsor apply to participate in the SFSP?			§378.641	How does a sponsor apply to participate in the SFSP?

		§12.642	What must a sponsor do if the information in its application changes?			§378.642	What must a sponsor do if the information in its application changes?
		§12.643	What criteria does DHS use to approve or deny applications?			§378.643	What criteria does DHS use to approve or deny applications?
	4		Sponsor Standards and Responsibilities				Sponsor Standards and Responsibilities
		§12.651	What are the rights and responsibilities of a sponsor that participates in the SFSP?		4	§378.651	What are the rights and responsibilities of a sponsor that participates in the SFSP?
		§12.652	Must a sponsor implement a particular financial management system?			§378.652	Must a sponsor implement a particular financial management system?
		§12.653	Must a sponsor maintain records and documents related to its participation in the SFSP?			§378.653	Must a sponsor maintain records and documents related to its participation in the SFSP?
		§12.654	How long must a sponsor maintain records and documents pertaining to the program?			§378.654	How long must a sponsor maintain records and documents pertaining to the program?
		§12.655	When is litigation, a claim, an audit, or an investigation finding considered resolved?			§378.655	When is litigation, a claim, an audit, or an investigation finding considered resolved?
		§12.656	Must a sponsor permit DHS to access its facilities and records?			§378.656	Must a sponsor permit DHS to access its facilities and records?
		§12.657	How must a sponsor procure foods, supplies, equipment, and other goods and services for the SFSP?			§378.657	How must a sponsor procure foods, supplies, equipment, and other goods and services for the SFSP?
		§12.658	Must a sponsor manage its meal service according to any specific guidelines?			§378.658	Must a sponsor manage its meal service according to any specific guidelines?
		§12.659	How does a sponsor determine a participant's eligibility for free or reduced-price school meals?			§378.659	How does a sponsor determine a participant's eligibility for free or reduced-price school meals?
		§12.660	Must a sponsor comply with specific health standards when operating its food service?			§378.660	Must a sponsor comply with specific health standards when operating its food service?
		§12.661	Must a sponsor prevent discrimination against participants in its SFSP operations?			§378.661	Must a sponsor prevent discrimination against participants in its SFSP operations?
		§12.662	Will a sponsor be discriminated against in the SFSP?			§378.662	Will a sponsor be discriminated against in the SFSP?
	5		Budgets		5		Budgets
		§12.681	How must a sponsor submit an administrative budget for DHS approval?			§378.681	How must a sponsor submit an administrative budget for DHS approval?
		§12.682	Can a sponsor adjust its approved budget?			§378.682	Can a sponsor adjust its approved budget?
		§12.683	When must a sponsor submit budget information to DHS?			§378.683	When must a sponsor submit budget information to DHS?
		§12.684	Will DHS approve a budget adjustment retroactively?			§378.684	Will DHS approve a budget adjustment retroactively?
	6		Food Service Management Companies		6		Food Service Management Companies
		§12.691	Can a sponsor contract with a food service management company or school food authority to obtain meals?			§378.691	Can a sponsor contract with a food service management company or school food authority to obtain meals?
		§12.692	How does a sponsor contract for the services of a food service management company (FSMC) or school food authority (SFA)?			§378.692	How does a sponsor contract for the services of a food service management company (FSMC) or school food authority (SFA)?
		§12.693	If a sponsor purchases meals from a food service management company, must it establish a special account for operating costs?			§378.693	If a sponsor purchases meals from a food service management company, must it establish a special account for operating costs?
	7		Start-Up and Advance Payments		7		Start-Up and Advance Payments

		§12.701	Does DHS provide start-up payments to sponsors?			§378.701	Does DHS provide start-up payments to sponsors?
		§12.702	Does DHS provide advance payment to sponsors before the end of the month in which the costs will be incurred?			§378.702	Does DHS provide advance payment to sponsors before the end of the month in which the costs will be incurred?
		§12.703	Is there a limit to the amount of an advance payment?			§378.703	Is there a limit to the amount of an advance payment?
	8		Commodities		8		Commodities
		§12.711	Does DHS provide commodity assistance to sponsors?			§378.711	Does DHS provide commodity assistance to sponsors?
		§12.712	How must a sponsor use these commodities?			§378.712	How must a sponsor use these commodities?
	9		Reimbursement		9		Reimbursement
		§12.721	Must a sponsor follow specific guidelines when claiming reimbursement?			§378.721	Must a sponsor follow specific guidelines when claiming reimbursement?
		§12.722	Under what authority does DHS reimburse sponsors in the SFSP?			§378.722	Under what authority does DHS reimburse sponsors in the SFSP?
		§12.723	Does DHS reimburse the cost of meals served to adults performing labor necessary for the operation of the SFSP?			§378.723	Does DHS reimburse the cost of meals served to adults performing labor necessary for the operation of the SFSP?
		§12.724	Does DHS provide supplemental reimbursement for meals served to children?			§378.724	Does DHS provide supplemental reimbursement for meals served to children?
		§12.725	Is there a specific deadline by which a sponsor must submit a claim for reimbursement?			§378.725	Is there a specific deadline by which a sponsor must submit a claim for reimbursement?
		§12.726	When must a sponsor combine two consecutive months of service on a single claim for reimbursement?			§378.726	When must a sponsor combine two consecutive months of service on a single claim for reimbursement?
		§12.727	Is there a specific deadline by which a sponsor must submit a claim for reimbursement of two consecutive months of service?			§378.727	Is there a specific deadline by which a sponsor must submit a claim for reimbursement of two consecutive months of service?
		§12.728	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§378.728	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§12.729	How does DHS handle a claim received later than 60 days after the end of the claim month(s)?			§378.729	How does DHS handle a claim received later than 60 days after the end of the claim month(s)?
		§12.730	What happens if DHS finds that good cause did not exist?			§378.730	What happens if DHS finds that good cause did not exist?
		§12.731	What happens if DHS finds that good cause beyond the sponsor's control existed?			§378.731	What happens if DHS finds that good cause beyond the sponsor's control existed?
		§12.732	What happens if USDA finds that good cause existed?			§378.732	What happens if USDA finds that good cause existed?
		§12.733	What happens if USDA finds that good cause did not exist?			§378.733	What happens if USDA finds that good cause did not exist?
		§12.734	Does a sponsor have the option not to submit a request for payment of a late claim based on good cause?			§378.734	Does a sponsor have the option not to submit a request for payment of a late claim based on good cause?
		§12.735	If a sponsor chooses not to submit a request for payment of a late claim based on good cause, can a sponsor still be reimbursed for that claim?			§378.735	If a sponsor chooses not to submit a request for payment of a late claim based on good cause, can a sponsor still be reimbursed for that claim?
	10		Program Reviews and Technical Assistance		10		Program Reviews and Technical Assistance
		§12.751	Does DHS monitor a sponsor's activities?			§378.751	Does DHS monitor a sponsor's activities?
		§12.752	Is a sponsor required to administer and monitor its program operations?			§378.752	Is a sponsor required to administer and monitor its program operations?

		§12.753	Is a sponsor required to conduct reviews of its facilities?			§378.753	Is a sponsor required to conduct reviews of its facilities?
	11		Audits		11		Audits
		§12.761	Is a sponsor that participates in the SFSP subject to audit?			§378.761	Is a sponsor that participates in the SFSP subject to audit?
		§12.762	Are certain sponsors exempt from the single audit requirements?			§378.762	Are certain sponsors exempt from the single audit requirements?
		§12.763	When is an audit considered acceptable?			§378.763	When is an audit considered acceptable?
		§12.764	How is a sponsor informed of its obligation to comply with the single audit requirements?			§378.764	How is a sponsor informed of its obligation to comply with the single audit requirements?
	12		Sanctions and Penalties		12		Sanctions and Penalties
		§12.771	Does DHS investigate irregularities in or complaints about a sponsor's operation of the SFSP?			§378.771	Does DHS investigate irregularities in or complaints about a sponsor's operation of the SFSP?
		§12.772	What does DHS do if a sponsor that is subject to single audit requirements fails to submit an audit as required?			§378.772	What does DHS do if a sponsor that is subject to single audit requirements fails to submit an audit as required?
		§12.773	Can a sponsor appeal this action?			§378.773	Can a sponsor appeal this action?
		§12.774	What does DHS do if extenuating circumstances prevent a sponsor from conducting an audit as required?			§378.774	What does DHS do if extenuating circumstances prevent a sponsor from conducting an audit as required?
		§12.775	Who must pay for this audit?			§378.775	Who must pay for this audit?
		§12.776	What does DHS do if a sponsor submits an audit that does not meet the single audit requirements as specified in 7 CFR Part 3052?			§378.776	What does DHS do if a sponsor submits an audit that does not meet the single audit requirements as specified in 7 CFR Part 3052?
		§12.777	Can DHS extend the deadline by which a sponsor must submit an audit?			§378.777	Can DHS extend the deadline by which a sponsor must submit an audit?
		§12.778	How must a sponsor request an extension of its audit deadline?			§378.778	How must a sponsor request an extension of its audit deadline?
		§12.779	Is DHS required to grant a sponsor an extension of its audit deadline?			§378.779	Is DHS required to grant a sponsor an extension of its audit deadline?
		§12.780	How is a new audit due date determined?			§378.780	How is a new audit due date determined?
		§12.781	How is the sponsor informed of the decision regarding the extension of its audit due date?			§378.781	How is the sponsor informed of the decision regarding the extension of its audit due date?
		§12.782	Can a sponsor request more than one extension?			§378.782	Can a sponsor request more than one extension?
		§12.783	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§378.783	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§12.784	Can a sponsor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SFSP for failing to comply with the single audit requirements as stated in 7 CFR Part 3052?			§378.784	Can a sponsor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SFSP for failing to comply with the single audit requirements as stated in 7 CFR Part 3052?
	13		Suspension and Termination		13		Suspension and Termination
		§12.801	What regulations does DHS use to deny an application for participation in the SFSP and to terminate an agreement between DHS and a sponsor?			§378.801	What regulations does DHS use to deny an application for participation in the SFSP and to terminate an agreement between DHS and a sponsor?
	14		Appeals		14		Appeals
		§12.811	How does a sponsor or food service management company (FSMC) appeal an adverse action by DHS?			§378.811	How does a sponsor or food service management company (FSMC) appeal an adverse action by DHS?
		§12.812	When must a sponsor or food service management company (FSMC) submit an appeal?			§378.812	When must a sponsor or food service management company (FSMC) submit an appeal?

		§12.813	If DHS declines to forward a late claim to USDA for a determination of good cause, can a sponsor appeal this decision?			§378.813	If DHS declines to forward a late claim to USDA for a determination of good cause, can a sponsor appeal this decision?
		§12.814	Can a sponsor appeal a USDA decision that a late claim is ineligible for payment?			§378.814	Can a sponsor appeal a USDA decision that a late claim is ineligible for payment?
C			Special Milk Program (SMP)	C			Special Milk Program (SMP)
	1		Overview and Purpose		1		Overview and Purpose
		§12.871	What is the purpose of the Special Milk Program (SMP)?			§378.871	What is the purpose of the Special Milk Program (SMP)?
		§12.872	What do certain words and terms in the subchapter mean?			§378.872	What do certain words and terms in the subchapter mean?
		§12.873	How is the SMP administered in Texas?			§378.873	How is the SMP administered in Texas?
	2		Contractor Eligibility		2		Contractor Eligibility
		§12.881	How does a contractor qualify to participate in the SMP?			§378.881	How does a contractor qualify to participate in the SMP?
		§12.882	What information must a contractor submit when applying to participate in the SMP?			§378.882	What information must a contractor submit when applying to participate in the SMP?
	3		Contractor Participation Requirements and Responsibilities		3		Contractor Participation Requirements and Responsibilities
		§12.901	What are the rights and responsibilities of a contractor that participates in the SMP?			§378.901	What are the rights and responsibilities of a contractor that participates in the SMP?
		§12.902	Is a contractor that participates in the SMP subject to federal and state procurement guidelines?			§378.902	Is a contractor that participates in the SMP subject to federal and state procurement guidelines?
		§12.903	How does a contractor determine if an individual is eligible to participate and receive benefits in the SMP?			§378.903	How does a contractor determine if an individual is eligible to participate and receive benefits in the SMP?
	4		Reimbursement and Financial Management		4		Reimbursement and Financial Management
		§12.921	How does DHS reimburse a contractor for its participation in the SMP?			§378.921	How does DHS reimburse a contractor for its participation in the SMP?
		§12.922	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§378.922	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§12.923	How does DHS process a claim received later than 60 days after the end of the claim month(s)?			§378.923	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
		§12.924	What happens if DHS finds that good cause did not exist?			§378.924	What happens if DHS finds that good cause did not exist?
		§12.925	What happens if DHS finds that good cause beyond the contractor's control existed?			§378.925	What happens if DHS finds that good cause beyond the contractor's control existed?
		§12.926	What happens if USDA finds that good cause existed?			§378.926	What happens if USDA finds that good cause existed?
		§12.927	What happens if USDA finds that good cause did not exist?			§378.927	What happens if USDA finds that good cause did not exist?
		§12.928	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?			§378.928	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?
		§12.929	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?			§378.929	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
	5		Program Reviews, Monitoring, and Management Evaluations		5		Program Reviews, Monitoring, and Management Evaluations
		§12.941	How does DHS ensure that a contractor complies with SMP requirements?			§378.941	How does DHS ensure that a contractor complies with SMP requirements?

		§12.942	Does the USDA conduct management evaluations of contractors operating the SMP?			§378.942	Does the USDA conduct management evaluations of contractors operating the SMP?
	6		Audits		6		Audits
		§12.951	Must a contractor that participates in the SMP conduct audits?			§378.951	Must a contractor that participates in the SMP conduct audits?
		§12.952	Must a contractor that participates in the SMP comply with the requirements of the Single Audit Act?			§378.952	Must a contractor that participates in the SMP comply with the requirements of the Single Audit Act?
		§12.953	Are certain contractors not subject to the requirements of the Single Audit Act?			§378.953	Are certain contractors not subject to the requirements of the Single Audit Act?
		§12.954	When is an audit considered acceptable?			§378.954	When is an audit considered acceptable?
		§12.955	How is a contractor informed of its obligation to comply with the single audit requirements?			§378.955	How is a contractor informed of its obligation to comply with the single audit requirements?
	7		Sanctions, Penalties, and Fiscal Action		7		Sanctions, Penalties, and Fiscal Action
		§12.971	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?			§378.971	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?
		§12.972	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 215 and 245?			§378.972	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 215 and 245?
		§12.973	Does DHS investigate irregularities in or complaints about a contractor's operation of the SMP?			§378.973	Does DHS investigate irregularities in or complaints about a contractor's operation of the SMP?
		§12.974	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?			§378.974	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?
		§12.975	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?			§378.975	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?
		§12.976	Who must pay for this audit?			§378.976	Who must pay for this audit?
		§12.977	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?			§378.977	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?
		§12.978	Can DHS extend the deadline by which a contractor must submit an audit?			§378.978	Can DHS extend the deadline by which a contractor must submit an audit?
		§12.979	How must a contractor request an extension of its audit deadline?			§378.979	How must a contractor request an extension of its audit deadline?
		§12.980	Is DHS required to grant a contractor an extension of its audit deadline?			§378.980	Is DHS required to grant a contractor an extension of its audit deadline?
		§12.981	How is a new audit due date determined?			§378.981	How is a new audit due date determined?
		§12.982	How is the contractor informed of the decision regarding the extension of its audit due date?			§378.982	How is the contractor informed of the decision regarding the extension of its audit due date?
		§12.983	Can a contractor request more than one extension?			§378.983	Can a contractor request more than one extension?
		§12.984	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§378.984	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?

		§12.985	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SMP for failing to comply with the single audit requirements?			§378.985	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SMP for failing to comply with the single audit requirements?
	8		Suspension and Termination		8		Suspension and Termination
		§12.991	How does DHS terminate or suspend a contract?			§378.991	How does DHS terminate or suspend a contract?
	9		Appeals		9		Appeals
		§12.1001	Does a contractor applying to participate in the SMP have the right to appeal the denial of its contract application?			§378.1001	Does a contractor applying to participate in the SMP have the right to appeal the denial of its contract application?
		§12.1002	Does a contractor participating in the SMP have the right to appeal any action that affects its continued participation in the SMP or affects its claim for reimbursement?			§378.1002	Does a contractor participating in the SMP have the right to appeal any action that affects its continued participation in the SMP or affects its claim for reimbursement?
D			School Breakfast Program (SBP)	D			School Breakfast Program (SBP)
	1		Overview and Purpose		1		Overview and Purpose
		§12.1051	What is the purpose of the School Breakfast Program (SBP)?			§378.1051	What is the purpose of the School Breakfast Program (SBP)?
		§12.1052	What do certain words and terms in this subchapter mean?			§378.1052	What do certain words and terms in this subchapter mean?
		§12.1053	How is the SBP administered in Texas?			§378.1053	How is the SBP administered in Texas?
	2		Contractor Eligibility		2		Contractor Eligibility
		§12.1071	How does a contractor qualify to participate in the SBP?			§378.1071	How does a contractor qualify to participate in the SBP?
		§12.1072	What information must a contractor submit when applying to participate in the SBP?			§378.1072	What information must a contractor submit when applying to participate in the SBP?
	3		Contractor Participation Requirements and Responsibilities		3		Contractor Participation Requirements and Responsibilities
		§12.1091	What are the rights and responsibilities of a contractor that participates in the SBP?			§378.1091	What are the rights and responsibilities of a contractor that participates in the SBP?
		§12.1092	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the SBP?			§378.1092	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the SBP?
		§12.1093	Is a contractor that participates in the SBP subject to federal and state procurement guidelines?			§378.1093	Is a contractor that participates in the SBP subject to federal and state procurement guidelines?
		§12.1094	How does a contractor determine if an individual is eligible to participate and receive benefits in the SBP?			§378.1094	How does a contractor determine if an individual is eligible to participate and receive benefits in the SBP?
	4		Reimbursement and Financial Management		4		Reimbursement and Financial Management
		§12.1101	How does DHS reimburse a contractor for its participation in the SBP?			§378.1101	How does DHS reimburse a contractor for its participation in the SBP?
		§12.1102	Does DHS make advance payments?			§378.1102	Does DHS make advance payments?
		§12.1103	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§378.1103	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§12.1104	How does DHS process a claim received later than 60 days after the end of the claim month(s)?			§378.1104	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
		§12.1105	What happens if DHS finds that good cause did not exist?			§378.1105	What happens if DHS finds that good cause did not exist?
		§12.1106	What happens if DHS finds that good cause beyond the contractor's control existed?			§378.1106	What happens if DHS finds that good cause beyond the contractor's control existed?

		§12.1107	What happens if USDA finds that good cause existed?			§378.1107	What happens if USDA finds that good cause existed?
		§12.1108	What happens if USDA finds that good cause did not exist?			§378.1108	What happens if USDA finds that good cause did not exist?
		§12.1109	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?			§378.1109	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?
		§12.1110	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?			§378.1110	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
	5		Program Reviews, Monitoring, and Management Evaluations		5		Program Reviews, Monitoring, and Management Evaluations
		§12.1121	How does DHS ensure that a contractor complies with SBP requirements?			§378.1121	How does DHS ensure that a contractor complies with SBP requirements?
		§12.1122	Does the USDA conduct management evaluations of contractors operating the SBP?			§378.1122	Does the USDA conduct management evaluations of contractors operating the SBP?
	6		Audits		6		Audits
		§12.1131	Must a contractor that participates in the SBP conduct audits?			§378.1131	Must a contractor that participates in the SBP conduct audits?
		§12.1132	Must a contractor that participates in the SBP comply with the requirements of the Single Audit Act?			§378.1132	Must a contractor that participates in the SBP comply with the requirements of the Single Audit Act?
		§12.1133	Are certain contractors not subject to the requirements of the Single Audit Act?			§378.1133	Are certain contractors not subject to the requirements of the Single Audit Act?
		§12.1134	When is an audit considered acceptable?			§378.1134	When is an audit considered acceptable?
		§12.1135	How is a contractor informed of its obligation to comply with the single audit requirements?			§378.1135	How is a contractor informed of its obligation to comply with the single audit requirements?
	7		Sanctions, Penalties, and Fiscal Action		7		Sanctions, Penalties, and Fiscal Action
		§12.1151	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?			§378.1151	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?
		§12.1152	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 220 and 245?			§378.1152	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 220 and 245?
		§12.1153	Does DHS investigate irregularities in or complaints about a contractor's operation of the SBP?			§378.1153	Does DHS investigate irregularities in or complaints about a contractor's operation of the SBP?
		§12.1154	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?			§378.1154	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?
		§12.1155	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?			§378.1155	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?
		§12.1156	Who must pay for this audit?			§378.1156	Who must pay for this audit?
		§12.1157	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?			§378.1157	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?
		§12.1158	Can DHS extend the deadline by which a contractor must submit an audit?			§378.1158	Can DHS extend the deadline by which a contractor must submit an audit?

		§12.1159	How must a contractor request an extension of its audit deadline?			§378.1159	How must a contractor request an extension of its audit deadline?
		§12.1160	Is DHS required to grant a contractor an extension of its audit deadline?			§378.1160	Is DHS required to grant a contractor an extension of its audit deadline?
		§12.1161	How is a new audit due date determined?			§378.1161	How is a new audit due date determined?
		§12.1162	How is the contractor informed of the decision regarding the extension of its audit due date?			§378.1162	How is the contractor informed of the decision regarding the extension of its audit due date?
		§12.1163	Can a contractor request more than one extension?			§378.1163	Can a contractor request more than one extension?
		§12.1164	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§378.1164	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§12.1165	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SBP for failing to comply with the single audit requirements?			§378.1165	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SBP for failing to comply with the single audit requirements?
	8		Suspension and Termination		8		Suspension and Termination
		§12.1191	How does DHS terminate or suspend a contract?			§378.1191	How does DHS terminate or suspend a contract?
	9		Appeals		9		Appeals
		§12.1201	Does a contractor applying to participate in the SBP have the right to appeal the denial of its contract application?			§378.1201	Does a contractor applying to participate in the SBP have the right to appeal the denial of its contract application?
		§12.1202	Does a contractor participating in the SBP have the right to appeal any action that affects its continued participation in the SBP or affects its claim for reimbursement?			§378.1202	Does a contractor participating in the SBP have the right to appeal any action that affects its continued participation in the SBP or affects its claim for reimbursement?
E			National School Lunch Program (NSLP)	E			National School Lunch Program (NSLP)
	1		Overview and Purpose		1		Overview and Purpose
		§12.1251	What is the purpose of the National School Lunch Program (NSLP)?			§378.1251	What is the purpose of the National School Lunch Program (NSLP)?
		§12.1252	What do certain words and terms in this subchapter mean?			§378.1252	What do certain words and terms in this subchapter mean?
		§12.1253	How is the NSLP administered in Texas?			§378.1253	How is the NSLP administered in Texas?
	2		Contractor Eligibility		2		Contractor Eligibility
		§12.1261	How does a contractor qualify to participate in the NSLP?			§378.1261	How does a contractor qualify to participate in the NSLP?
		§12.1262	What information must a contractor submit when applying to participate in the NSLP?			§378.1262	What information must a contractor submit when applying to participate in the NSLP?
		§12.1263	Must a school food authority (SFA) meet any specific requirements in order to be eligible to administer an Afterschool Care Snack program in the NSLP?			§378.1263	Must a school food authority (SFA) meet any specific requirements in order to be eligible to administer an Afterschool Care Snack program in the NSLP?
		§12.1264	What documentation must a school food authority (SFA) provide to demonstrate that an Afterschool Care Snack program facility has been determined exempt from state licensing requirements?			§378.1264	What documentation must a school food authority (SFA) provide to demonstrate that an Afterschool Care Snack program facility has been determined exempt from state licensing requirements?
	3		Contractor Participation Requirements and Responsibilities		3		Contractor Participation Requirements and Responsibilities
		§12.1281	What are the rights and responsibilities of a contractor that participates in the NSLP?			§378.1281	What are the rights and responsibilities of a contractor that participates in the NSLP?

		§12.1282	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the NSLP?			§378.1282	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the NSLP?
		§12.1283	Is a contractor that participates in the NSLP subject to federal and state procurement guidelines?			§378.1283	Is a contractor that participates in the NSLP subject to federal and state procurement guidelines?
		§12.1284	How does a contractor determine if an individual is eligible to participate and receive benefits in the NSLP?			§378.1284	How does a contractor determine if an individual is eligible to participate and receive benefits in the NSLP?
	4		Reimbursement and Financial Management		4		Reimbursement and Financial Management
		§12.1301	How does DHS reimburse a contractor for its participation in the NSLP?			§378.1301	How does DHS reimburse a contractor for its participation in the NSLP?
		§12.1302	Does DHS make advance payments?			§378.1302	Does DHS make advance payments?
		§12.1303	Can a school participating in an approved after school program claim reimbursement for snacks?			§378.1303	Can a school participating in an approved after school program claim reimbursement for snacks?
		§12.1304	How does DHS determine the rate of reimbursement for eligible snacks served in an after school program?			§378.1304	How does DHS determine the rate of reimbursement for eligible snacks served in an after school program?
		§12.1305	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§378.1305	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§12.1306	How does DHS process a claim received later than 60 days after the end of the claim month(s)?			§378.1306	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
		§12.1307	What happens if DHS finds that good cause did not exist?			§378.1307	What happens if DHS finds that good cause did not exist?
		§12.1308	What happens if DHS finds that good cause beyond the contractor's control existed?			§378.1308	What happens if DHS finds that good cause beyond the contractor's control existed?
		§12.1309	What happens if USDA finds that good cause existed?			§378.1309	What happens if USDA finds that good cause existed?
		§12.1310	What happens if USDA finds that good cause did not exist?			§378.1310	What happens if USDA finds that good cause did not exist?
		§12.1311	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?			§378.1311	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?
		§12.1312	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?			§378.1312	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
	5		Program Reviews, Monitoring, and Management Evaluations		5		Program Reviews, Monitoring, and Management Evaluations
		§12.1331	How does DHS ensure that a contractor complies with NSLP requirements?			§378.1331	How does DHS ensure that a contractor complies with NSLP requirements?
		§12.1332	Does USDA conduct management evaluations of contractors operating the NSLP?			§378.1332	Does USDA conduct management evaluations of contractors operating the NSLP?
	6		Audits		6		Audits
		§12.1341	Must a contractor that participates in the NSLP conduct audits?			§378.1341	Must a contractor that participates in the NSLP conduct audits?
		§12.1342	Must a contractor that participates in the NSLP comply with the requirements of the Single Audit Act?			§378.1342	Must a contractor that participates in the NSLP comply with the requirements of the Single Audit Act?
		§12.1343	Are certain contractors not subject to the requirements of the Single Audit Act?			§378.1343	Are certain contractors not subject to the requirements of the Single Audit Act?

		§12.1344	When is an audit considered acceptable?			§378.1344	When is an audit considered acceptable?
		§12.1345	How is a contractor informed of its obligation to comply with the single audit requirements?			§378.1345	How is a contractor informed of its obligation to comply with the single audit requirements?
	7		Sanctions, Penalties, and Fiscal Action		7		Sanctions, Penalties, and Fiscal Action
		§12.1361	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?			§378.1361	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?
		§12.1362	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 210 and 245?			§378.1362	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 210 and 245?
		§12.1363	Does DHS investigate irregularities in or complaints about a contractor's operation of the NSLP?			§378.1363	Does DHS investigate irregularities in or complaints about a contractor's operation of the NSLP?
		§12.1364	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?			§378.1364	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?
		§12.1365	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?			§378.1365	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?
		§12.1366	Who must pay for this audit?			§378.1366	Who must pay for this audit?
		§12.1367	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?			§378.1367	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?
		§12.1368	Can DHS extend the deadline by which a contractor must submit an audit?			§378.1368	Can DHS extend the deadline by which a contractor must submit an audit?
		§12.1369	How must a contractor request an extension of its audit deadline?			§378.1369	How must a contractor request an extension of its audit deadline?
		§12.1370	Is DHS required to grant a contractor an extension of its audit deadline?			§378.1370	Is DHS required to grant a contractor an extension of its audit deadline?
		§12.1371	How is a new audit due date determined?			§378.1371	How is a new audit due date determined?
		§12.1372	How is the contractor informed of the decision regarding the extension of its audit due date?			§378.1372	How is the contractor informed of the decision regarding the extension of its audit due date?
		§12.1373	Can a contractor request more than one extension?			§378.1373	Can a contractor request more than one extension?
		§12.1374	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§378.1374	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§12.1375	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the NSLP for failing to comply with the single audit requirements?			§378.1375	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the NSLP for failing to comply with the single audit requirements?
	8		Suspension and Termination		8		Suspension and Termination
		§12.1401	How does DHS terminate or suspend contracts?			§378.1401	How does DHS terminate or suspend contracts?
	9		Appeals		9		Appeals
		§12.1411	Does a contractor applying to participate in the NSLP have the right to appeal the denial of its contract application?			§378.1411	Does a contractor applying to participate in the NSLP have the right to appeal the denial of its contract application?

		§12.1412	Does a contractor participating in the NSLP have the right to appeal any action that affects its continued participation in the NSLP or affects its claim for reimbursement?			§378.1412	Does a contractor participating in the NSLP have the right to appeal any action that affects its continued participation in the NSLP or affects its claim for reimbursement?

Current Rules from Title 40, Part 1 Texas Department of Human Services Chapter 54, Family Violence Program				**Transferred to Title 1, Part 15 Texas Health and Human Services Commission Chapter 379, Family Violence Program**			
Subchapter and Division		Section	Heading	Subchapter and Division		Section	Heading
A			Definitions	A			Definitions
		§54.1	What do certain words and terms in the chapter mean?			§379.1	What do certain words and terms in the chapter mean?
B			Shelters Centers	B			Shelters Centers
	1		Board of Directors		1		Board of Directors
		§54.101	What is the stewardship function of the shelter center's board of directors?			§379.101	What is the stewardship function of the shelter center's board of directors?
		§54.102	What are the responsibilities of the shelter center's board of directors?			§379.102	What are the responsibilities of the shelter center's board of directors?
		§54.103	What documents must the shelter center's board of directors maintain?			§379.103	What documents must the shelter center's board of directors maintain?
		§54.104	What must the shelter center's bylaws contain?			§379.104	What must the shelter center's bylaws contain?
		§54.105	What must the shelter center board include in its recruitment procedures?			§379.105	What must the shelter center board include in its recruitment procedures?
		§54.106	What information does the shelter center need to provide to new board members?			§379.106	What information does the shelter center need to provide to new board members?
		§54.107	What must the shelter center's board handbook include?			§379.107	What must the shelter center's board handbook include?
		§54.108	How often should the shelter center board of directors receive training?			§379.108	How often should the shelter center board of directors receive training?
		§54.109	What training must the shelter center's board of directors receive?			§379.109	What training must the shelter center's board of directors receive?
		§54.110	What responsibilities do board members have regarding confidentiality?			§379.110	What responsibilities do board members have regarding confidentiality?
	2		Contract Standards		2		Contract Standards
		§54.201	Who is eligible to apply for a shelter center contract?			§379.201	Who is eligible to apply for a shelter center contract?
		§54.202	What factors will the Texas Department of Human Services (DHS) consider in awarding contracts?			§379.202	What factors will the Texas Department of Human Services (DHS) consider in awarding contracts?
		§54.203	How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted shelter center?			§379.203	How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted shelter center?
		§54.204	Can an organization reapply for funding if the shelter center contract has been terminated for failure to perform the obligations?			§379.204	Can an organization reapply for funding if the shelter center contract has been terminated for failure to perform the obligations?
		§54.205	Can the shelter center apply for a special nonresidential project contract?			§379.205	Can the shelter center apply for a special nonresidential project contract?
		§54.206	How can the shelter center qualify for satellite shelter funding?			§379.206	How can the shelter center qualify for satellite shelter funding?
		§54.207	What are the requirements of the satellite shelter?			§379.207	What are the requirements of the satellite shelter?
		§54.208	What is the process to renew the shelter center contract?			§379.208	What is the process to renew the shelter center contract?

		§54.209	What types of documentation must the shelter center maintain?			§379.209	What types of documentation must the shelter center maintain?
		§54.210	How long must the shelter center keep the documents?			§379.210	How long must the shelter center keep the documents?
		§54.211	Who may inspect, monitor, or evaluate the shelter center's resident and nonresident records, financial books, and supporting documents that pertain to services provided?			§379.211	Who may inspect, monitor, or evaluate the shelter center's resident and nonresident records, financial books, and supporting documents that pertain to services provided?
		§54.212	What documents should the shelter center have available for a monitoring visit?			§379.212	What documents should the shelter center have available for a monitoring visit?
		§54.213	What should the shelter center do after it receives a Texas Department of Human Services (DHS) monitoring report?			§379.213	What should the shelter center do after it receives a Texas Department of Human Services (DHS) monitoring report?
		§54.214	Does the shelter center need to have an internal monitoring system?			§379.214	Does the shelter center need to have an internal monitoring system?
		§54.215	Does the shelter center have to maintain a copy of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual?			§379.215	Does the shelter center have to maintain a copy of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual?
		§54.216	How much of the shelter center's funding can the Texas Department of Human Services (DHS) provide?			§379.216	How much of the shelter center's funding can the Texas Department of Human Services (DHS) provide?
		§54.217	Is it possible to obtain a waiver to the Texas Department of Human Services (DHS)-prescribed percentage of the shelter center's operating budget?			§379.217	Is it possible to obtain a waiver to the Texas Department of Human Services (DHS)-prescribed percentage of the shelter center's operating budget?
		§54.218	How can the shelter center request a variance or waiver?			§379.218	How can the shelter center request a variance or waiver?
		§54.219	Can the shelter center receive a funding percentage waiver more than once?			§379.219	Can the shelter center receive a funding percentage waiver more than once?
		§54.220	What is the process to amend the shelter center contract?			§379.220	What is the process to amend the shelter center contract?
		§54.221	What is the process to revise the shelter center budget?			§379.221	What is the process to revise the shelter center budget?
		§54.222	What is the responsibility of the shelter center with regard to subcontracts?			§379.222	What is the responsibility of the shelter center with regard to subcontracts?
		§54.223	What must a shelter center do if there is a change in corporate control?			§379.223	What must a shelter center do if there is a change in corporate control?
		§54.224	What can happen if the shelter center does not comply with the rules?			§379.224	What can happen if the shelter center does not comply with the rules?
	3		Fiscal Management		3		Fiscal Management
		§54.301	What are the accounting system requirements for the shelter center?			§379.301	What are the accounting system requirements for the shelter center?
		§54.302	Is the shelter center required to have a fidelity bond?			§379.302	Is the shelter center required to have a fidelity bond?
		§54.303	What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?			§379.303	What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?
		§54.304	How should the shelter center handle in-kind contributions?			§379.304	How should the shelter center handle in-kind contributions?
		§54.305	How should the shelter center handle cash contributions?			§379.305	How should the shelter center handle cash contributions?
		§54.306	How should the shelter center document required cash/in-kind match?			§379.306	How should the shelter center document required cash/in-kind match?

		§54.307	How does the shelter center allocate overhead costs to its Texas Department of Human Services contract?			§379.307	How does the shelter center allocate overhead costs to its Texas Department of Human Services contract?
		§54.308	What must the shelter center do in order to receive payment from the Texas Department of Human Services (DHS)?			§379.308	What must the shelter center do in order to receive payment from the Texas Department of Human Services (DHS)?
		§54.309	What costs are eligible for reimbursement under the shelter center contract?			§379.309	What costs are eligible for reimbursement under the shelter center contract?
		§54.310	Can the shelter center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?			§379.310	Can the shelter center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?
		§54.311	What is the quarterly report?			§379.311	What is the quarterly report?
		§54.312	When is the quarterly report due?			§379.312	When is the quarterly report due?
		§54.313	What is the annual report?			§379.313	What is the annual report?
		§54.314	When is the annual report due?			§379.314	When is the annual report due?
		§54.315	What are the shelter center's audit requirements?			§379.315	What are the shelter center's audit requirements?
		§54.316	When is the shelter center audit due?			§379.316	When is the shelter center audit due?
	4		Personnel		4		Personnel
		§54.401	Must the shelter center comply with federal personnel laws?			§379.401	Must the shelter center comply with federal personnel laws?
		§54.402	What additional personnel policies and procedures must the shelter center have?			§379.402	What additional personnel policies and procedures must the shelter center have?
		§54.403	Who needs a copy of the shelter center's personnel handbook?			§379.403	Who needs a copy of the shelter center's personnel handbook?
		§54.404	Are there any requirements for the shelter center employees' personnel files?			§379.404	Are there any requirements for the shelter center employees' personnel files?
		§54.405	Where should the shelter center keep its employee payroll information?			§379.405	Where should the shelter center keep its employee payroll information?
		§54.406	What must the shelter center do to ensure confidentiality of specific employee information?			§379.406	What must the shelter center do to ensure confidentiality of specific employee information?
		§54.407	What should the shelter center address in its policy regarding confidentiality of employee records?			§379.407	What should the shelter center address in its policy regarding confidentiality of employee records?
		§54.408	What should the shelter center address in its drug-free workplace policies?			§379.408	What should the shelter center address in its drug-free workplace policies?
		§54.409	What should the shelter center address in its recruitment policies?			§379.409	What should the shelter center address in its recruitment policies?
		§54.410	What should the shelter center address in its interviewing and hiring policies?			§379.410	What should the shelter center address in its interviewing and hiring policies?
		§54.411	Does the shelter center need written job descriptions for its employee positions?			§379.411	Does the shelter center need written job descriptions for its employee positions?
		§54.412	Should the shelter center identify its employee positions as exempt or non-exempt?			§379.412	Should the shelter center identify its employee positions as exempt or non-exempt?
		§54.413	What are the shelter center requirements for new employee orientation?			§379.413	What are the shelter center requirements for new employee orientation?
		§54.414	Does the shelter center need to provide specific job training?			§379.414	Does the shelter center need to provide specific job training?
		§54.415	Are there any requirements for specific program training for shelter center employees?			§379.415	Are there any requirements for specific program training for shelter center employees?

		§54.416	What access should the shelter center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?			§379.416	What access should the shelter center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?
		§54.417	Should the shelter center evaluate employee performance?			§379.417	Should the shelter center evaluate employee performance?
		§54.418	Can the shelter center use probationary periods for its employees?			§379.418	Can the shelter center use probationary periods for its employees?
	5		Facility, Safety, and Health Requirements		5		Facility, Safety, and Health Requirements
		§54.501	What facility codes must the shelter center meet?			§379.501	What facility codes must the shelter center meet?
		§54.502	Must the shelter center's facilities comply with the Americans with Disabilities Act (ADA)?			§379.502	Must the shelter center's facilities comply with the Americans with Disabilities Act (ADA)?
		§54.503	What are the additional facility requirements for the 24-hour-a-day shelter center?			§379.503	What are the additional facility requirements for the 24-hour-a-day shelter center?
		§54.504	What are the shelter center's requirements for preparing, providing, and serving food to residents?			§379.504	What are the shelter center's requirements for preparing, providing, and serving food to residents?
		§54.505	Must the shelter center have a security system?			§379.505	Must the shelter center have a security system?
		§54.506	What security policies and procedures must the shelter center have?			§379.506	What security policies and procedures must the shelter center have?
		§54.507	What safety policies and procedures does the shelter center need to have for delivering services to children?			§379.507	What safety policies and procedures does the shelter center need to have for delivering services to children?
		§54.508	Should there always be employees or volunteers at the shelter?			§379.508	Should there always be employees or volunteers at the shelter?
		§54.509	Should there always be employees or volunteers at the satellite shelter facility?			§379.509	Should there always be employees or volunteers at the satellite shelter facility?
		§54.510	What health and hygiene policies and procedures must the shelter center follow?			§379.510	What health and hygiene policies and procedures must the shelter center follow?
		§54.511	What hygiene items must the shelter center provide to residents?			§379.511	What hygiene items must the shelter center provide to residents?
		§54.512	What regulations regarding smoking must the shelter center follow?			§379.512	What regulations regarding smoking must the shelter center follow?
	6		Program Administration		6		Program Administration
		§54.601	What services must the shelter center provide to victims of family violence?			§379.601	What services must the shelter center provide to victims of family violence?
		§54.602	Can the shelter center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?			§379.602	Can the shelter center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?
		§54.603	Who is eligible for services in the shelter center?			§379.603	Who is eligible for services in the shelter center?
		§54.604	When is a family violence victim who is less than 18 years old eligible to receive 24-hour-a-day shelter?			§379.604	When is a family violence victim who is less than 18 years old eligible to receive 24-hour-a-day shelter?
		§54.605	When is a family violence victim who is less than 18 years old eligible to receive nonresidential services?			§379.605	When is a family violence victim who is less than 18 years old eligible to receive nonresidential services?
		§54.606	What federal and state laws must the shelter center follow when determining eligibility?			§379.606	What federal and state laws must the shelter center follow when determining eligibility?

		§54.607	What criteria can the shelter center use to determine eligibility for services?			§379.607	What criteria can the shelter center use to determine eligibility for services?
		§54.608	Can the shelter center ever deny services to an otherwise eligible individual?			§379.608	Can the shelter center ever deny services to an otherwise eligible individual?
		§54.609	What should the shelter center do when its services are at capacity?			§379.609	What should the shelter center do when its services are at capacity?
		§54.610	Must the shelter center provide access to services for people with limited English proficiency?			§379.610	Must the shelter center provide access to services for people with limited English proficiency?
		§54.611	Is the shelter center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?			§379.611	Is the shelter center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?
		§54.612	What must the shelter center include in its general confidentiality policy?			§379.612	What must the shelter center include in its general confidentiality policy?
		§54.613	What information must the shelter center provide adult residents and nonresidents regarding confidentiality?			§379.613	What information must the shelter center provide adult residents and nonresidents regarding confidentiality?
		§54.614	Who needs to sign confidentiality agreements and where should the shelter center keep these agreements?			§379.614	Who needs to sign confidentiality agreements and where should the shelter center keep these agreements?
		§54.615	What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the shelter center?			§379.615	What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the shelter center?
		§54.616	What is required in the confidentiality training provided to employees, board members, interns and direct service volunteers?			§379.616	What is required in the confidentiality training provided to employees, board members, interns and direct service volunteers?
		§54.617	What information should the shelter center keep in resident or nonresident files?			§379.617	What information should the shelter center keep in resident or nonresident files?
		§54.618	What policies and procedures must the shelter center have regarding entries in a resident or nonresident file?			§379.618	What policies and procedures must the shelter center have regarding entries in a resident or nonresident file?
		§54.619	Is the shelter center required to give a resident or nonresident access to her or his files?			§379.619	Is the shelter center required to give a resident or nonresident access to her or his files?
		§54.620	What must the shelter center do if a resident or nonresident contests an entry in her or his file?			§379.620	What must the shelter center do if a resident or nonresident contests an entry in her or his file?
		§54.621	What controls must the shelter center maintain over resident and nonresident files?			§379.621	What controls must the shelter center maintain over resident and nonresident files?
		§54.622	When can the shelter center release resident or nonresident information?			§379.622	When can the shelter center release resident or nonresident information?
		§54.623	What must the shelter center include in its written release of resident or nonresident information document?			§379.623	What must the shelter center include in its written release of resident or nonresident information document?
		§54.624	What written procedures must the shelter center have regarding court orders?			§379.624	What written procedures must the shelter center have regarding court orders?
		§54.625	Must the shelter center notify a victim of family violence when a court order affects the individual or the individual's records?			§379.625	Must the shelter center notify a victim of family violence when a court order affects the individual or the individual's records?

		§54.626	Must the shelter center have written policies and procedures for the retention and destruction of documentation?			§379.626	Must the shelter center have written policies and procedures for the retention and destruction of documentation?
		§54.627	What types of facilities does the Texas Department of Human Services allow for a 24-hour-a-day shelter?			§379.627	What types of facilities does the Texas Department of Human Services allow for a 24-hour-a-day shelter?
		§54.628	How can the shelter center request an exception to the allowable types of facilities for a 24-hour-a-day shelter?			§379.628	How can the shelter center request an exception to the allowable types of facilities for a 24-hour-a-day shelter?
		§54.629	What additional requirements apply if the shelter center uses a series of safe homes?			§379.629	What additional requirements apply if the shelter center uses a series of safe homes?
		§54.630	Can the shelter center use a motel as a type of shelter?			§379.630	Can the shelter center use a motel as a type of shelter?
		§54.631	What must the shelter center do if it has any disruption in its ability to provide services?			§379.631	What must the shelter center do if it has any disruption in its ability to provide services?
		§54.632	Is there a maximum length of stay for shelter center residents?			§379.632	Is there a maximum length of stay for shelter center residents?
		§54.633	What responsibility does the shelter center have to inform all residents and nonresidents of their rights?			§379.633	What responsibility does the shelter center have to inform all residents and nonresidents of their rights?
		§54.634	Must the shelter center develop a plan regarding cooperation with criminal justice officials?			§379.634	Must the shelter center develop a plan regarding cooperation with criminal justice officials?
		§54.635	What responsibility does the shelter center have to provide community education?			§379.635	What responsibility does the shelter center have to provide community education?
		§54.636	What methods must the shelter center use to provide community education?			§379.636	What methods must the shelter center use to provide community education?
		§54.637	What is required for the shelter center's volunteer program?			§379.637	What is required for the shelter center's volunteer program?
		§54.638	How much recruitment must the shelter center do for volunteers?			§379.638	How much recruitment must the shelter center do for volunteers?
		§54.639	When recruiting volunteers, what laws or codes must the shelter center follow?			§379.639	When recruiting volunteers, what laws or codes must the shelter center follow?
		§54.640	How often must the shelter center offer training for volunteers?			§379.640	How often must the shelter center offer training for volunteers?
		§54.641	What training must the shelter center provide to direct service volunteers?			§379.641	What training must the shelter center provide to direct service volunteers?
		§54.642	What training must the shelter center provide to non-direct service volunteers?			§379.642	What training must the shelter center provide to non-direct service volunteers?
		§54.650	Are there any limitations to providing shelter or care to family violence victims who are less than 18 years old who are not accompanied by a parent or legal guardian, are not legally emancipated, are not married, or have not been married?			§379.650	Are there any limitations to providing shelter or care to family violence victims who are less than 18 years old who are not accompanied by a parent or legal guardian, are not legally emancipated, are not married, or have not been married?
		§54.651	Are there any limitations to providing nonresidential services to family violence victims who are less than 18 years old who are not accompanied by a parent or legal guardian, are not legally emancipated, are not married, or have not been married?			§379.651	Are there any limitations to providing nonresidential services to family violence victims who are less than 18 years old who are not accompanied by a parent or legal guardian, are not legally emancipated, are not married, or have not been married?
	7		Service Delivery		7		Service Delivery
		§54.701	What services must the shelter center provide?			§379.701	What services must the shelter center provide?

		§54.702	What requirements must the shelter center meet for the crisis call hotline?			§379.702	What requirements must the shelter center meet for the crisis call hotline?
		§54.703	What crisis call hotline procedures must the shelter center have?			§379.703	What crisis call hotline procedures must the shelter center have?
		§54.704	Can the shelter center use caller ID on the crisis call hotline?			§379.704	Can the shelter center use caller ID on the crisis call hotline?
		§54.705	Can the shelter center subcontract the answering of the crisis call hotline?			§379.705	Can the shelter center subcontract the answering of the crisis call hotline?
		§54.706	What procedures must the shelter center have for delivery of Texas Department of Human Services-contracted services?			§379.706	What procedures must the shelter center have for delivery of Texas Department of Human Services-contracted services?
		§54.707	What information must the shelter center cover in the resident's orientation?			§379.707	What information must the shelter center cover in the resident's orientation?
		§54.708	What must the shelter center do to promote cooperative living in the shelter?			§379.708	What must the shelter center do to promote cooperative living in the shelter?
		§54.709	What information must the shelter center cover in the nonresident's orientation?			§379.709	What information must the shelter center cover in the nonresident's orientation?
		§54.710	What kind of intervention services must the shelter center provide to adult residents and nonresidents?			§379.710	What kind of intervention services must the shelter center provide to adult residents and nonresidents?
		§54.711	Who can provide the shelter center intervention services?			§379.711	Who can provide the shelter center intervention services?
		§54.712	How often should the shelter center provide intervention services?			§379.712	How often should the shelter center provide intervention services?
		§54.713	Is the shelter center allowed to incorporate religion into the intervention services?			§379.713	Is the shelter center allowed to incorporate religion into the intervention services?
		§54.714	Is the shelter center required to help each resident and nonresident develop an individual service plan?			§379.714	Is the shelter center required to help each resident and nonresident develop an individual service plan?
		§54.715	What are the shelter center requirements regarding group intervention?			§379.715	What are the shelter center requirements regarding group intervention?
		§54.716	What are the requirements for the shelter center regarding delivery of children's direct services?			§379.716	What are the requirements for the shelter center regarding delivery of children's direct services?
		§54.717	What kind of intervention services must the shelter center provide to children who reside at the shelter?			§379.717	What kind of intervention services must the shelter center provide to children who reside at the shelter?
		§54.718	What is the shelter center's responsibility regarding educational services for children of adult residents?			§379.718	What is the shelter center's responsibility regarding educational services for children of adult residents?
		§54.719	What is the shelter center's responsibility regarding emergency medical services?			§379.719	What is the shelter center's responsibility regarding emergency medical services?
		§54.720	What policies and procedures must the shelter center have regarding residents and their medications?			§379.720	What policies and procedures must the shelter center have regarding residents and their medications?
		§54.721	What legal assistance services must the shelter center provide?			§379.721	What legal assistance services must the shelter center provide?
		§54.722	What are the requirements for the shelter center regarding legal assistance?			§379.722	What are the requirements for the shelter center regarding legal assistance?
		§54.723	What training and employment services must the shelter center provide?			§379.723	What training and employment services must the shelter center provide?
		§54.724	Must the shelter center maintain a referral system?			§379.724	Must the shelter center maintain a referral system?
		§54.725	What policies must the shelter center have regarding termination of resident and nonresident services?			§379.725	What policies must the shelter center have regarding termination of resident and nonresident services?

		§54.726	What information about termination of services must the shelter center provide to residents and nonresidents?			§379.726	What information about termination of services must the shelter center provide to residents and nonresidents?
C			Special Nonresidential Projects	C			Special Nonresidential Projects
	1		Board of Directors		1		Board of Directors
		§54.801	What is the stewardship function of the special nonresidential project contractor's board of directors?			§379.801	What is the stewardship function of the special nonresidential project contractor's board of directors?
		§54.802	What process should the special nonresidential project contractor's board of directors follow to analyze the finances?			§379.802	What process should the special nonresidential project contractor's board of directors follow to analyze the finances?
		§54.803	When should the board of directors be notified about a contract award for a Texas Department of Human Services (DHS) special nonresidential project?			§379.803	When should the board of directors be notified about a contract award for a Texas Department of Human Services (DHS) special nonresidential project?
		§54.804	What responsibilities do members of the special nonresidential project board of directors have regarding confidentiality?			§379.804	What responsibilities do members of the special nonresidential project board of directors have regarding confidentiality?
	2		Contract Standards		2		Contract Standards
		§54.901	Who is eligible to apply for a special nonresidential project contract?			§379.901	Who is eligible to apply for a special nonresidential project contract?
		§54.902	How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted special nonresidential project?			§379.902	How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted special nonresidential project?
		§54.903	Can an organization reapply for funding if the special nonresidential project contract has been terminated for failure to perform the obligations?			§379.903	Can an organization reapply for funding if the special nonresidential project contract has been terminated for failure to perform the obligations?
		§54.904	What is the process to renew the special nonresidential project contract?			§379.904	What is the process to renew the special nonresidential project contract?
		§54.905	What types of documentation must the special nonresidential project contractor maintain and keep in an accessible location at all times?			§379.905	What types of documentation must the special nonresidential project contractor maintain and keep in an accessible location at all times?
		§54.906	How long must the special nonresidential project contractor keep the documents?			§379.906	How long must the special nonresidential project contractor keep the documents?
		§54.907	Who may inspect, monitor, or evaluate the special nonresidential project contractor's program participant records, financial books, and supporting documents that pertain to services provided?			§379.907	Who may inspect, monitor, or evaluate the special nonresidential project contractor's program participant records, financial books, and supporting documents that pertain to services provided?
		§54.908	What documents should the special nonresidential project contractor have available for a monitoring visit?			§379.908	What documents should the special nonresidential project contractor have available for a monitoring visit?
		§54.909	What should the special nonresidential project contractor do after it receives a Texas Department of Human Services (DHS) monitoring report?			§379.909	What should the special nonresidential project contractor do after it receives a Texas Department of Human Services (DHS) monitoring report?
		§54.910	Does the special nonresidential project contractor need to have an internal monitoring system?			§379.910	Does the special nonresidential project contractor need to have an internal monitoring system?
		§54.911	Does the special nonresidential project contractor have to maintain a copy of the Texas Department of Human Services Family Violence Special Nonresidential Project Provider Manual?			§379.911	Does the special nonresidential project contractor have to maintain a copy of the Texas Department of Human Services Family Violence Special Nonresidential Project Provider Manual?

		§54.912	How can the special nonresidential project contractor request a variance or waiver?			§379.912	How can the special nonresidential project contractor request a variance or waiver?
		§54.913	What is the process to amend the special nonresidential project contract?			§379.913	What is the process to amend the special nonresidential project contract?
		§54.914	What is the process to revise the special nonresidential project budget?			§379.914	What is the process to revise the special nonresidential project budget?
		§54.915	What is the responsibility of the special nonresidential project contractor with regard to subcontracts?			§379.915	What is the responsibility of the special nonresidential project contractor with regard to subcontracts?
		§54.916	What must the special nonresidential project contractor do if there is a change in corporate control?			§379.916	What must the special nonresidential project contractor do if there is a change in corporate control?
		§54.917	What can happen if the special nonresidential project contractor does not comply with the rules?			§379.917	What can happen if the special nonresidential project contractor does not comply with the rules?
	3		Fiscal Management		3		Fiscal Management
		§54.1001	What are the accounting system requirements for the special nonresidential project contractor?			§379.1001	What are the accounting system requirements for the special nonresidential project contractor?
		§54.1002	What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?			§379.1002	What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?
		§54.1003	How should the special nonresidential project handle in-kind contributions?			§379.1003	How should the special nonresidential project handle in-kind contributions?
		§54.1004	How should the special nonresidential project contractor handle cash contributions?			§379.1004	How should the special nonresidential project contractor handle cash contributions?
		§54.1005	How should the special nonresidential project contractor document required cash/in-kind match?			§379.1005	How should the special nonresidential project contractor document required cash/in-kind match?
		§54.1006	How does the special nonresidential project contractor allocate overhead costs to its Texas Department of Human Services contract?			§379.1006	How does the special nonresidential project contractor allocate overhead costs to its Texas Department of Human Services contract?
		§54.1007	What must the special nonresidential project contractor do in order to receive payment from the Texas Department of Human Services (DHS)?			§379.1007	What must the special nonresidential project contractor do in order to receive payment from the Texas Department of Human Services (DHS)?
		§54.1008	What costs are eligible for reimbursement under the special nonresidential project contract?			§379.1008	What costs are eligible for reimbursement under the special nonresidential project contract?
		§54.1009	Can the special nonresidential project's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?			§379.1009	Can the special nonresidential project's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?
		§54.1010	What are the quarterly reports?			§379.1010	What are the quarterly reports?
		§54.1011	When are the quarterly reports due?			§379.1011	When are the quarterly reports due?
		§54.1012	What are the annual reports?			§379.1012	What are the annual reports?
		§54.1013	When are the annual reports due?			§379.1013	When are the annual reports due?
		§54.1014	What are the special nonresidential project contractor's audit requirements?			§379.1014	What are the special nonresidential project contractor's audit requirements?
		§54.1015	When is the special nonresidential project audit due?			§379.1015	When is the special nonresidential project audit due?
	4		Personnel		4		Personnel

		§54.1101	Must the special nonresidential project contractor comply with federal personnel laws?			§379.1101	Must the special nonresidential project contractor comply with federal personnel laws?
		§54.1102	What should the special nonresidential project contractor address in its drug-free workplace policies?			§379.1102	What should the special nonresidential project contractor address in its drug-free workplace policies?
		§54.1103	What should the special nonresidential project contractor address in its disabilities in the workplace policies?			§379.1103	What should the special nonresidential project contractor address in its disabilities in the workplace policies?
		§54.1104	Does the special nonresidential project contractor need written job descriptions for its employee positions?			§379.1104	Does the special nonresidential project contractor need written job descriptions for its employee positions?
		§54.1105	Should the special nonresidential project contractor identify its employee positions as exempt or non-exempt?			§379.1105	Should the special nonresidential project contractor identify its employee positions as exempt or non-exempt?
		§54.1106	Should the special nonresidential project contractor staff receive training?			§379.1106	Should the special nonresidential project contractor staff receive training?
		§54.1107	What are the requirements for specific program training for special nonresidential project employees?			§379.1107	What are the requirements for specific program training for special nonresidential project employees?
		§54.1108	What access should the special nonresidential project contractor provide to the Texas Department of Human Services Family Violence Program Special Nonresidential Project Provider Manual?			§379.1108	What access should the special nonresidential project contractor provide to the Texas Department of Human Services Family Violence Program Special Nonresidential Project Provider Manual?
	5		Facility, Safety, and Health Requirements		5		Facility, Safety, and Health Requirements
		§54.1201	What facility codes must the special nonresidential project meet?			§379.1201	What facility codes must the special nonresidential project meet?
		§54.1202	How must the special nonresidential project's facilities comply with the Americans with Disabilities Act (ADA)?			§379.1202	How must the special nonresidential project's facilities comply with the Americans with Disabilities Act (ADA)?
		§54.1203	What are the additional facility requirements for the special nonresidential project providing direct services?			§379.1203	What are the additional facility requirements for the special nonresidential project providing direct services?
		§54.1204	What kind of security system must the special nonresidential project's facilities have?			§379.1204	What kind of security system must the special nonresidential project's facilities have?
		§54.1205	What security policies and procedures must the special nonresidential project have?			§379.1205	What security policies and procedures must the special nonresidential project have?
		§54.1206	What are the safety policies and procedures that need to be developed if the special nonresidential project provides services to children?			§379.1206	What are the safety policies and procedures that need to be developed if the special nonresidential project provides services to children?
		§54.1207	What health and hygiene policies and procedures are required for the special nonresidential project?			§379.1207	What health and hygiene policies and procedures are required for the special nonresidential project?
		§54.1208	What health and hygiene policies are required for the special nonresidential project providing services to children?			§379.1208	What health and hygiene policies are required for the special nonresidential project providing services to children?
		§54.1209	What are the regulations regarding smoking for the special nonresidential project?			§379.1209	What are the regulations regarding smoking for the special nonresidential project?
	6		Program Administration		6		Program Administration

		§54.1301	What services must the special nonresidential project provide to victims of family violence?			§379.1301	What services must the special nonresidential project provide to victims of family violence?
		§54.1302	Can the special nonresidential project charge or solicit contributions or donations in return for the Texas Department of Human Services (DHS)-contracted services?			§379.1302	Can the special nonresidential project charge or solicit contributions or donations in return for the Texas Department of Human Services (DHS)-contracted services?
		§54.1303	Who is eligible for services in the special nonresidential project?			§379.1303	Who is eligible for services in the special nonresidential project?
		§54.1304	Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?			§379.1304	Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?
		§54.1305	What federal and state laws must the special nonresidential project follow when determining eligibility?			§379.1305	What federal and state laws must the special nonresidential project follow when determining eligibility?
		§54.1306	What criteria can the special nonresidential project use to determine eligibility for services?			§379.1306	What criteria can the special nonresidential project use to determine eligibility for services?
		§54.1307	Can the nonresidential special project ever deny services to an otherwise eligible individual?			§379.1307	Can the nonresidential special project ever deny services to an otherwise eligible individual?
		§54.1308	Must the special nonresidential project provide access to services for people with limited English proficiency?			§379.1308	Must the special nonresidential project provide access to services for people with limited English proficiency?
		§54.1309	Is the nonresidential special project contractor subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?			§379.1309	Is the nonresidential special project contractor subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?
		§54.1310	What must the special nonresidential project include in its general confidentiality policy?			§379.1310	What must the special nonresidential project include in its general confidentiality policy?
		§54.1311	What information must the special nonresidential project provide to adult program participants regarding confidentiality?			§379.1311	What information must the special nonresidential project provide to adult program participants regarding confidentiality?
		§54.1312	Who needs to sign confidentiality agreements and where should the special nonresidential project keep these agreements?			§379.1312	Who needs to sign confidentiality agreements and where should the special nonresidential project keep these agreements?
		§54.1313	What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the special nonresidential project?			§379.1313	What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the special nonresidential project?
		§54.1314	What is required in the confidentiality training provided to employees, board members, interns, and direct service volunteers?			§379.1314	What is required in the confidentiality training provided to employees, board members, interns, and direct service volunteers?
		§54.1315	What can the special nonresidential project contractor who has attorneys or other licensed professionals providing Texas Department of Human Services (DHS)-funded services do to allow DHS to monitor their services?			§379.1315	What can the special nonresidential project contractor who has attorneys or other licensed professionals providing Texas Department of Human Services (DHS)-funded services do to allow DHS to monitor their services?
		§54.1316	What information should the special nonresidential project keep in program participant files?			§379.1316	What information should the special nonresidential project keep in program participant files?

		§54.1317	What policies and procedures must the special nonresidential project have regarding entries in a program participant file?			§379.1317	What policies and procedures must the special nonresidential project have regarding entries in a program participant file?
		§54.1318	Is the special nonresidential project required to give a program participant access to her or his files?			§379.1318	Is the special nonresidential project required to give a program participant access to her or his files?
		§54.1319	What must the special nonresidential project do if a program participant contests an entry in her or his file?			§379.1319	What must the special nonresidential project do if a program participant contests an entry in her or his file?
		§54.1320	What controls must the special nonresidential project contractor maintain over program participant files?			§379.1320	What controls must the special nonresidential project contractor maintain over program participant files?
		§54.1321	When can the special nonresidential project release program participant information?			§379.1321	When can the special nonresidential project release program participant information?
		§54.1322	What must the special nonresidential project include in its written release of program participant information document?			§379.1322	What must the special nonresidential project include in its written release of program participant information document?
		§54.1323	What written procedures must the special nonresidential project have regarding court orders?			§379.1323	What written procedures must the special nonresidential project have regarding court orders?
		§54.1324	Must the special nonresidential project notify the victim of family violence when a court order affects the individual or the individual's records?			§379.1324	Must the special nonresidential project notify the victim of family violence when a court order affects the individual or the individual's records?
		§54.1325	Must the special nonresidential project have written policies and procedures for the retention and destruction of documentation?			§379.1325	Must the special nonresidential project have written policies and procedures for the retention and destruction of documentation?
		§54.1326	Must the special nonresidential project contractor provide project staff with telephone access?			§379.1326	Must the special nonresidential project contractor provide project staff with telephone access?
	7		Service Delivery		7		Service Delivery
		§54.1401	What services must the special nonresidential project contractor provide?			§379.1401	What services must the special nonresidential project contractor provide?
		§54.1402	Must the special nonresidential project contractor provide a crisis call hotline?			§379.1402	Must the special nonresidential project contractor provide a crisis call hotline?
		§54.1403	What crisis call hotline procedures must the special nonresidential project contractor have?			§379.1403	What crisis call hotline procedures must the special nonresidential project contractor have?
		§54.1404	Can the special nonresidential project contractor use caller ID on the crisis call hotline?			§379.1404	Can the special nonresidential project contractor use caller ID on the crisis call hotline?
		§54.1405	Can the special nonresidential project contractor subcontract the answering of the crisis call hotline?			§379.1405	Can the special nonresidential project contractor subcontract the answering of the crisis call hotline?
		§54.1406	What information must the special nonresidential project contractor cover in the program participant's orientation?			§379.1406	What information must the special nonresidential project contractor cover in the program participant's orientation?
		§54.1407	Is the special nonresidential project allowed to incorporate religion into the intervention services?			§379.1407	Is the special nonresidential project allowed to incorporate religion into the intervention services?
		§54.1408	Must the special nonresidential project contractor maintain a referral system?			§379.1408	Must the special nonresidential project contractor maintain a referral system?
		§54.1409	What policies should the special nonresidential project contractor have regarding termination of program participant services?			§379.1409	What policies should the special nonresidential project contractor have regarding termination of program participant services?

		§54.1410	What information about termination of services must the special nonresidential project contractor provide program participants?			§379.1410	What information about termination of services must the special nonresidential project contractor provide program participants?
D			Nonresidential Centers	D			Nonresidential Centers
	1		Board of Directors		1		Board of Directors
		§54.1501	What is the stewardship function of the nonresidential center's board of directors?			§379.1501	What is the stewardship function of the nonresidential center's board of directors?
		§54.1502	What are the responsibilities of the nonresidential center's board of directors?			§379.1502	What are the responsibilities of the nonresidential center's board of directors?
		§54.1503	What documents must the nonresidential center's board of directors maintain?			§379.1503	What documents must the nonresidential center's board of directors maintain?
		§54.1504	What must the nonresidential center's bylaws contain?			§379.1504	What must the nonresidential center's bylaws contain?
		§54.1505	What must the nonresidential center board include in its recruitment procedures?			§379.1505	What must the nonresidential center board include in its recruitment procedures?
		§54.1506	What information does the nonresidential center need to provide to new board members?			§379.1506	What information does the nonresidential center need to provide to new board members?
		§54.1507	What must the nonresidential center include in its board handbook?			§379.1507	What must the nonresidential center include in its board handbook?
		§54.1508	How often should the nonresidential center board of directors receive training?			§379.1508	How often should the nonresidential center board of directors receive training?
		§54.1509	What training must the nonresidential center's board of directors receive?			§379.1509	What training must the nonresidential center's board of directors receive?
		§54.1510	What responsibilities do board members have regarding confidentiality?			§379.1510	What responsibilities do board members have regarding confidentiality?
	2		Contract Standards		2		Contract Standards
		§54.1601	Who is eligible to apply for a nonresidential center contract?			§379.1601	Who is eligible to apply for a nonresidential center contract?
		§54.1602	How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted nonresidential center?			§379.1602	How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted nonresidential center?
		§54.1603	Can an organization reapply for funding if the nonresidential center contract has been terminated for failure to perform the obligations?			§379.1603	Can an organization reapply for funding if the nonresidential center contract has been terminated for failure to perform the obligations?
		§54.1604	Can the nonresidential center target services to a particular unserved or underserved population?			§379.1604	Can the nonresidential center target services to a particular unserved or underserved population?
		§54.1605	Can the nonresidential center apply for a special project contract?			§379.1605	Can the nonresidential center apply for a special project contract?
		§54.1606	What is the process to renew the nonresidential center contract?			§379.1606	What is the process to renew the nonresidential center contract?
		§54.1607	What types of documentation must the nonresidential center maintain?			§379.1607	What types of documentation must the nonresidential center maintain?
		§54.1608	How long must the nonresidential center keep the documents?			§379.1608	How long must the nonresidential center keep the documents?
		§54.1609	Who may inspect, monitor, or evaluate the nonresidential center client records, financial books, and supporting documents that pertain to services provided?			§379.1609	Who may inspect, monitor, or evaluate the nonresidential center client records, financial books, and supporting documents that pertain to services provided?
		§54.1610	What documents should the nonresidential center have available for a monitoring visit?			§379.1610	What documents should the nonresidential center have available for a monitoring visit?
		§54.1611	What should the nonresidential center do after it receives a Texas Department of Human Services (DHS) monitoring report?			§379.1611	What should the nonresidential center do after it receives a Texas Department of Human Services (DHS) monitoring report?

		§54.1612	Does the nonresidential center need to have an internal monitoring system?			§379.1612	Does the nonresidential center need to have an internal monitoring system?
		§54.1613	Does the nonresidential center have to maintain a copy of the Texas Department of Human Services Family Violence Program Nonresidential Center Provider Manual?			§379.1613	Does the nonresidential center have to maintain a copy of the Texas Department of Human Services Family Violence Program Nonresidential Center Provider Manual?
		§54.1614	How much of the nonresidential center's funding can the Texas Department of Human Services (DHS) provide?			§379.1614	How much of the nonresidential center's funding can the Texas Department of Human Services (DHS) provide?
		§54.1615	Is it possible to obtain a waiver to the prescribed percentage of the nonresidential center's operating budget?			§379.1615	Is it possible to obtain a waiver to the prescribed percentage of the nonresidential center's operating budget?
		§54.1616	How can the nonresidential center request a variance or waiver?			§379.1616	How can the nonresidential center request a variance or waiver?
		§54.1617	Can the nonresidential center receive a funding percentage waiver more than once?			§379.1617	Can the nonresidential center receive a funding percentage waiver more than once?
		§54.1618	What is the process to amend the nonresidential center contract?			§379.1618	What is the process to amend the nonresidential center contract?
		§54.1619	What is the process to revise the nonresidential center budget?			§379.1619	What is the process to revise the nonresidential center budget?
		§54.1620	What is the responsibility of the nonresidential center with regard to subcontracts?			§379.1620	What is the responsibility of the nonresidential center with regard to subcontracts?
		§54.1621	What must a nonresidential center do if there is a change in corporate control?			§379.1621	What must a nonresidential center do if there is a change in corporate control?
		§54.1622	What can happen if the nonresidential center does not comply with the rules?			§379.1622	What can happen if the nonresidential center does not comply with the rules?
	3		Fiscal Management		3		Fiscal Management
		§54.1701	What are the accounting system requirements for the nonresidential center?			§379.1701	What are the accounting system requirements for the nonresidential center?
		§54.1702	Is the nonresidential center required to have a fidelity bond?			§379.1702	Is the nonresidential center required to have a fidelity bond?
		§54.1703	What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?			§379.1703	What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?
		§54.1704	How should the nonresidential center handle in-kind contributions?			§379.1704	How should the nonresidential center handle in-kind contributions?
		§54.1705	How should the nonresidential center handle cash contributions?			§379.1705	How should the nonresidential center handle cash contributions?
		§54.1706	How should the nonresidential center document required cash/in-kind match?			§379.1706	How should the nonresidential center document required cash/in-kind match?
		§54.1707	How does the nonresidential center allocate overhead costs to its Texas Department of Human Services contract?			§379.1707	How does the nonresidential center allocate overhead costs to its Texas Department of Human Services contract?
		§54.1708	What must the nonresidential center do in order to receive payment from the Texas Department of Human Services (DHS)?			§379.1708	What must the nonresidential center do in order to receive payment from the Texas Department of Human Services (DHS)?
		§54.1709	What costs are eligible for reimbursement under the nonresidential center contract?			§379.1709	What costs are eligible for reimbursement under the nonresidential center contract?
		§54.1710	Can the nonresidential center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?			§379.1710	Can the nonresidential center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?

		§54.1711	What is the quarterly report?			§379.1711	What is the quarterly report?
		§54.1712	When is the quarterly report due?			§379.1712	When is the quarterly report due?
		§54.1713	What is the annual report?			§379.1713	What is the annual report?
		§54.1714	When is the annual report due?			§379.1714	When is the annual report due?
		§54.1715	What are the nonresidential center's audit requirements?			§379.1715	What are the nonresidential center's audit requirements?
		§54.1716	When is the nonresidential center audit due?			§379.1716	When is the nonresidential center audit due?
	4		Personnel		4		Personnel
		§54.1801	Must the nonresidential center comply with federal personnel laws?			§379.1801	Must the nonresidential center comply with federal personnel laws?
		§54.1802	What additional personnel policies and procedures must the nonresidential center have?			§379.1802	What additional personnel policies and procedures must the nonresidential center have?
		§54.1803	Who needs a copy of the nonresidential center's personnel handbook?			§379.1803	Who needs a copy of the nonresidential center's personnel handbook?
		§54.1804	Are there any requirements for the nonresidential center employees' personnel files?			§379.1804	Are there any requirements for the nonresidential center employees' personnel files?
		§54.1805	Where should the nonresidential center keep its employee payroll information?			§379.1805	Where should the nonresidential center keep its employee payroll information?
		§54.1806	What must the nonresidential center do to ensure confidentiality of specific employee information?			§379.1806	What must the nonresidential center do to ensure confidentiality of specific employee information?
		§54.1807	What should the nonresidential center address in its policy regarding confidentiality of employee records?			§379.1807	What should the nonresidential center address in its policy regarding confidentiality of employee records?
		§54.1808	What should the nonresidential center address in its drug-free workplace policies?			§379.1808	What should the nonresidential center address in its drug-free workplace policies?
		§54.1809	What should the nonresidential center address in its recruitment policies?			§379.1809	What should the nonresidential center address in its recruitment policies?
		§54.1810	What should the nonresidential center address in its interviewing and hiring policies?			§379.1810	What should the nonresidential center address in its interviewing and hiring policies?
		§54.1811	Does the nonresidential center need written job descriptions for its employee positions?			§379.1811	Does the nonresidential center need written job descriptions for its employee positions?
		§54.1812	Should the nonresidential center identify its employee positions as exempt or non-exempt?			§379.1812	Should the nonresidential center identify its employee positions as exempt or non-exempt?
		§54.1813	What are the nonresidential center requirements for new employee orientation?			§379.1813	What are the nonresidential center requirements for new employee orientation?
		§54.1814	Does the nonresidential center need to provide specific job training?			§379.1814	Does the nonresidential center need to provide specific job training?
		§54.1815	Are there any requirements for specific program training for nonresidential center employees?			§379.1815	Are there any requirements for specific program training for nonresidential center employees?
		§54.1816	What access should the nonresidential center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?			§379.1816	What access should the nonresidential center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?
		§54.1817	Should the nonresidential center evaluate employee performance?			§379.1817	Should the nonresidential center evaluate employee performance?
		§54.1818	Can the nonresidential center use probationary periods for its employees?			§379.1818	Can the nonresidential center use probationary periods for its employees?
	5		Facility, Safety, and Health Requirements		5		Facility, Safety, and Health Requirements
		§54.1901	What facility codes must the nonresidential center meet?			§379.1901	What facility codes must the nonresidential center meet?

		§54.1902	Must the nonresidential center's facilities comply with the Americans with Disabilities Act (ADA)?			§379.1902	Must the nonresidential center's facilities comply with the Americans with Disabilities Act (ADA)?
		§54.1903	What are the additional facility requirements for the nonresidential center?			§379.1903	What are the additional facility requirements for the nonresidential center?
		§54.1904	What kind of security system must the nonresidential center have?			§379.1904	What kind of security system must the nonresidential center have?
		§54.1905	What security policies and procedures must the nonresidential center have?			§379.1905	What security policies and procedures must the nonresidential center have?
		§54.1906	What are the safety policies and procedures that the nonresidential center needs to develop for providing services to children?			§379.1906	What are the safety policies and procedures that the nonresidential center needs to develop for providing services to children?
		§54.1907	What health and hygiene policies and procedures must the nonresidential center follow?			§379.1907	What health and hygiene policies and procedures must the nonresidential center follow?
		§54.1908	What health and hygiene policies are required for the nonresidential center providing services to children?			§379.1908	What health and hygiene policies are required for the nonresidential center providing services to children?
		§54.1909	What are the regulations regarding smoking in the nonresidential center?			§379.1909	What are the regulations regarding smoking in the nonresidential center?
	6		Program Administration		6		Program Administration
		§54.2001	What services must the nonresidential center provide to victims of family violence?			§379.2001	What services must the nonresidential center provide to victims of family violence?
		§54.2002	Can the nonresidential center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?			§379.2002	Can the nonresidential center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?
		§54.2003	Who is eligible for services in the nonresidential center?			§379.2003	Who is eligible for services in the nonresidential center?
		§54.2004	Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?			§379.2004	Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?
		§54.2005	What federal and state laws must the nonresidential center follow when determining eligibility?			§379.2005	What federal and state laws must the nonresidential center follow when determining eligibility?
		§54.2006	What criteria can the nonresidential center use to determine eligibility for services?			§379.2006	What criteria can the nonresidential center use to determine eligibility for services?
		§54.2007	Can the nonresidential center ever deny services to an otherwise eligible individual?			§379.2007	Can the nonresidential center ever deny services to an otherwise eligible individual?
		§54.2008	Must the nonresidential center provide access to services for people with limited English proficiency?			§379.2008	Must the nonresidential center provide access to services for people with limited English proficiency?
		§54.2009	Is the nonresidential center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?			§379.2009	Is the nonresidential center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?
		§54.2010	What must the nonresidential center include in its general confidentiality policy?			§379.2010	What must the nonresidential center include in its general confidentiality policy?
		§54.2011	What information must the nonresidential center provide adult program participants regarding confidentiality?			§379.2011	What information must the nonresidential center provide adult program participants regarding confidentiality?

		§54.2012	Who needs to sign confidentiality agreements and where should the nonresidential center keep these agreements?			§379.2012	Who needs to sign confidentiality agreements and where should the nonresidential center keep these agreements?
		§54.2013	What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the nonresidential center?			§379.2013	What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the nonresidential center?
		§54.2014	What is required in confidentiality training provided to employees, board members, interns, and direct service volunteers?			§379.2014	What is required in confidentiality training provided to employees, board members, interns, and direct service volunteers?
		§54.2015	What information should the nonresidential center keep in program participant files?			§379.2015	What information should the nonresidential center keep in program participant files?
		§54.2016	What policies and procedures must the nonresidential center have regarding entries in a program participant file?			§379.2016	What policies and procedures must the nonresidential center have regarding entries in a program participant file?
		§54.2017	Is the nonresidential center required to give a program participant access to her or his files?			§379.2017	Is the nonresidential center required to give a program participant access to her or his files?
		§54.2018	What must the nonresidential center do if a program participant contests an entry in her or his file?			§379.2018	What must the nonresidential center do if a program participant contests an entry in her or his file?
		§54.2019	What controls must the nonresidential center maintain over program participant files?			§379.2019	What controls must the nonresidential center maintain over program participant files?
		§54.2020	When can the nonresidential center release program participant information?			§379.2020	When can the nonresidential center release program participant information?
		§54.2021	What must the nonresidential center include in its written release of program participant information document?			§379.2021	What must the nonresidential center include in its written release of program participant information document?
		§54.2022	What written procedures must the nonresidential center have regarding court orders?			§379.2022	What written procedures must the nonresidential center have regarding court orders?
		§54.2023	Must the nonresidential center notify a victim of family violence when a court order affects the individual or the individual's records?			§379.2023	Must the nonresidential center notify a victim of family violence when a court order affects the individual or the individual's records?
		§54.2024	Must the nonresidential center have written policies and procedures for the retention and destruction of documentation?			§379.2024	Must the nonresidential center have written policies and procedures for the retention and destruction of documentation?
		§54.2025	Is there a minimum number of hours a nonresidential center must be open each week?			§379.2025	Is there a minimum number of hours a nonresidential center must be open each week?
		§54.2026	What are the requirements for the nonresidential center if a victim of family violence needs shelter services?			§379.2026	What are the requirements for the nonresidential center if a victim of family violence needs shelter services?
		§54.2027	What must the nonresidential center do if it has any disruption in its ability to provide services?			§379.2027	What must the nonresidential center do if it has any disruption in its ability to provide services?
		§54.2028	What responsibility does the nonresidential center have to inform all program participants about their rights?			§379.2028	What responsibility does the nonresidential center have to inform all program participants about their rights?
		§54.2029	Must the nonresidential center develop a plan regarding cooperation with criminal justice officials?			§379.2029	Must the nonresidential center develop a plan regarding cooperation with criminal justice officials?

		§54.2030	What responsibility does the nonresidential center have to provide community education?			§379.2030	What responsibility does the nonresidential center have to provide community education?
		§54.2031	What methods must the nonresidential center use when providing community education?			§379.2031	What methods must the nonresidential center use when providing community education?
		§54.2032	What is required for the nonresidential center's volunteer program?			§379.2032	What is required for the nonresidential center's volunteer program?
		§54.2033	How much recruitment must the nonresidential center do for volunteers?			§379.2033	How much recruitment must the nonresidential center do for volunteers?
		§54.2034	When recruiting volunteers, what laws or codes must the nonresidential center follow?			§379.2034	When recruiting volunteers, what laws or codes must the nonresidential center follow?
		§54.2035	How often must the nonresidential center offer training for volunteers?			§379.2035	How often must the nonresidential center offer training for volunteers?
		§54.2036	What training must the nonresidential center provide to direct service volunteers?			§379.2036	What training must the nonresidential center provide to direct service volunteers?
		§54.2037	What training must the nonresidential center provide to non-direct service volunteers?			§379.2037	What training must the nonresidential center provide to non-direct service volunteers?
	7		Service Delivery		7		Service Delivery
		§54.2101	What services must the nonresidential center provide?			§379.2101	What services must the nonresidential center provide?
		§54.2102	What requirements must the nonresidential center meet for the crisis call hotline?			§379.2102	What requirements must the nonresidential center meet for the crisis call hotline?
		§54.2103	What crisis call hotline procedures must the nonresidential center have?			§379.2103	What crisis call hotline procedures must the nonresidential center have?
		§54.2104	Can the nonresidential center use caller ID on the crisis call hotline?			§379.2104	Can the nonresidential center use caller ID on the crisis call hotline?
		§54.2105	Can the nonresidential center subcontract the answering of the crisis call hotline?			§379.2105	Can the nonresidential center subcontract the answering of the crisis call hotline?
		§54.2106	What procedures must the nonresidential center have for delivery of DHS-contracted services?			§379.2106	What procedures must the nonresidential center have for delivery of DHS-contracted services?
		§54.2107	What information must the nonresidential center cover in the program participant's orientation?			§379.2107	What information must the nonresidential center cover in the program participant's orientation?
		§54.2108	What kind of intervention services must the nonresidential center provide to adult program participants?			§379.2108	What kind of intervention services must the nonresidential center provide to adult program participants?
		§54.2109	Who can provide the nonresidential center intervention services?			§379.2109	Who can provide the nonresidential center intervention services?
		§54.2110	How often should the nonresidential center provide intervention services?			§379.2110	How often should the nonresidential center provide intervention services?
		§54.2111	Is the nonresidential center allowed to incorporate religion into the intervention services?			§379.2111	Is the nonresidential center allowed to incorporate religion into the intervention services?
		§54.2112	Is the nonresidential center required to help each program participant develop an individual service plan?			§379.2112	Is the nonresidential center required to help each program participant develop an individual service plan?
		§54.2113	What are the nonresidential center's requirements regarding group intervention?			§379.2113	What are the nonresidential center's requirements regarding group intervention?
		§54.2114	What are the requirements for the nonresidential center regarding delivery of children's direct services?			§379.2114	What are the requirements for the nonresidential center regarding delivery of children's direct services?

		§54.2115	What is the nonresidential center's responsibility regarding emergency medical services?			§379.2115	What is the nonresidential center's responsibility regarding emergency medical services?
		§54.2116	What legal assistance services must the nonresidential center provide?			§379.2116	What legal assistance services must the nonresidential center provide?
		§54.2117	What are the requirements for the nonresidential center regarding legal assistance?			§379.2117	What are the requirements for the nonresidential center regarding legal assistance?
		§54.2118	What training and employment services must the nonresidential center provide?			§379.2118	What training and employment services must the nonresidential center provide?
		§54.2119	Must the nonresidential center maintain a referral system?			§379.2119	Must the nonresidential center maintain a referral system?
		§54.2120	What policies must the nonresidential center have regarding termination of program participant services?			§379.2120	What policies must the nonresidential center have regarding termination of program participant services?
		§54.2121	What information about termination of services must the nonresidential center provide program participants?			§379.2121	What information about termination of services must the nonresidential center provide program participants?

TRD-200404084 ♦ ♦ ♦

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 Review

Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners proposes to review Chapter 186, (§186.1), concerning Supervision of Physician Assistant Students, pursuant to the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

TRD-200403927
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: June 15, 2004

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Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of Title 4, Texas Administrative Code, Part 1, Chapter 17 (Chapter 17), concerning Marketing and Promotion Division, pursuant to the Texas Government Code, §2001.039, and readopts this chapter as proposed in its notice of intent to review. The proposed notice of intent to review was published in the May 14, 2004 issue of the *Texas Register* (29 TexReg 4933). No comments were received on the proposal.

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. As part of the review process, the department proposed the amendment of Chapter 17, Subchapter C, §17.52 and 17.55, concerning the department's GO TEXAN promotional marketing membership program. These sections were also published in the May 14, 2004 issue of *Texas Register* (29 TexReg 4631). No comments were received on the proposed amendments and the department has adopted the amendments without changes. The assessment of Chapter 17 by the department at this time indicates that including the amended sections, as adopted, the reason for readopting without changes all sections in Chapter 17 continues to exist.

TRD-200403976
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 17, 2004

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Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Part 6, Chapter 91, §91.301, relating to field of membership and Chapter 97, §97.205, relating to use of historically underutilized businesses. Notice of the proposed review was published in the February 27, 2004, issue of the *Texas Register* (29 TexReg 2057).

The Commission received no comments with respect to these rules. The Commission finds that the reasons for initially adopting 7 TAC §91.301 and §97.205 continue to exist and readopts these sections without changes pursuant to the requirements of Government Code, §2001.039.

TRD-200404087
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 22, 2004

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) readopts, without changes, 16 TAC Chapter 63, Personnel Employment Services: §§63.1, 63.10, 63.20, 63.21, 63.40, 63.70, 63.80, 63.81, 63.82, and 63.90 in accordance with the Texas Government Code, §2001.039.

The intent to review was published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3239). The comment period for the review closed on April 26, 2004. No public comments were received.

The Department has conducted a thorough review of the rules in Chapter 63 in accordance with Texas Government Code, §2001.039 which requires state agencies to review and consider for re-adoption rules adopted under the Administrative Procedures Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist.

As a result of the review, the Department has determined that the rules continue to be essential in effectuating the provisions of Texas Occupations Code, Chapters 1901 and 1902, which gives the Texas Commission of Licensing and Regulation the authority to promulgate and enforce rules and take all action required to assure compliance with the intent and purpose of the Code. The rules are re-adopted in accordance with Texas Government Code, §2001.039.

TRD-200404189
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: June 23, 2004

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The Texas Department of Licensing and Regulation (Department) readopts, without changes, 16 TAC Chapter 72, Staff Leasing Services: §§72.1, 72.10, 72.20, 72.70, 72.71, 72.80, 72.81, and 72.82 in accordance with the Texas Government Code, §2001.039.

The intent to review was published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4273). The comment period for the review closed on May 30, 2004. No public comments were received.

The Department has conducted a thorough review of the rules in Chapter 72 in accordance with Texas Government Code, §2001.039 which requires state agencies to review and consider for re-adoption rules adopted under the Administrative Procedures Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist.

As a result of the review, the Department has determined that the rules continue to be essential in effectuating the provisions of the Texas Labor Code, Chapter 91, which gives the Texas Commission of Licensing and Regulation the authority to promulgate and enforce rules and take all action required to assure compliance with the intent and purpose of the Code. The rules are re-adopted in accordance with Texas Government Code, §2001.039.

TRD-200404188
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: June 23, 2004

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Texas Board of Occupational Therapy Examiners

Title 40, Part 12

The Texas Board of Occupational Therapy Examiners adopts the review of the following chapters:

Chapter 361. Statutory Authority

Chapter 362. Definitions

Chapter 363. Consumer/Licensee Information

Chapter 364. Requirements for Licensure

Chapter 367. Continuing Education

Chapter 368. Open Records

Chapter 369. Display of Licenses

Chapter 370. License Renewal

Chapter 371. Inactive Status

Chapter 372. Provision of Services

Chapter 373. Supervision

Chapter 374. Disciplinary Actions/Detrimental Practice/Complaint Process/Code of Ethics

Chapter 375. Fees

Chapter 376. Registration of Facilities

The proposed review was published in the April 23, 2004, issue of the *Texas Register* (29 TexReg 3978).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in these chapters continues to exist.

This concludes the review of agency rules, pursuant to Texas Government Code §2001.039 (Administrative Procedures Act).

TRD-200404070
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Filed: June 21, 2004

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Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by Senate Bill 178, 76th Legislature, and pursuant to the notice of intention to review published in the March 12, 2004, issue of the *Texas Register* (29 TexReg 2756), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 142. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 142. DISPUTE RESOLUTION-BENEFIT CONTESTED CASE HEARING

§142.1. Application of the Administrative Procedure Act.

§142.2. Authority of the Hearing Officer.

§142.3. Ex Parte Communications.

§142.4. Delivery of Copies to All Parties.

§142.5. Sequence of Proceedings to Resolve Benefit Disputes.

§142.6. Setting a Benefit Contested Case Hearing.

§142.7. Statement of Disputes.

§142.8. Summary Procedures.

§142.9. Stipulations, Agreements, and Settlements.

§142.10. Continuance.

§142.11. Failure to Attend A Benefit Contested Case Hearing.

§142.12. Subpoena.

§142.13. Discovery.

§142.14. Permission to Use Court Reporter.

§142.16. Decision.

§142.17. Transcript or Duplicate of the Hearing Audiotape.

§142.18. Special Provisions for Cases on Remand from the Appeals Panel.

§142.19. Form Interrogatories.

§142.20. Interlocutory Orders.

TRD-200404056
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 21, 2004

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In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by Senate Bill 178, 76th Legislature, and pursuant to the notice of intention to review published in the February 20, 2004, issue of the *Texas Register* (29 TexReg 1677), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 150. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 150. REPRESENTATION OF PARTIES BEFORE THE AGENCY QUALIFICATIONS OF REPRESENTATIVES

§150.1. Minimum Standards of Practice for an Attorney.

§150.2. Qualification and Authorization of Attorney to Practice Before the Commission.

§150.3. Representatives: Written Authorization Required.

TRD-200404057
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 21, 2004

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §1.814(d)

	Rate Per $1,000 of Amount Financed	
Original Financing Term (Months)	**Loan**	**Balloon Loan**
24	0	7.16
27	0	8.64
30	0	10.14
33	0	11.68
36	0	13.24
39	0	14.60
42	0	15.99
45	0	17.41
48	7.45	18.87
51	8.51	20.30
54	9.64	21.80
57	10.82	23.34
60	12.05	24.92
63	13.35	26.75
66	14.70	28.58
69	16.17	30.44
72	17.72	32.31
75	19.39	34.53
78	21.17	36.74
81	23.06	38.99
84	25.09	41.26

Figure: 22 TAC §3.102(b)

Figure: 22 TAC §5.112(b)

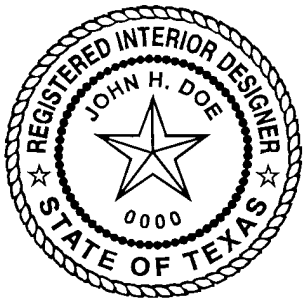

Figure: 22 TAC §183.16(b)

ACUPUNCTURE TRAINING ADVISORY STATEMENT

You are advised that the practice of acupuncture in Texas requires licensure by the Texas State Board of Acupuncture Examiners and is governed by Chapter 205 of the Texas Occupations Code and the rules of the Texas State Board of Medical Examiners, 22 TAC §§183.1 et. seq.

You are further advised that for an acupuncture school located in the United States or Canada to be considered to be an approved acupuncture school by the Texas State Board of Acupuncture Examiners for purposes of meeting the educational requirements for obtaining an acupuncture license, the school must comply and must meet the requirements set forth below:

Acceptable approved acupuncture school - Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Tex. Occ. Code and with the exception of the provisions outlined in §183.4(h) of this title (relating to Exceptions),

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), offered no more than a certificate upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modification/variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAOM, offered a masters degree

or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a Texas acupuncture school or a school defined in subparagraph (B) of this paragraph through an evaluation by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).

You are additionally advised that _____ (name of institution) is not currently a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and is not currently accredited by ACAOM. If such candidate status or accreditation is not obtained by this institution by the time of your graduation, under the current rules of the Texas State Board of Acupuncture Examiners you will not be eligible for a Texas acupuncture license based on training received at this institution.

Figure: 34 TAC §3.434(h)(1)

Registered Gross Weight	Less Than 5,000 Miles	5,000 to 9,999 Miles	10,000 to 14,999 Miles	15,000 Miles and Over
Class A: Less than 4,000 pounds	$ 30	$ 60	$ 90	$120
Class B: 4,000 to 10,000 pounds	42	84	126	168
Class C: 10,001 to 15,000 pounds	48	96	144	192
Class D: 15,001 to 27,500 pounds	84	168	252	336
Class E: 27,501 to 43,500 pounds	126	252	378	504
Class F: 43,501 and over	186	372	558	744

Figure: 34 TAC §3.438(c)(4)(B)

Example:

	Deliveries to:	
Date	Buyer A	Buyer B
July 5	5,000 gal.	5,000 gal.
July 10	2,500 gal.	2,500 gal.
July 15	2,500 gal.	2,501 gal.
July 20	3,000 gal.	500 gal.

The sale on July 20 to Buyer B is taxable because the 10,000 gallon limit was exceeded on July 15. The sale to Buyer A on July 20 is not taxable because it is the sale that caused the 10,000 gallon limit to be exceeded and the delivery does not exceed 7,400 gallons.

Figure: 40 TAC §92.129(c)

Texas Department of Human Services (DHS)
Information Regarding Authorized Electronic Monitoring

A resident, or the resident's guardian or legal representative, is entitled to conduct authorized electronic monitoring (AEM) under Health and Safety Code, Chapter 247, §247.003. To request AEM, you, your guardian or your legal representative, must:
1) complete the Request for Authorized Electronic Monitoring form (available from the facility);
2) obtain the consent of other residents, if any, in your room, using the Consent to Authorized Electronic Monitoring form (available from the facility); and
3) give the form(s) to the facility manager or designee.

Who may request AEM?
1) The resident, if the resident has capacity to request AEM and has not been judicially declared to lack the required capacity.
2) The guardian of the resident, if the resident has been judicially declared to lack the required capacity.
3) The legal representative of the resident, if the resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity.

Who determines if the resident does not have the capacity to request AEM?
The resident's physician will make the determination regarding the capacity to request AEM. When the resident's physician has determined the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:
1) a person named in the resident's medical power of attorney or other advance directive;
2) the resident's spouse;
3) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;
4) a majority of the resident's reasonably available adult children;
5) the resident's parents; or
6) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

Who may consent to AEM?
1) The other resident(s) in the room.
2) The guardian of the other resident, if the resident has been judicially declared to lack the required capacity.
3) The legal representative of the other resident, if the resident does not have capacity to sign the form, but has not been judicially declared to lack the required capacity. The legal representative is determined by following the procedure for determining a legal representative, as stated above, under "Who determines if the resident does not have the capacity to request AEM?"

Can a resident be discharged or refused admittance for requesting AEM?
A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct AEM. If either of these situations occur, you should report the occurrence to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

What about covert electronic monitoring?
A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. A facility attempting to discharge a resident because of covert electronic monitoring should be reported to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

What is required if a covert electronic monitoring device is discovered?
If a covert electronic monitoring device is discovered by a facility and is no longer covert as defined in §92.3 of this chapter (relating to Definitions), the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?
Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that an electronic monitoring device is monitoring the room.

What is required for the installation of monitoring equipment?
The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. A facility may also require that AEM be conducted in plain view.

The facility must make reasonable physical accommodation for AEM, which includes providing:
1) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
2) access to power sources for the video surveillance camera or other electronic monitoring device.

If the facility refuses to permit AEM or fails to make reasonable physical accommodations for AEM, you should report the facility's refusal to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

Are facilities subject to administrative penalties for violations of the electronic monitoring rules?
Yes. DHS may assess an administrative penalty (see §92.559 of this chapter (relating to What is the administrative penalty schedule?)) against a facility for each instance in which the facility:
1) refuses to permit a resident, or the resident's guardian or legal representative, to conduct AEM:
2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;
3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or
4) violates any other provision related to AEM.

How does AEM affect the reporting of abuse and neglect?
Section 92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to the Texas Department of Human Services (DHS) by Facilities), requires facility staff to report abuse or neglect. If abuse or neglect has occurred, the most important thing is to report it. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect, the following apply:
1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.
2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.
3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.
4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.
5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

What is required for the use of a tape or recording by an agency or court?
a) Subject to applicable rules of evidence and procedure, a tape or recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding.
b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert monitoring or AEM or take or authorize action based on the tape or recording unless:
1) the tape or recording shows the time and date the events on the tape or recording occurred, if the tape or recording is a video tape or recording;
2) the contents of the tape or recording have not been edited or artificially enhanced; and
3) any transfer of the contents of the tape or recording was done by a qualified professional and the contents were not altered, if the contents have been transferred from the original format to another technological format.

Are there additional provisions of the law?
A person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

A person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

_____ _____
Signature of Resident/ Person Signing of Behalf of Resident Date

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice Regarding Private Real Property Rights Preservation Act (SB 14) Guidelines

In 1995 the Legislature enacted Senate Bill 14, the Private Real Property Rights Preservation Act (the Act), codified at Government Code, Chapter 2007. As required by the Act, the Office of the Attorney General prepared Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those Guidelines were published in the January 12, 1996 issue of the *Texas Register* (21 TexReg 387). Current versions of the Guidelines appear on the Office of the Attorney General website at www.oag.state.tx.us and are published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 10173).

The Act also requires the Office of the Attorney General to review the Guidelines at least annually and revise them as necessary.

The Office of the Attorney General has begun its annual review and invites comments whether the Guidelines are consistent with actions of the Texas Legislature and the decisions of the United States and Texas Supreme Courts from June 1, 2003 through May 31, 2004. Please address comments to Cue D. Boykin, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78701-2548 no later than August 20, 2004. Comments may be submitted by e-mail to cue.boykin@oag.state.tx.us.

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

TRD-200404024
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 18, 2004

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Texas Building and Procurement Commission

Correction of Error

The Texas Building and Procurement Commission adopted new 1 TAC §111.14, concerning subcontracting for Historically Underutilized Business Program. The Commission concurrently adopted the repeal of the previous version of §111.14. The adoption notices appeared in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5773).

The effective date of June 14, 2004, is incorrect due to a document submission error. The effective date for the new rule and repeal of the old rule should read September 1, 2004.

TRD-200404037

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Invitation for Bid

TBPC Project No. 04-009-7034

Project Name: Florence DPS Firing Range Storage Building, County Road 240, Florence, Texas, for the Department of Public Safety (DPS).

Sealed Bids for this project will be received until **3:00 PM, Monday, July 12, 2004, at the 4th Floor Reception, 1711 San Jacinto, Austin, Texas 78701.** See the Invitation for Bid (IFB) for other delivery choices.

Plans and specifications may be obtained from A/E BLGY 2204 Forbes Drive, Suite 101, Austin, Texas 78754 (P) (512) 977-0390, (F) (512) 977-0838, for a deposit of $30.00, refundable upon return of a complete, unmarked set(s).

A Pre-Bid Conference will be held at Austin DPS Headquarters Complex (Building B, Crime Lab Conference Room), 5805 North Lamar, Austin, Texas 78773, at 2:00 PM, Tuesday, June 29, 2004. Only bids submitted on the official Contractor's Bid Form found in the project Manual will be accepted.

The IFB may be obtained by contacting Texas Building and Procurement Commission Internal Procurement, Attention: Deborah Norwood (Fax: (512) 463-3360), *deborah.norwood@tbpc.state.tx.us* or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/;

then enter the Agency Req. No. "303-4-11312" in the blank provided and click FIND

TRD-200404047
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: June 21, 2004

♦ ♦ ♦

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 §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of June 28, 2004 - July 4, 2004 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of June 28, 2004 - July 4, 2004 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of July 1, 2004 - July 31, 2004 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of July 1, 2004 - July 31, 2004 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200404093

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 22, 2004

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Texas Council for Developmental Disabilities

Notice of Availability of Funds (Consumer Stipends)

The Texas Council for Developmental Disabilities announces the availability of funds for stipends to support self-advocates and family members to attend conferences and workshops. Funds for these grants are made available to the Texas Council for Developmental Disabilities by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities.

DD COUNCIL INTENT: Stipend grants are provided to Texas organizations to enable individuals with developmental disabilities and their family members to attend established in-state professional or informational conferences and workshops. The Council's intent is to promote empowerment and involvement of individuals with developmental disabilities and their families in activities that enhance independence, productivity and community inclusion. Stipends support is limited to Texas residents who are not eligible for conference or workshop reimbursement from other organizations of which they are an employee or member.

TERMS: Organizations that receive funds will be responsible for complying with all rules and procedures of the Texas Council for Developmental Disabilities. Requests for funding must be received by TCDD at least 90 days in advance of the starting date of the event. A minimum of 10% matching funds as a share of direct costs is required. Funds are limited to $6,000 per grant. Applicant for funding to provide stipends must be sponsoring organizations of meetings, conferences or workshops and be incorporated to do business in Texas.

APPLICATION: Additional information concerning the stipend application and process for obtaining a TCDD stipend is available at the Texas Council for Developmental Disabilities website, www.txddc.state.tx.us or by contacting Patrice A. LeBlanc, TCDD Grants Management Director at (512) 437-5435.

EFFECTIVE DATE: June 1, 2004.

TRD-200404215
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 24, 2004

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Notice of Request for Ideas

The Texas Council for Developmental Disabilities (TCDD) announces a Request for Ideas (RFI) to obtain suggestions for future grants, projects, and activities in three areas. The Texas Council for Developmental Disabilities (TCDD) is established by and funded under state and federal law and is responsible to promote the development of supports and services necessary for individuals with developmental disabilities to be fully included in their communities. TCDD develops a State Plan and approves grant projects to carry out objectives in the State Plan. TCDD has a commitment to support projects that will be carried out by organizations that share the Council's vision and values.

An RFI is a process to solicit creative ideas for possible future projects. This method of gathering information is a tool to explore innovative ways to address current disability needs of people with disabilities in the state for consideration by the Council. An RFI is not a solicitation with any funding attached. It is a request for ideas and suggestions only. Ideas must be innovative, creative, and respond to an identified barrier or issue for individuals with developmental disabilities in Texas. Ideas submitted for consideration by TCDD must be in the State Plan areas of (1) transportation, (2) health/recreation, and (3) guardianship.

For questions about the Request for Ideas, review the information on TCDD's Website at http://www.txddc.state.tx.us, or contact Sharon Pratscher, Planning Specialist, at (512) 437-5412 (voice), (512) 437-5431 (TDD), or E-mail Sharon.Pratscher@tcdd.state.tx.us.

To obtain the complete RFI packet, download material directly from the Web site or request a copy in writing by U.S. mail, fax, or E-mail from Barbara Booker at the Texas Council for Developmental Disabilities, 6201 E. Oltorf Street, Suite 600, Austin, TX, 78741-7509; fax number (512) 437-5434; E-mail address Barbara.Booker@tcdd.state.tx.us.

Deadlines and Submission Process: Two hard copies should be submitted.

All submissions must be received by TCDD not later than 4:00 PM, Central Standard Time, September 6, 2004, or, if mailed, postmarked prior to midnight on the date specified above. Submissions may be delivered by hand or mailed to TCDD's physical office at 6201 East Oltorf, Suite 600, Austin, TX, 78741-7509. Submission should be directed to the attention of Barbara Booker.

TCDD also requests that an electronic copy be sent at the same time the hard copies are submitted. Electronic copies should be addressed to Barbara.Booker@tcdd.state.tx.us.

TRD-200404216
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 24, 2004

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Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) is established by and funded under state and federal law and is responsible to promote the development of supports and services necessary for individuals with developmental disabilities to be fully included in their communities. TCDD develops a State Plan and approves grant projects to carry out objectives in the State Plan. TCDD has a commitment to support projects that will be carried out by organizations that share the Council's vision and values.

TCDD intends to fund up to five projects to develop peer to peer training for self-advocates led by people with developmental disabilities. Priority will be given to implementing a project in each of the following areas: the Texas Panhandle, East Texas, the Rio Grande Valley, far West Texas, and a rural area of the state (which can be in one of the regions listed). Organizations that receive grants will provide training as well as direct support and technical assistance on a regular and ongoing basis to self-advocates.

TCDD has approved the funding of up to $100,000 per project per year for up to three years. At that time, TCDD will reevaluate the need for the projects and the project's impact and reserves the right to extend funding for up to two additional years. Non-federal matching funds of at least 10% of total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas. Funding

for the projects depends on the result of an independent review process established by the Council and to the availability of funds.

For questions about this RFP, review the information on TCDD's Web site at http://www.txddc.state.tx.us, or contact Joanna Cordry, Project Development Director, at (512) 437-5410 (voice), (512) 437-5431 (TDD), or E-mail Joanna.Cordry@tcdd.state.tx.us.

To obtain the application packet, download directly from TCDD's Web site or request a copy in writing by U.S. mail, fax, or E-mail, from Barbara Booker at the Texas Council for Developmental Disabilities, 6201 E. Oltorf Street, Suite 600, Austin, TX, 78741-7509; fax number (512) 437-5434; E-mail address Barbara.Booker@tcdd.state.tx.us. Applications must be requested in writing unless downloaded from the Internet.

Deadlines and Submission Process: Two hard copies, one with the original signatures, should be submitted. All proposals must be received by TCDD not later than 4:00 PM, Central Standard Time, September 6, 2004, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD's physical office at 6201 East Oltorf, Suite 600, Austin, TX, 78741-7509. Proposals should be directed to the attention of Barbara Booker. Faxed proposals cannot be accepted.

TCDD also requests that applicants send an electronic copy at the same time the hard copies are submitted. Electronic copies should be addressed to Barbara.Booker@tcdd.state.tx.us.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct a series of Workshops to help applicants understand the grant application process. For more information on the Grant Proposer's Workshops and the scheduled times and locations, see our website at http://www.txddc.state.tx.us.

TRD-200404217
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 24, 2004

♦ ♦ ♦

Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 19, 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 19, 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: Highway Transport, Inc.; DOCKET NUMBER: 2003-0778-PST-E; TCEQ ID NUMBERS: 46351 and RN100864537; LOCATION: 520 16th Street, La Porte, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of a petroleum underground storage tank; PENALTY: $2,000; STAFF ATTORNEY: Christina Mann, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Shell Chemical, L.P.; DOCKET NUMBER: 2003-1321-AIR-E; TCEQ ID NUMBER: HG-0659-W and RN100211879; LOCATION: 5900 Highway 225, Deer Park, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(G), Texas Health and Safety Code, §382.085(b), and Air Permit Number 9334, Maximum Allowable Emission Rate Table (MAERT), by failing to comply with the permitted limit established in the MAERT for benzene; PENALTY: $5,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200404142
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 22, 2004

♦ ♦ ♦

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 2, 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 August 2, 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: Acacia Natural Gas Corporation; DOCKET NUMBER: 2003-1335-AIR-E; IDENTIFIER: Air Account Numbers MQ-0303-C, MQ0583-O, MQ-0021-P, and WB-0098-G, Regulated Entity (RN) Numbers 100227867, 102563921, 102534278, and 10022776; LOCATION: Magnolia and Brookshire, Montgomery and Waller Counties, Texas; TYPE OF FACILITY: air compressor/plant stations; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit Form ECT-1, Annual Compliance Report in a timely manner; PENALTY: $2,480; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Aqua Texas, Inc.; DOCKET NUMBER: 2004-0353-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12519-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12519-001, and the Code, §26.121(a), by failing to comply with its permitted daily average total suspended solids (TSS) loading limit; and 30 TAC §21.4, by failing to pay outstanding consolidated water quality assessment late fees; PENALTY: $1,790; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Inc.; DOCKET NUMBER: 2004-0290-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1550125; LOCATION: Valley Mills, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(3)(B) and (J), by failing to provide a well casing and by failing to provide a concrete sealing block; 30 TAC §290.46(v), by failing to install all water system electrical wiring in a securely mounted conduit; and 30 TAC §290.43(d)(3), by failing to provide a pressure tank with facilities for maintaining the air-water volume; PENALTY: $1,143; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Atofina Petrochemicals, Inc.; DOCKET NUMBER: 2003-0089-AIR-E; IDENTIFIER: Air Account Number HG-0036-S; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: polymer manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Numbers 3908B and 21538, 40 Code of Federal Regulations (CFR), §§60.8, 60.562-2, and 60.565(k), and THSC, §382.085(b), by failing to comply with emission limits, by failing to make the first attempt to repair components, by failing to conduct the initial performance test, and by failing to submit the semi-annual reports; 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to make the notations of observations in the flare operation log; and 30 TAC §106.452(2)(C) and THSC, §382.085(b), by failing to maintain the records of operating hours and abrasive material usage; PENALTY: $11,280; ENFORCEMENT COORDINATOR: Trina Grieco, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: AT&T Wireless Services, Incorporated; DOCKET NUMBER: 2003-0359-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program File Number 02010901; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: telecommunications switching; RULE VIOLATED: 30 TAC §213.4(a), by failing to submit and receive approval of an Edwards Aquifer protection plan; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Chevron USA Inc.; DOCKET NUMBER: 2004-0441-AIR-E; IDENTIFIER: Air Account Number HX-1786-O, RN102507043; LOCATION: Cypress, Harris County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §101.352(b) and THSC, §382.085(b), by allegedly having emitted nitrogen oxides; PENALTY: $800; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Cisco; DOCKET NUMBER: 2003-0381-PWS-E; IDENTIFIER: PWS Number 0670001, Certificate of Convenience and Necessity Number 10535; LOCATION: Cisco, Eastland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(j) and §290.110(c), by failing to ensure that disinfection was performed; 30 TAC §290.46(f)(4)(B), by failing to ensure that the system's monthly operation report contained all required information; and 30 TAC §291.93(3) and the Code, §13.139(d), by failing to provide a written planning report; PENALTY: $9,243; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2003-0446-AIR-E; IDENTIFIER: Air Account Number BL-0042-G, RN101619179; LOCATION: near Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(1) and (2) and §116.115(c), 40 CFR §§60.105(a)(4), 60.482-7(a), 60.487(a) and (c)(2)(vii), and §63.182(d)(2), Air Permit Numbers 21265 and 5682A, and THSC, §382.085(b), by failing to implement a fugitive monitoring program, by failing to submit semiannual reports, by failing to include an explanation for the delay in repairing leaking components, by failing to perform the initial compliance certification test, and by failing to submit the semi-annual reports; PENALTY: $42,224; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Kobra Mirhaj dba East Mount Houston Mobile Home Park Wastewater Treatment Facility; DOCKET NUMBER: 2003-0340-IWD-E; IDENTIFIER: TPDES Permit Number 13955-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13955-001, and the Code, §26.121(a), by failing to meet permit limits for TSS, ammonia-nitrogen, and flow; PENALTY: $9,420; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Harris County; DOCKET NUMBER: 2003-1353-AIR-E; IDENTIFIER: RN103914503; LOCATION: Houston, Harris

County, Texas; TYPE OF FACILITY: air heating plant; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit a completed ECT-1 form; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: City of Holland; DOCKET NUMBER: 2003-0444-MWD-E; IDENTIFIER: TPDES Permit Number 10897-001; LOCATION: Holland, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10897-001, and the Code, §26.121(d), by failing to prevent an unauthorized discharge, by failing to comply with the permitted effluent limitations, and by failing to report deviations of more than 40%; PENALTY: $15,070; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Hood County Utilities, Inc.; DOCKET NUMBER: 2003-1442-MWD-E; IDENTIFIER: TPDES Permit Number 13022-001; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13022-001, and the Code, §26.121, by failing to meet the permitted effluent limits at outfall 001; PENALTY: $11,935; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Houston Independent School District and Camp Olympia, Inc. and Camp Management, Inc.; DOCKET NUMBER: 2003-0024-MWD-E; IDENTIFIER: TPDES Permit Number 11898-001; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: recreation camp; RULE VIOLATED: 30 TAC §§305.125(1), 317.3(e)(5), 319.11(b) and (c), TPDES Permit Number 11898-001, and the Code, §26.121(a), by failing to comply with effluent limitations, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained, by failing to comply with test methods and procedures for obtaining flow measurements and analysis of residual chlorine, and by failing to report effluent violations which deviated more than 40% of the permit limit; and 30 TAC §334.22(a) and the Code, §26.358(d), by failing to pay underground storage tank fees; PENALTY: $22,850; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: S. P. Holmes, Inc. dba Georgetown 66; DOCKET NUMBER: 2003-0992-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0026064; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(15) COMPANY: City of Leona; DOCKET NUMBER: 2003-1424-PWS-E; IDENTIFIER: PWS Number 1450008; LOCATION: Leona, Leon County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(f), (i), and (n)(2), by failing to maintain water works operations and maintenance activities records, by failing to adopt an adequate plumbing ordinance, regulations or service agreement, and by failing to maintain and make available an accurate up-to-date map of the distribution system; 30 TAC §290.42(e)(5), by failing to properly cover the hypochlorination solution container top; 30 TAC §290.43(c)(3), by failing to provide an overflow pipe valve assembly; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide the well units with a properly constructed intruder-resistant fence; and 30 TAC §288.20(a) and §288.30(3)(B), by failing to make an adopted drought contingency plan available for inspection; PENALTY: $1,568; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: William E. Hartzog dba Lone Willow Mobile Home Park West; DOCKET NUMBER: 2004-0463-PWS-E; IDENTIFIER: PWS Number 1010663; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(e)(3) and (5), by failing to install disinfection equipment and by failing to house the hypochlorination solution containers and pumps in a secure enclosure; 30 TAC §290.45(b)(1)(E)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.41(c)(1)(F) and (3)(J), (K), (N), and (O), by failing to secure a sanitary control easement, by failing to provide a concrete sealing block, by failing to seal the wellhead, by failing to provide the well with a flow measuring device, and by failing to provide the well site with an intruder-resistant fence; and 30 TAC §290.46(v), by failing to install securely all water system electrical wiring in compliance with a local or national electrical code; PENALTY: $3,597; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Mansoorali G. Chunara dba Lucky 7 Quick Stop; DOCKET NUMBER: 2004-0154-PST-E; IDENTIFIER: PST Facility Identification Number 64498; LOCATION: Angus, Navarro County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2004-0164-PST-E; IDENTIFIER: RN102862455; 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: $24,800; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Rod Packard dba Packard Tire Service; DOCKET NUMBER: 2004-0327-MSW-E; IDENTIFIER: Tire Transporter Identification Number 25032, Municipal Solid Waste Generator Identification Number 0002; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: retail tire shop; RULE VIOLATED: 30 TAC §328.57(c)(3) and THSC, §361.112(c), by failing to transport used and scrap tires to an unauthorized facility; 30 TAC §328.60(a) and THSC, §361.112(a), by failing to obtain a scrap tire storage site registration; and 30 TAC §382.56(a)(2), by failing to notify the executive director of any change to generator information; PENALTY: $2,080; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: City of Pasadena; DOCKET NUMBER: 2003-1017-MWD-E; IDENTIFIER: TPDES Permit Number 10053-001, RN101609584; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10053-001, and the Code, §26.121(a), by failing to meet permitted effluent limits and by failing to submit written notification that construction of the new wastewater treatment plant was complete; PENALTY:

$234,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 133 and 141; DOCKET NUMBER: 2004-0598-PST-E; IDENTIFIER: PST Facility Identification Numbers 66800 and 66802; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(1), by failing to report the discovery of released regulated substances; 30 TAC §334.6(a)(2), by failing to notify the TCEQ of construction activity; and 30 TAC §334.78(c), by failing to assemble information about the site and nature of a release; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Sabre Communications Corporation; DOCKET NUMBER: 2004-0559-AIR-E; IDENTIFIER: Air Account Number TA-0496-G, RN100222124; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: metal conduit manufacturing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit Title V compliance certification; PENALTY: $920; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Sarbali Oil, Inc. dba Jasper Fuels Company; DOCKET NUMBER: 2004-0397-PST-E; IDENTIFIER: PST Facility Identification Numbers 37326 and 48536; LOCATION: San Augustine, San Augustine County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to make all vapor recovery records immediately available for review; 30 TAC §115.242(3)(C)(iii) and (K) and THSC, §382.085(b), by failing to ensure that the vapor recovery system is free of defects; 30 TAC §334.74, by failing to investigate a suspected release; 30 TAC §334.72(3), by failing to report a suspected release; PENALTY: $5,425; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Gulam H. Gulamali dba Speedy Mart; DOCKET NUMBER: 2004-0229-PST-E; IDENTIFIER: PST Facility Identification Number 39751; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i), and (d)(1)(B)(ii) and (4)(A)(ii)(II), and the Code, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks for releases and by failing to equip each separate pressurized line with an automatic line leak detector; PENALTY: $10,800; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Sunrise Dairies, Inc.; DOCKET NUMBER: 2003-1300-AGR-E; IDENTIFIER: Water Quality Permit Number 02452; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a), Water Quality Permit Number 02452, and the Code, §26.121(a), by failing to prevent a discharge; 30 TAC §321.39(a), by failing to develop a pollution prevention plan; and 30 TAC §321.42(a), by failing to provide verbal notification of a discharge into the waters of the state; PENALTY: $13,050; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: Technical Chemical Company; DOCKET NUMBER: 2003-1510-IHW-E; IDENTIFIER: Solid Waste Registration Number 87191; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: automotive cleaners and additives manufacturing and packaging plant; RULE VIOLATED: 30 TAC §335.4, by failing to prevent a discharge of industrial solid or municipal waste; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct a hazardous determination and waste classification on three waste streams; 30 TAC §335.69(a)(1)(B) and (3), §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii), by failing to obtain a certified written integrity assessment and by failing to label a 4,000-gallon steel tank; 30 TAC §335.6(c), by failing to provide and maintain an accurate notice of registration; 40 CFR §365.195(c), by failing to document and maintain inspection operating records; and 30 TAC §205.6, by failing to pay general permit storm water fees; PENALTY: $18,442; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: W W Cattle Feeds, Inc. dba W W Cattle Feeds; DOCKET NUMBER: 2004-0336-MSW-E; IDENTIFIER: Municipal Solid Waste Registration Number 47026; LOCATION: Poolville, Parker County, Texas; TYPE OF FACILITY: feed processing operation; RULE VIOLATED: 30 TAC §330.5 and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of run-off water from waste stockpiles; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200404145
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 22, 2004

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Texas Department of Health

Designation of Canutillo Clinic Salud y Vida, P.A. as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Canutillo Clinic Salud y Vida, P.A., 7200 Doniphan Drive, Canutillo, Texas 79834. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200404190
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 23, 2004

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Designation of Montana Clinic Salud y Vida, P.A. as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Montana Clinic Salud y Vida, P.A., 3329 Montana Avenue, El Paso, Texas 79903. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200404191
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 23, 2004

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Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05774	El Paso	00	06/14/04
Houston	Nuclear Imaging Services LLC	L05791	Houston	00	06/08/04
Throughout Tx	Blohowiak Wireline Company Inc	L05797	Granbury	00	06/14/04

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Equistar Chemicals LP	L03363	Alvin	22	06/01/04
Austin	Ambion Inc	L04307	Austin	13	06/03/04
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	12	06/04/04
Bedford	Texas Oncology PA	L05550	Bedford	05	05/27/04
Cleburne	Numed Imaging Centers Inc.	L05762	Cleburne	01	06/04/04
Corpus Christi	South Texas Diagnostic Imaging	L05652	Corpus Christi	01	06/10/04
Dallas	Cardinal Health	L02048	Dallas	112	06/01/04
Dallas	Dallas Cardiology Associates PA DBA Heartplace East	L04607	Dallas	41	06/02/04
Dallas	Presbyterian Healthcare System DBA Presbyterian Hospital of Dallas	L04288	Dallas	19	06/07/04
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	82	06/10/04
El Paso	Isomedix Operations Inc	L04268	El Paso	15	06/02/04
El Paso	Guillermo A. Pinzon M.D. PA	L04277	El Paso	12	06/09/04
Ennis	Ellis County Medical Associates	L05759	Ennis	01	06/01/04
Friendswood	ISO Tex Diagnostic Inc.	L02999	Friendswood	39	06/08/04
Hallettsville	Lavaca Medical Center	L04397	Hallettsville	07	06/07/04
Jasper	NUMED Imaging Centers Inc	L05202	Jasper	03	06/10/04
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	39	06/09/04
La Grange	Fayette Memorial Hospital	L03572	La Grange	14	05/27/04
La Porte	Longview Inspection Inc.	L01774	La Porte	204	05/28/04
La Porte	Cardiorad Inc.	L05755	La Porte	02	06/04/04
La Porte	Invista Sàrl	L05719	La Porte	01	06/09/04
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	71	05/28/04
Lubbock	Radiation Oncology of the South Plains PA	L05484	Lubbock	05	06/02/04
Lubbock	University Medical Center	L04719	Lubbock	70	06/04/04
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	72	06/09/04
Marble	Marble Falls Imaging Center LP DBA Marble Falls Imaging Center	L05301	Marble Falls	04	06/09/04
McAllen	Advanced Nuclear Imaging Inc	L05467	McAllen	03	06/03/04

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mesquite	Lone Star HMA LP DBA Mesquite Community Hospital	L02733	Mesquite	32	06/04/04
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	38	06/14/04
Midland	HIS Inspection Inc.	L04861	Midland	11	05/28/04
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	71	06/02/04
Midland	Texas Oncology PA DBA Allison Cancer Center	L04905	Midland	07	06/03/04
New Braunfels	Cancer Care Network of South Texas PA	L05717	New Braunfels	02	06/14/04
Pasadena	Mohamed O Jeroudi M.D. P.A.	L05753	Pasadena	02	06/02/04
Pasadena	Gulf Coast Cancer Center	L05185	Pasadena	06	06/14/04
Pasadena	Mohamed O Jeroudi MD PA	L05753	Pasadena	03	06/10/04
San Antonio	Methodist Healthcare System of San Antonio DBA Southwest Texas Methodist Hospital	L00594	San Antonio	187	05/27/04
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	29	06/04/04
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	16	06/07/04
San Antonio	Baptist Imaging Center	L04506	San Antonio	43	06/14/04
Sugar Land	Fort Bend Heart Center	L05678	Sugar Land	02	05/27/04
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	01	06/07/04
Taylor	Johns Community Hospital	L03657	Taylor	28	06/07/04
Texarkana	Collom & Carney Clinic Association	L05524	Texarkana	02	06/02/04
Texarkana	Red River Pharmacy Services	L05077	Texarkana	14	06/08/04
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	37	06/07/04
Throughout Tx	Quantum Technical Services Inc	L03731	Alvin	3731	06/10/04
Throughout Tx	XCEL Energy Southwestern Public Service DBA Utility Engineering Corp	L05238	Amarillo	06	06/14/04
Throughout Tx	JD Ramming Paving Co Inc	L04666	Austin	03	06/02/04
Throughout Tx	Exxon Mobil Oil Corporation	L00603	Beaumont	67	06/09/04
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	83	06/09/04
Throughout Tx	Professional Service Industries Inc	L04939	Corpus Christi	08	06/01/04
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	49	06/01/04
Throughout Tx	Mactec Engineering and Consulting Inc	L05490	Fort Worth	05	06/03/04
Throughout Tx	Professional Service Industries Inc.	L00931	Fort Worth	112	06/08/04
Throughout Tx	Baker Hughes Oilfield Operations Inc DBA Baker Atlas	L00446	Houston	152	05/28/04
Throughout Tx	Remington Support Services Inc	L05642	Houston	04	06/02/04
Throughout Tx	Material Inspection Technology	L05672	Houston	08	06/04/04
Throughout Tx	Cooperheat-MQS Inc	L00087	Houston	118	06/14/04
Throughout Tx	H & H X-Ray Services Inc DBA Mississippi X-Ray Service Inc	L02516	Tyler	46	06/01/04
Tyler	East Texas Medical Center Healthcare Assoc.	L05702	Tyler	02	06/04/04
Victoria	Citizens Medical Center	L00283	Victoria	69	05/28/04
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	45	06/10/04

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Center	Tenet Healthcare Inc DBA Shelby Regional Medical Center	L03608	Center	29	06/03/04
Denton	University of North Texas	L00101	Denton	75	06/02/04
El Paso	R E Thomason General Hospital	L00502	El Paso	56	06/8/04
Houston	Bernardo Treistman MD PA DBA Cardiology Specialists of Houston	L05083	Houston	05	06/10/04
Irving	George Jacob Hersman DVM PC DBA Las Colinas Veterinary Clinic	L04602	Irving	03	06/04/04
Lubbock	Covenant Medical Group DBA Cardiology Assoc Covenant Med Grp	L04468	Lubbock	16	06/09/04
Round Rock	Wheeler Coatings Asphalt Inc	L05059	Round Rock	03	06/07/04
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	132	06/10/04

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Dallas Cardiology Associates DBA Heart Place	L05609	Dallas	02	06/02/04
Tyler	Nutech Cyclotron Technologies LLC	L05598	Tyler	03	06/10/04
Webster	American Molecular Imaging LLC DBA Texas Molecular Imaging Consultants	L05664	Webster	04	06/02/04

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200403978
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 17, 2004

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Notice of Agreed Order with Austin Radiological Association

On June 14, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Austin Radiological Association (registrant-M00200-003) of Austin. The registrant was required to pay $1,000 in administrative penalties assessed for violations of 25 Texas Administrative Code Chapter 289, and comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200404180

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 23, 2004

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Notice of Agreed Order with Hereford Regional Medical Center

On June 14, 2004, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Hereford Regional Medical Center (registrant-M00408) of Hereford. The registrant was required to pay $3,000 in administrative penalties assessed for violations of 25 Texas Administrative Code Chapter 289, and comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200404181
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 23, 2004

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Imaging and Medical Diagnostic Specialists, P.A., dba Central Imaging of Arlington

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Imaging and Medical Diagnostic Specialists, P.A., doing business as Central Imaging of Arlington (registrant-M00615-002) of Arlington. A total penalty of $30,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200404182
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 23, 2004

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Professional Services Industries, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Professional Services Industries, Inc. (licensee-L04946) of San Antonio. A total penalty of $5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200404183
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 23, 2004

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Alta Renn Apartments) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Kerr High School, 8150 Howell Sugar Land Road, Houston, Texas 77083, at 6:00 p.m. on July 20, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $14,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Alta Renn Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 240-unit multifamily residential rental development to be located at the southwest corner of the intersection of Renn Road and Eldridge Parkway at approximately the 13600 block of Renn Road, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200404095
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 22, 2004

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Department of Information Resources

Notice of Request for Proposals of Legal Services for Intellectual Property Law Matters

In compliance with the provisions of Chapter 2156, Subchapter C, Texas Government Code, the Department of Information Resources (DIR) announces this Request for Proposals (RFP #DIR-LEGAL IP-04) for provision of Legal Services for Intellectual Property Law Matters.

Eligible Proposers. DIR is requesting proposals from qualified law firms and individual attorneys. Historically underutilized businesses (HUBs) are encouraged to submit a proposal.

Description. DIR seeks full service legal representation in the area of Intellectual Property Law. Services may include providing research and advice regarding all aspects of existing and proposed Intellectual Property assets, representing DIR's interests before administrative bodies such as the US Trademark Office, with the consent of the Office of the Attorney General and DIR, filing appropriate actions against alleged infringers, and negotiating appropriate contract language to protect DIR's Intellectual Property interests. DIR has been authorized by the Office of the Attorney General to issue this RFP to seek legal representation in the area of Intellectual Property law. The Attorney General must approve DIR's selection.

Dates of Project. All services related to this proposal will be conducted within specified dates. The contract should commence on or about September 1, 2004, and end August 31, 2006. There is a single one-year extension option in the contract. The Attorney General must approve any contract extension.

Project Amount. One contractor will be selected to receive a contract valued at an annual not-to-exceed amount of $15,000.

Selection Criteria. The selected contractor shall have the highest scoring proposal from among responsive proposals submitted, based on qualifications, experience and reputation of the firm to provide the services described in the RFP, the experience and qualifications of the attorneys, staff and others proposed to perform the work, satisfactory client references and overall price and value of the proposal. DIR reserves the right to conduct interviews with up to the top three scoring firms, at its discretion. If conducted, the interviews will be scored. DIR is not obligated to execute a contract, provide funds or endorse any proposal submitted in response to the RFP. DIR reserves the right to amend, withdraw or cancel this RFP at any time. DIR shall not be responsible for any costs incurred by proposers in developing responses to this RFP. The issuance of this RFP does not obligate DIR to award a contract.

Requesting the Proposal. A complete copy of the RFP #DIR-LEGAL IP-04 may be obtained by writing: Denny Ross, Purchaser, Department of Information Resources, Garage R, 1706 San Jacinto Boulevard, Austin, Texas 78701, by faxing (512) 463-8234, or by calling (512) 463-3358. As of July 2, 2004, the RFP has been posted in its entirety on the *Texas Marketplace*.

Further Information. For clarifying information about the RFP, contact Cynthia J. Hill, Attorney, Department of Information Resources, (512) 463-6422.

Deadline for Receipt of Proposals. Proposals must be received in Support Services Division Office at 1706 San Jacinto Boulevard, Garage R, DIR by 4:00 PM (CST), Friday, August 6, 2004, to be considered. Proposers are responsible for the timely delivery of proposals. The clock in Garage R is the official clock for determining timeliness of proposals.

TRD-200404094
Renee Mauzy
General Counsel
Department of Information Resources
Filed: June 22, 2004

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FIRST CATHOLIC SLOVAK LADIES ASSOCIATION OF THE U.S.A., a foreign life, accident and/or health company. The home office is in Beachwood, Ohio.

Application for admission to the State of Texas by AMERICAN VEHICLE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Plantation, Florida.

Application for admission to the State of Texas by AUSTIN MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Minneapolis, Minnesota.

Application to change the name of AMERICAN INDUSTRIES FAMILY LIFE INSURANCE COMPANY to FORETHOUGHT NATIONAL LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Houston, Texas.

Application to change the name of FIRST AMERICAN TITLE INSURANCE COMPANY OF TEXAS to CENSTAR TITLE INSURANCE COMPANY, a domestic title company. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by COLLEGIATE ASSOCIATION RESOURCE OF THE SOUTHWEST, INC. (CARES), a domestic Multiple Employer Welfare Arrangement (MEWA). 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-200404194
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 23, 2004

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Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Integrated Benefit Management Services, LLC. (using the assumed name of Wellnet Healthcare Administrators, LLC), a foreign third party administrator. The home office is Gladstone, Oregon.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200404193

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 23, 2004

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Texas Lottery Commission

Correction to Instant Game Number 457 "Corvette Cash"

The Texas Lottery Commission filed for publication Instant Game Number 457 "Corvette Cash." The document was published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5824). The last sentence in paragraph "2.9 Disclaimer" was inadvertently left out. The sentence that was omitted reads as follows:

An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

TRD-200404006
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 18, 2004

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Instant Game Number 451 "High Roller"

1.0 Name and Style of Game.

A. The name of Instant Game No. 451 is "HIGH ROLLER". The play style in HIGH CARD is "yours beats theirs". The play style in LUCKY SPIN is "key number match". The play style in DICE is "add up". The play style in SLOTS is "key symbol match". The play style in BONUS AREA is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 451 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 451.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $5,000, $50,000, 2, 3, 4, 5, 6, 7, 8, 9, 10, J, Q, K, A, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, CLOVER SYMBOL, CHERRIES SYMBOL, BELL SYMBOL, STACK OF BILLS SYMBOLS, GOLD BAR SYMBOL, HORSESHOE SYMBOL, ANCHOR SYMBOL, STAR SYMBOL, CROWN SYMBOL, TRY AGAIN SYMBOL, NEXT TIME SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One Play Symbol 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. 451 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTEEN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIVE HUN
$5,000	FIV THOU
$50,000	50 THOU
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
J	JCK
Q	QUN
K	KNG
A	ACE
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THREE
4 DICE SYMBOL	FOUR

5 DICE SYMBOL	FIVE
6 DICE SYMBOL	SIX
CLOVER SYMBOL	CLOVER
CHERRIES SYMBOL	CHERRIES
BELL SYMBOL	BELL
STACK OF BILLS SYMBOL	MONEY
GOLD BAR SYMBOL	GLDBAR
HORSESHOE SYMBOL	SHOE
ANCHOR SYMBOL	ANCHOR
STAR SYMBOL	STAR
CROWN SYMBOL	CROWN
TRY AGAIN SYMBOL	AGAIN
NEXT TIME SYMBOL	TIME

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 451 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (451), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 451-0000001-000.

L. Pack - A pack of "HIGH ROLLER" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be shown on the front of the pack; the back of ticket 074 will be revealed on the back of the pack. Every other book will reverse, i.e., the back of ticket 000 will be shown on the front of the pack and the front of ticket 074 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HIGH ROLLER" Instant Game No. 451 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 "HIGH ROLLER" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) play symbols. In the HIGH CARD play area, if YOUR CARD beats the DEALER'S CARD within a HAND, win the prize shown for that HAND. The Ace symbol is high. In the LUCKY SPIN play area, if any of YOUR NUMBERS matches the WINNING NUMBER, win prize shown below that number. In the DICE play area, the player must scratch the dice rolls. If the total of the dice within a ROLL adds up to 7 or 11, the player will win the prize shown for that ROLL. In the SLOTS play area, if the player matches 3 identical symbols within a SPIN, the player will win the prize for that SPIN. In the BONUS play area, if the

player finds a prize amount, the player will win that amount. 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 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each Play Symbol must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each Play Symbol must be present in its entirety and be fully legible;

4. Each Play Symbol must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) 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 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 46 (forty-six) 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 patterns.

B. HIGH CARD: Players can win up to three (3) times in this play area.

C. HIGH CARD: The "2" card symbol will never appear as a YOUR CARD.

D. HIGH CARD: The Ace symbol is considered high.

E. HIGH CARD: There will be no ties between the YOUR CARD symbol and the DEALER'S CARD symbol in a HAND.

F. HIGH CARD: There will be no duplicate non-winning prize symbols.

G. HIGH CARD: There will be no identical cards appearing in the YOUR CARD Column on a ticket.

H. HIGH CARD: There will be no identical cards appearing in the DEALER'S CARD Column on a ticket.

I. HIGH CARD: The "Ace" card symbol will never appear as a DEALER'S CARD.

J. HIGH CARD: There will be no duplicate games on a ticket.

K. LUCKY SPIN: Players can win up to five (5) times in this play area.

L. LUCKY SPIN: No duplicate non-winning YOUR NUMBERS on a ticket.

M. LUCKY SPIN: Non-winning prize symbols will not match a winning prize symbol on a ticket.

N. LUCKY SPIN: There will be no duplicate non-winning prize symbols.

O. LUCKY SPIN: YOUR NUMBER will never equal the corresponding prize symbol.

P. DICE: Players can win up to three (3) times in this play area.

Q. DICE: There will be no duplicate non-winning prize symbols.

R. DICE: There will be no duplicate non-winning rolls in any order.

S. SLOTS: Players can win up to four (4) times in this play area.

T. SLOTS: There will be no duplicate non-winning prize symbols.

U. SLOTS: There will be no duplicate non-winning spins on a ticket.

V. SLOTS: There will never be three (3) identical Play Symbols in a vertical or diagonal line.

W. BONUS AREA: Players can win only once in this play area.

X. BONUS AREA: Winning tickets in this play area will reveal a prize amount.

Y. BONUS AREA: Winning tickets in this play area will win only the $5, $10, $15, or $20 prize levels.

Z. BONUS AREA: Tickets that do not win in the Bonus Area will display one of the non-winning play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "HIGH ROLLER" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HIGH ROLLER" Instant Game prize of $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HIGH ROLLER" 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.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

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.F 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 "HIGH ROLLER" 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 "HIGH ROLLER" 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 Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,960,000 tickets in the Instant Game No. 451. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 451 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	475,200	8.33
$10	369,600	10.71
$15	158,400	25.00
$20	79,200	50.00
$50	53,460	74.07
$100	4,587	863.31
$500	198	20,000.00
$5,000	30	132,000.00
$50,000	3	1,320,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 451 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 451, 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-200403977
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 17, 2004

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Manufactured Housing Division

Notice of Administrative Hearing

Thursday, July 15, 2004, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Myrna Trevizo aka Myrna Paredes to hear the merits of the Department's Denial to Issue a Retailer's License and the revocation of a Salesperson's License to Myrna Trevizo aka Myrna Paredes as found in §1201.551(8) of the Act and §80.123(m)(1)(A) - (E) of the Rules. SOAH 332-04-5930. Department MHD2004000683-LR.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jameshicks@tdhca.state.tx.us

TRD-200404197
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: June 23, 2004

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Texas Department of Mental Health and Mental Retardation

Notice of Availability of Texas Community Mental Health Services State Plan (Federal Community Mental Health Block Grant)

The Federal Community Mental Health Block Grant statute (42 USC 300x-51) requires that the Texas Department of Mental Health and Mental Retardation (TDMHMR) make the Texas Community Mental Health Services State Plan available for public comment during its development.

TDMHMR is currently preparing the plan for Fiscal Year (FY) 2005 to describe the intended use of the Federal Community Mental Health Block Grant funds. These funds must be utilized by TDMHMR to develop new initiatives and/or enhance already existing service delivery systems for adults with severe mental illness and children with serious emotional disturbance.

When the draft of the FY 2005 Texas Community Mental Health Services State Plan is available (on or about July 1, 2004), it may be obtained on the TDMHMR web site at the following address: http://www.mhmr.state.tx.us/CentralOffice/BehavioralHealthServices/BehavioralHealthServices.html or by contacting Sam Shore, Director, Behavioral Health Services, Texas Department of Mental

Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

Comments regarding the FY 2005 Texas Community Mental Health Services State Plan should be directed to: blockgrantcomments@mhmr.state.tx.us or to Sam Shore, Director, Behavioral Health Services, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. Comments must be received by 5:00 p.m., Friday, July 23, 2004.

TRD-200404179
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: June 23, 2004

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Texas Department of Public Safety

Request for Proposal - Consultant Services

1. SUBJECT.

The Texas Department of Public Safety (TxDPS) desires to acquire the services of an experienced and financially stable Consultant possessing the expertise and resources necessary to provide comprehensive, professional, and competent consultation on a wide range of issues related to the Vehicle Inspection and Emissions program.

2. PURPOSE.

The Consultant will perform this contract on an as-needed basis, providing consultation, analysis, and feedback based on specific, to-be-determined, work orders from the Department. Said work orders will be specific in nature, will not exceed the contemplated scope of this contract, and will contain distinct performance measurements that will allow a proper evaluation of whether, or not, the consultant has performed as specified.

This project includes, but is not limited to:

A. Evaluative consultation of existing, planned, or proposed Early Action Compacts (EAC) and their structures as they relate to the Department goal, objective, or mission in emission-control strategies;

1. Consultations, in this area, primarily focused on the identification of inspection and maintenance options, through the evaluation and analysis of existing, emerging, or future protocols, for EAC areas:

a. Accelerations Simulation Mode (ASM), On-Board Diagnostics (OBD), Two-Speed Idle (TSI), and Remote Sensing Devices (RSD) protocols currently employed in the Houston, Dallas, Fort Worth, and El Paso metropolitan areas;

b. OBD II-only with RSD screening for ASM testing regimen as an alternative in State or EAC programs;

c. OBD II-only with TSI as a proposed option in the EAC areas;

d. RSD screening for OBD and ASM testing as an option for I/M programs; and,

e. Any other identified or emerging technology, protocol, or regimen that could prove valuable in the Department's efforts in responding to its obligations with respect to implementation or regulation of emissions-testing programs;

2. A particular emphasis on the evaluation and emissions-reduction benefits of RSD-based alternatives is desirable; and,

3. The development of implementation and regulatory guidance for any resulting programs.

B. Evaluative and analytical consultation on the unique challenges posed by the integration, into the OBD II fleet, of Controller Area Network (CAN) equipped vehicles; Evaluative and analytical consultation on existing or revealed problems with OBD and OBD II equipped vehicles having chronic "not-ready" codes and other problems affecting program integrity;

C. Evaluative consultation and assistance in producing drive cycle or other guidance for the Department to use in instructing or assisting inspection stations, testing facilities, repair facilities, vehicle operators, and/or vehicle owners in resolving not-readiness and other OBD issues;

D. Evaluative consultation and analysis in determining the effectiveness, impact, compliance, integrity, and overall benefit of the Texas Inspection and Maintenance Program; and,

E. Evaluative consultation and analysis aimed at corollary or comparative studies of the Texas Inspection and Maintenance Program and similar programs administered by other countries, states, agencies, or private entities.

The Consultant will be available for these services, over the term of the contract, on an as-needed or directed basis.

Individual requests for services, during the term of the contract, that fall under the purview of this contract and that are contemplated in this contract, will have a deadline for the production of results that is negotiated and committed to, in writing, between the Department and the Consultant.

3. NOTICE.

The Contract for these services will be awarded to a single Respondent willing and financially able to accept complete responsibility and liability for all aspects of the project, including the commodities and work provided by Subcontractors, if any. To qualify for evaluation, a Respondent must demonstrate organizational experience as well as their financial stability. Respondents must also provide full information regarding any litigation to which the Respondent is a party.

The State of Texas and the Department recognize responding to this Request for Proposal (RFP) requires extensive effort at a substantial cost to the Respondents. However, only Proposals that satisfy the comprehensive requirements of this Request for Proposal will be considered. Parties who believe their products or services are competitive but lack the necessary qualifications to make a Proposal on the Contract are encouraged to seek out opportunities to participate as team members in a Subcontractor capacity.

The Consultant shall have no ownership, licensing, or copy rights to any files, records, or data or, related reports collected, stored, generated, maintained, or transmitted as a result or as part of the Contract resulting from this Request for Proposal.

The Consultant shall not share with, disclose to, offer for sale to, disseminate to, or duplicate for any entity, not a party to this Contract, any work product, deliverable, report, analyses, or advice (verbal, documented, or electronic) that is produced as a result of performance under this Contract without the Department's consent.

At the termination of the Contract, the Consultant shall cooperate with the Department to ensure that all files, records, data, and reports collected, stored, generated, maintained, or transmitted, as a result of the Contract, and all equipment, of which the Department is the rightful owner, remain intact during their transfer into the possession of the Department or its assignee.

Finally, pursuant to Government Code, §2254.029, the Department hereby discloses its intent to award the contract to de la Torre Klausmeier Consulting of Austin, Texas unless a better offer is received. This

Consultant has provided similar, or identical, services in the past and has demonstrated the requisite expertise necessary to satisfactorily perform this contract and, in the interest of program continuity and time constraints, it is in the best interests of the State to show a preference.

This disclosure is not intended to discourage any qualified respondent to make an offer. All proposals will be evaluated and, ultimately, a consultant selected pursuant to Government Code, §2254.027.

4. SUBMISSION OF PROPOSAL.

The deadline for submitting a response for this procurement is Thursday, August 5, 2004 at 5:00 P.M. Proposals received after this deadline will not be considered under any circumstances.

5. PROCUREMENT AND CONTRACT DOCUMENTS.

A. This procurement shall be conducted in accordance with the Professional Services Procurement Act (Texas Government Code, Chapter 2254).

B. Vendors shall supply eight (8) copies of the proposal for evaluation purposes, three (3) of which shall be in binders, to the address shown in the "POINT OF CONTACT" section below. Proposals must be submitted in a sealed envelope clearly marked with the RFP number and the scheduled date and time of opening. Proposals will not be accepted via facsimile or electronic transmissions.

C. This is not a complete bid package. For a complete copy of package, including specifications, terms and conditions, go to the Electronic State Business Daily at www.esbd.tbpc.state.tx.us.

6. POINT OF CONTACT.

Tom Jackson, Procurement and Grants Administrator Accounting and Budget Control 5805 N. Lamar Blvd., Building A Austin, Texas 78752 (512) 424-2305

7. INQUIRIES. All inquiries shall be directed to the contact individual. Specific questions regarding the RFP shall be submitted in writing. Questions may be received by fax, letter, or e-mail. Telephone inquiries shall not be responded to. Responses will be delivered by fax if appropriate information is provided, or by e-mail. Only answers that are provided in writing from the contact individual shall be considered official responses.

8. ORAL PRESENTATIONS.

The TxDPS may, at its discretion, elect to have Vendors provide oral presenetations of their response.

9. ADDENDA TO THE RFP.

The TxDPS may, by written addendum, change any portion of the RFP.

10. TxDPS RIGHTS.

The rights reserved by the TxDPS include but, are not limited to:

A. The right to use any and all ideas presented in any response to the RFP, the selection or rejection status of any offer, from which ideas may be used, notwithstanding;

B. The right to reject any and all Proposals received in response to this Request for Proposal which do not conform to the preparation, content, or submission guidelines outlined herein; or, if it is in the best interest of the State of Texas to do so;

C. The right to accept Proposals, which represent the best value to the State of Texas and without discussion of those Proposals with Respondents;

D. The right to waive minor Proposal provisions in Proposals received, after prior notice, coordination, and concurrence of the Respondent;

E. The right to modify minor irregularities in Proposals received, after prior notice, coordination, and concurrence of the Respondent;

F. The right, in its sole discretion, to amend this Request for Proposal so as to clarify, revise, supplement, or delete any provision hereof or to add any new provision hereto;

G. The right, in its sole discretion, to withdraw this Request for Proposal in its entirety and, as part of such withdrawal, reject all Proposals which have been submitted by Respondents;

H. The right to terminate contract negotiations with the Respondent, in order to serve the best interests of the Department and the State of Texas;

I. The right to satisfy itself that the Respondent will be able to perform under the Contract;

J. The right to enter, and to be granted entry by the Consultant to, the Consultant's fixed and mobile facilities at any time and without delay to evaluate security and storage facilities and inspect methods and compliance with all specifications herein;

K. The right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract;

L. The right to audit the Consultant's records and documents regarding the terms and conditions of this Contract; and,

M. The right to exclusive ownership, and possession on demand or contract termination, of all files, records, and data collected, stored, generated, maintained, or transmitted in the performance of the Contract.

11. COST OF PROPOSAL PREPARATION.

The TxDPS shall not be responsible for any costs incurred by a vendor in preparing and submitting a response to the RFP.

12. EVALUATION CRITERIA FOR AWARD.

A. The award will be made to the vendor whose proposal offers the best value for the state and is in the state's best interest. In determining the proposals that offer the best value and are in the state's best interest, the TxDPS will consider the below listed criteria:

B. Each Proposal will be evaluated on the basis of a 1,000 point scoring system allocated as follows, with point totals in the far right column.

1. Cost Proposal: 600

2. Consultant Capability: 400

C. Each proposal which is not rejected shall be evaluated and graded by the Evaluation Committee.

D. The entire 600 points, for the Cost Proposal, will be awarded to the proposal that represents the lowest cost, for consultant services, to the State of Texas. All other proposals will receive reduced points in this category based on their proposed costs with the following formula applied:

1. A value of 12 points for each percentage of increased cost, over the lowest cost offer, will be deducted from 600 points up to the entire 600 points for an offer that proposes a cost at more than 50% above the lowest cost proposal.

E. Consultant Capability is further divided into three specific categories; competence, knowledge, and qualifications. The proposals will be scored in each of these specific areas, relative to one another, and using the following scoring method:

1. Each member of the evaluation committee will review the proposals and submit individual scores for consultant competency, knowledge, and qualification.

2. The offer judged, by the committee member, to demonstrate the highest level of consultant competence will receive a score of 133.33 points by the individual committee member. Each other proposal will receive a lesser score, by the member, based on their independent judgment of the relative competency of consultant when compared with the consultant they judged to be most competent down to 0 points for a consultant the member judges to be wholly incompetent.

3. The individual members' scores for competency will be averaged and that shall represent the consultant's score, for competency, toward the 400 points awarded for consultant capability.

4. The scores for knowledge and qualifications shall be derived in the same manner. After the individual scores for competency, knowledge, and qualifications have been calculated, the cumulative points will be the score awarded to the consultant in the "Contractor Capability" category.

F. The TxDPS reserves the right not to award to any vendor the TxDPS considers to be non-responsive and/or irresponsible and, to make no award at all.

13. CONTRACT TERMS.

The award shall be for a term that includes the remainder of the current biennium, beginning on the date the purchase memorandum is issued and concluding at 11:59 P.M. on August 31, 2005.

14. MATERIAL CHANGES IN THE EXPENSE OF THE WORK.

In the event of the adoption, amendment, or repeal of any applicable state or federal statute, federal or state legislation, administrative rules or regulations which are the basis of the Texas Inspection and Maintenance Program, or in the event of the issuance of a final decision by a court of competent jurisdiction, the effect of which is not contemplated by the Contract and materially increases or decreases the cost to the Consultant of performing the Contract, the Department and the Consultant shall meet and attempt to agree on amendments to the Contract. If the parties cannot agree to amendments within sixty (60) days of their initial meeting, a dispute shall be deemed to exist and shall be with the following review process:

The Consultant's representative shall provide written notice of all facts and supporting documentation concerning the dispute to the Department Representative. The Department representative shall review these materials and shall, within thirty (30) days of receipt of the notice from the Consultant's representative, provide a written notice to the Consultant of the Department's position on the disputed issues and the reason(s) thereof.

The decision of the Department Representative shall be final unless, within thirty (30) days of receipt of the written decision, the Consultant presents a written appeal to the Director.

Pending a final decision of any appeal, the Consultant shall proceed diligently with the performance of the Contract in accordance with the written decision of the Department Representative.

Within thirty (30) days of receipt of the appeal, the Director will render a written decision. The decision of the Director shall be final, subject only to the Consultant's right to further remedies as are available by law.

While pursuing further remedies, the Consultant shall proceed diligently with the performance of the Contract in accordance with the decision of the Director.

Thereafter, if the parties are unable to resolve the dispute, the provisions of the Request for Proposal for early termination of the contract without fault by the Consultant due to a substantial amendment to the Program, may be invoked.

15. EXPERTISE REQUIRED.

The Proposal must demonstrate a comprehensive understanding of the objectives and purposes associated with the Contract and the Texas Inspection and Maintenance Program.

The Respondent must demonstrate knowledge of all State and Federal Statutes related to this program and its execution.

16. DELIVERABLES.

A. Evaluative consultation of existing, planned, or proposed Early Action Compacts (EAC) and their structures as they relate to the Department goal, objective, or mission in emission-control strategies characterized by;

1. Consultations, in this area, primarily focused on the identification of inspection and maintenance options, through the evaluation and analysis of existing, emerging, or future protocols, for EAC areas:

a. Accelerations Simulation Mode (ASM), On-Board Diagnostics (OBD), Two-Speed Idle (TSI), and Remote Sensing Devices (RSD) protocols currently employed in the Houston, Dallas, Fort Worth, and El Paso metropolitan areas;

b. OBD II-only with RSD screening for ASM testing regimen as an alternative in State or EAC programs;

c. OBD II-only with TSI as a proposed option in the EAC areas;

d. RSD screening for OBD and ASM testing as an option for I/M programs; and,

e. Any other identified or emerging technology, protocol, or regimen that could prove valuable in the Department's efforts in responding to its obligations with respect to implementation or regulation of emissions-testing programs;

2. A particular emphasis on the evaluation and emissions-reduction benefits of RSD-based alternatives is desirable; and,

3. The development of implementation and regulatory guidance for any resulting programs.

B. Evaluative and analytical consultation on the unique challenges posed by the integration, into the OBD II fleet, of Controller Area Network (CAN) equipped vehicles; Evaluative and analytical consultation on existing or revealed problems with OBD and OBD II equipped vehicles having chronic "not-ready" codes and other problems affecting program integrity;

C. Evaluative consultation and assistance in producing drive cycle or other guidance for the Department to use in instructing or assisting inspection stations, testing facilities, repair facilities, vehicle operators, and/or vehicle owners in resolving not-readiness and other OBD issues;

D. Evaluative consultation and analysis in determining the effectiveness, impact, compliance, integrity, and overall benefit of the Texas Inspection and Maintenance Program; and,

E. Evaluative consultation and analysis aimed at corollary or comparative studies of the Texas Inspection and Maintenance Program and programs and similar programs administered by other countries, states, agencies, or private entities.

17. INSTRUCTIONS TO BIDDERS.

Respondents are encouraged to initiate preparation of Proposals immediately upon receipt of this Request for Proposal so that all relevant

questions and information needs can be identified and addressed for adequate time to be available to prepare a comprehensive and complete proposal.

Preparation, content, and submission instructions must be adhered to and all requested information must be supplied. Failure to comply may result in Proposal rejection.

The entire Request for Proposal should be carefully studied and understood before a Proposal is submitted.

The Proposal will follow the sequence outlined in this section, and Respondents will respond to all questions. Proposals will be typed, spaced throughout in a manner that facilitates review, and completed on 8 1/2" x 11" paper (or pages folded to 8 1/2" x 11") with all pages sequentially numbered within each section.

The name of the Respondent will be shown at the top of each page. If necessary, sections may be submitted in multiple binders, marked with the section number, and labeled accordingly.

The Respondent must follow the format prescribed in this section for submission of a Proposal. Proposals which do not follow the format and structure prescribed herein will be rejected and not evaluated.

There is no restriction on the overall length of the Proposal. Unnecessarily elaborate presentations beyond those sufficient to present a complete and effective response to this Request for Proposal are not desired.

Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are not necessary.

Respondents will attempt to communicate their Proposals as clearly as possible. While in rare cases, a lengthy section may be needed to describe a complex set of issues; the Department prefers clear, concise responses where applicable. However, the Department believes detailed and complete work plans and descriptions of deliverables, work products, and equipment are necessary to demonstrate a Respondent's knowledge and expertise.

TRD-200403966
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: June 16, 2004

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Public Utility Commission of Texas

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 June 11, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC study on or around June 21, 2004.

Docket Title and Number: Texas ALLTEL, Incorporated Application for Approval of LRIC Study to Implement New National and Reverse Directory Assistance (DA) Services Pursuant to P.U.C. Substantive Rule 26.214, Docket Number 29846.

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 29846. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 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 29846.

TRD-200404015
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 18, 2004

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 10, 2004, for expanded local calling service (ELCS), pursuant to Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C. A summary of the application follows.

Project Title and Number: Petition of the Hawley Exchange for Expanded Local Calling Service, Project Number 29689.

The petitioners in the Hawley exchange request ELCS to the exchanges of Anson, Hamlin, Merkel, and Stamford.

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 July 5, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 29689.

TRD-200404065
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2004

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Notice of Withdrawal of Request for Offers for a Financial Advisor to Assist the Commission with Electric Utility Issuances of Transition Bonds

The Public Utility Commission of Texas (PUCT) published notice regarding the Request for Offers (RFO) for a Financial Advisor to Assist the Commission with Electric Utility Issuances of Transition Bonds in the April 23, 2004, issue of the *Texas Register* (29 TexReg 4020). The PUCT has determined that it is in the best interest of the State to withdraw this RFO, Project Number 29049.

Any questions concerning this withdrawal should be directed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, (512) 936-7120 or (toll-free) 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.

TRD-200404064
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2004

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Office of Rural Community Affairs

Notice of 2004 Texas Community Development Program Grant Awards

The Office of Rural Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2004 program year Community Development Funds, Housing Rehabilitation Funds, and Planning and Capacity Building Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 487, §487.351.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Office of Rural Community Affairs.

2004 Community Development Fund grantees:

Abernathy-$250,000, Alice-$298,000, Alvord-$250,000, Anahuac-$350,000, Angleton-$350,000, Anna-$250,000, Anthony-$263,000, Asherton-$166,975, Aubrey-$250,000, Austin County-$350,000, Bandera-$250,000, Bardwell-$215,000, Bay City-$104,449, Bell County-$250,000, Bellevue-$150,000, Bellmead-$226,500, Bells-$250,000, Belton-$250,000, Benavides-$300,000, Big Lake-$174,999, Big Spring-$350,000, Bishop-$300,000, Blossom-$249,983, Bogata-$250,000, Bonham-$250,000, Booker-$250,000, Brackettville-$267,844, Brady-$174,900, Brewster County-$263,000, Bryson-$150,000, Burnet County-$250,000, Carmine-$250,000, Chandler-$250,000, Chillicothe-$150,000, Cleveland-$350,000, Clifton-$250,000, Clint-$262,955, Collinsville-$148,875, Combes-$211,107, Concho County-$174,900, Cooper-$250,000, Crockett County-$154,111, Crystal City-$369,712, Culberson County-$263,000, Daingerfield-$250,000, Dayton-$350,000, De Leon-$250,000, Del Rio-$399,579, Detroit-$224,000, Devine-$250,000, Dimmitt-$197,500, Driscoll-$300,000, Duval County-$300,000, Eagle Pass-$800,000, Eden-$174,749, Edgewood-$250,000, Edna-$105,182, Ellis County-$245,000, Falls City-$250,000, Fayette County-$250,000, Ferris-$250,000, Flatonia-$250,000, Floresville-$250,000, Forsan-$350,000, Fort Stockton-$350,000, Galveston County-$350,000, Glen Rose-$244,250, Goree-$250,000, Gorman-$250,000, Grand Saline-$250,000, Grandview-$250,000, Granger-$250,000, Granite Shoals-$250,000, Grapeland-$250,000, Grimes County-$250,000, Gruver-$250,000, Hackberry-$250,000, Hall County-$250,000, Hempstead-$350,000, Hereford-$250,000, Hico-$250,000, Horizon City-$263,000, Hughes Springs-$250,000, Hunt County-$250,000, Huxley-$250,000, Indian Lake-$314,360, Italy-$250,000, Jasper County-$250,000, Jeff Davis County-$263,000, Jewett-$250,000, Jim Hogg County-$773,330, Johnson City-$250,000, Jourdanton-$250,000, Keene-$250,000, Kemp-$250,000, Kerr County-$250,000, Kirbyville-$250,000, La Vernia-$250,000, Laguna Vista-$314,360, Lakeport-$250,000, Log Cabin-$250,000, Lometa-$350,000, Lone Star-$250,000, Los Indios-$314,360, Lovelady-$250,000, Madisonville-$250,000, Manor-$250,000, Marble Falls-$250,000, Marfa-$263,000, Martindale-$250,000, McLean-$250,000, Meadow-$250,000, Mertens-$250,000, Mexia-$250,000, Milford-$250,000, Mineral Wells-$250,000, Moulton-$250,000, Nacogdoches County-$250,000, Navasota-$250,000, Newark-$250,000, Newcastle-$150,000, Newton-$250,000, Nixon-$250,000, Nome-$250,000, Orange County-$250,000, Palestine-$250,000, Pearsall-$250,000, Pecos County-$350,000, Pinehurst-$187,325, Point-$250,000, Polk County-$186,553, Port Isabel-$314,360, Port Neches-$250,000, Poth-$250,000, Presidio-$263,000, Primera-$314,360, Quanah-$150,000, Quinlan-$236714, Rains County-$250,000, Ralls-$148,344, Refugio-$300,000, Rio Grande City-$773,330, Rio Hondo-$375,661, Rio Vista-$250,000, Rising Star-$250,000, Robstown-$382,833, Rochester-$82,186, Roma-$773,330, Rose City-$250,000, Roxton-$210,830, Royse City-$250,000, Rusk-$250,000, San Perlita-$314,360, Scurry County-$250,000, Smiley-$250,000, Smyer-$250,000, Snyder-$250,000, Sour Lake-$250,000, Southmayd-$250,000, Springtown-$250,000, Spur-$250,000, Starr County-$773,330, Streetman-$250,000, Sundown-$250,000, Tatum-$250,000, Thorndale-$250,000, Three Rivers-$300,000, Timpson-$249,090, Toyah-$350,000, Trenton-$217,440, Trinity-$250,000, Van Zandt County-$250,000, Vernon-$150,000, Waelder-$250,000, Washington County-$250,000, Wellington-$166,029, Wharton County-$350,000, Wickett-$350,000, Wilbarger County-$145,000, Wills Point-$250,000, Wilson-$250,000, Winnsboro-$206,900, Woodville-$250,000, Wortham-$244,497, Zavala County-$369,712.

2004 Housing Rehabilitation Fund grantees:

Ames-$250,000, Brookshire-$250,000, Delta County-$250,000, Mineola-$250,000, Monahans-$250,000, San Saba County-$250,000.

2004 Planning and Capacity Fund grantees:

Aspermont-$26,800, Bartlett-$37,350, Collinsville-$32,750, Deport-$18,400, Devers-$19,200, Dodd City-$20,600, Eldorado-$47,200, Electra-$50,000, Freer-$49,200, Gunter-$32,750, Karnes City-$28,695, Leonard-$40,400, Littlefield-$28,100, Log Cabin-$23,800, Merkel-$44,800, Muleshoe-$50,000, Rankin-$26,800, San Perlita-$25,500, Spur-$31,050, Stamford-$50,000, Tahoka-$28,700, West-$47,200.

If you have any questions or need additional information, please contact Jeff Vistein at (512) 936-7878 or by e-mail at the following address jvistein@orca.state.tx.us.

TRD-200403992
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: June 17, 2004

♦ ♦ ♦

Texas Department of Transportation

Public Notice--Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 1-800-68-PILOT.

TRD-200404089
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 22, 2004

♦ ♦ ♦

University of Houston System

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System furnishes this notice of request for proposal (RFP). The University of Houston System seeks proposals from qualified firms to provide support for its implementation of PeopleSoft Student Administrative System. Interested parties are invited to express their interest and describe their capabilities on or before August 2, 2004.

The term of the contract is to be for a four month period beginning on or about August 2, 2004 and ending on or about December 2, 2004. Further technical information can be obtained from Brian McKinney at (713) 743-9116. All proposals must be specific and must be responsive to the criteria set forth in this request.

GENERAL INSTRUCTIONS: The University of Houston System (UHS) is in the process of implementing the PeopleSoft software suite. Over the past three years, UHS has successfully implemented PeopleSoft Financials, and Human Resources Management System (HRMS) for all campuses. PeopleSoft Student Administration (SA) modules are currently in production at the UH Clear Lake campus. UHS is in the process of upgrading HRMS and Financials at all the campuses, as well as SA at the Clear Lake campus. UHS is in the process of implementing Student Administration on the UH and Victoria campuses. An external peer review was conducted in January 2004, of the current PeopleSoft student implementation (SAA) project, and the upgrade efforts of the HRMS, SA at Clear Lake, and Finance systems. The review report detailed recommendations and action items for UHS. UHS is interested in retaining a consulting firm to support implementation of the recommendations of the review, assist in the implementation of the student functionality at other campuses, including upgrading the software already in production.

THE PROJECT: The PeopleSoft Implementation Support work will have the following components:

(1) Provide guidance for balancing ongoing operations and the demands of project implementation. This relates to Information Technology and Enrollment Services; Re-evaluate the SAA project's budget, based upon a bottom-up estimate of the project's scope. The budget should include support for change management and backfill, and address internal and external resources, hardware, software, and other required costs for the remainder of the current fiscal year, Fiscal Year '05 and projections for Fiscal Years '06 and '07;

(2) Develop a project management approach that articulates how the SAA project will be tracked and progress reported based on effort (work), budget, milestones, and other effective indicators of project status. The approach will also address how key stakeholders will oversee project progress through regular meetings, review and approval of work-planning packages, and receipt of project management metrics and status reports;

(3) Review the planned implementation sequence for SAA. Create a modified go-live strategy that reduces risk through a phased implementation based on academic calendars to minimize data conversion efforts;

(4) Create detailed project work plans, and detailed status reporting that tracks progress against plan, with regard to deliverables, schedule, milestones, effort, budget, staffing, and other key project indicators for the upgrade initiatives;

(5) Generate a communication and change management plan to articulate the need for and benefits of UH and UH Victoria (UHV) moving to PeopleSoft Student Administration;

(6) Refine the project organization structure and governance approach to help UHS achieve the upgrade and SAA project outcomes. This structure and approach must include roles and responsibilities for the major constituencies on the project;

(7) Develop contingency plans for the current production upgrades;

(8) Develop a written software modification policy that sets appropriate expectations;

(9) Perform a technology review to confirm the necessary third party tools are in place;

(10) Evaluate the current UHS capacity to maintain production PeopleSoft systems, and

(11) provide an order-of-magnitude estimate of the on-going support costs and alternative approaches. The consulting firm will assist the UHS in generating work-planning packages for the Student implementation at UH and UHV. Each work-planning package will include a stakeholder sign-off sheet, assumptions and overview documents, estimating factors, staffing plan, Gantt chart schedule, organization chart, and a high-level user participation schedule. Proposal responses should include, as a minimum, prior experience with the aforementioned systems and project work scope, a comprehensive list of deliverables, a project plan (including dates for deliverables), and costs associated with deliverables and references of same or similar projects with other major institutions of higher education.

CRITERIA FOR EVALUATION: Evaluation of Proposals and award to the Selected Proposer will be based on the following factors, as weighted and listed below:

(i) Evidence of ability to deliver project support as defined in the project description 50%;

(ii) Demonstrated understanding of goals as defined in the proposal description and deliverables 20%; and

(iii) Cost 30%.

GENERAL INSTRUCTIONS: Submit one original and two copies of your proposal in a sealed envelope to: Brian McKinney, University of Houston System, 207 Ezekiel Cullen Building, Room A, Houston, Texas 77204-2019 before 3:00 PM, August 2, 2004. The original shall be prepared on a word processor and formatted in at least 10-point-font that is clearly readable. The copies shall be of good, readable quality.

SCHEDULE:

August 2, 2004--Proposal due

Week of August 2, 2004--Firm is selected

Week of August 2, 2004--Project begins

December 2, 2004--Project completed

With the exception of the Proposal Due date, all dates are to be considered estimates and subject to adjustment.

COMPLIANCE WITH RFP REQUIREMENTS: By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. The System, at its sole discretion, may disqualify a Proposal from consideration, if the System determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

SIGNATURE, CERTIFICATION OF PROPOSER: The Proposal must be signed and dated by a representative of the Proposer who is authorized to bind the Proposer to the terms and conditions contained in this RFP and to compliance with the information submitted in the proposal. Each Proposer submitting a Proposal certifies to both (i) the completeness, veracity, and accuracy of the information provided in the Proposal and (ii) the authority of the individual whose signature appears on the

Proposal to bind the Proposer to the terms and conditions set for in this RFP. Proposals submitted without the required signature shall be disqualified.

OWNERSHIP OF PROPOSALS: All Proposals become the physical property of the System upon receipt.

USE, DISCLOSURE OF INFORMATION: Proposers acknowledge that the System is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a Proposal includes proprietary data, trade secrets, or information the Proposer wishes to except from public disclosure, then the Proposer must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL--PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the Proposer as proprietary will be used by the System only for purposes related to or arising out of the (i) evaluation of Proposals, (ii) selection of a Proposer pursuant to the RFP process, and (iii) negotiation and execution of a Contract, if any, with the Proposer selected.

REQUEST FOR CLARIFICATION: The System reserves the right to request clarification of any information contained in a Proposal.

TERMINATION: This Request for Proposal (RFP) in no manner obligates the University of Houston System to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston System and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston System reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals

TRD-200404178
Dona G. Hamilton
VC/VP for Legal Affairs and General Counsel
University of Houston System
Filed: June 23, 2004

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission (TWCC) 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

* Public Health Care Facility

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist,

* Employer

* General Public 1

In addition to these current vacancies, applications are being accepted for several other positions that will expire on August 31, 2004, leaving the following vacancies:

Primary

* Podiatrist

* Registered Nurse

Alternate

* Medical Doctor

* Physical Therapist

* Podiatrist

* Registered Nurse

* General Public Representative 2

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 web site 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 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 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 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 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 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, Attention: 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-200404175
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 23, 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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