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This month's front cover artwork:

Artist: *George A. Mondragon*

10th Grade

Fox Tech High School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. 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.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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IN ADDITION

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments Made April 13, 1999

To be judge of the 309th Judicial District Court, Harris County, until the next General Election and until her successor shall be duly elected and qualified: Eva M. Guzman, 12710 Timberland Trace, Houston, Texas 77065. Ms. Guzman will be replacing Judge John D. Montgomery of Houston who is deceased.

To be members of the Coastal Water Authority Board of Directors for terms to expire April 1, 2001: Darryl L. King, 13802 Glade Hollow Drive, Houston, Texas 77032, who is being reappointed; Gary R. Nelson, P.O. Box 1080, Mont Belvieu, Texas 77580, who is being reappointed.

To be members of the State Board of Dental Examiners for terms to expire February 1, 2005: J. Kevin Irons, DMD, 5509 Esquel Cove, Austin, Texas 78739, who is replacing Dr. J. Hadley Hall of Abilene whose term expired; Amy Landess Juba, 2205 South Travis, Amarillo, Texas 79109, who is replacing Jerry Burley of Houston whose term expired; Martha Manley Malik, D.D.S, 1501 Plantation, Victoria, Texas 77904, who is replacing Dr. Sheryl Beltrane of San Antonio whose term expired; Kent D. Starr, D.D.S, 3825 Herwol, Waco, Texas 76710, who is being reappointed; Nathaniel George Tippit, Jr., D.D.S., 8405 Burkhart Road, Houston, Texas 77055, who is replacing Dr. Miro Pavelka of Richardson whose term expired.

To be members of the Brazos River Authority Board of Directors for terms to expire February 1, 2005: Andrew Jackson, 16311 Quail Nest Court, Missouri City, Texas 77489, who is replacing Hulen M. Davis of Prairie View whose term expired; Joe B. Hinton, 4001 Bosque Ridge Road, Crawford, Texas 76638, who is replacing Lee M. Kidd of Denver City whose term expired; Celeste L. Kotter, P.O. Box 600, Marlin, Texas 76661, who is replacing Johnoween Smyth Mathis of Hearne whose term expired; Robert B. Lane, Route 1, Box 189, Clifton, Texas 76634, who is replacing David Lengefeld of Hamilton whose term expired; Steve D. Pena, #13 Old Oaks Drive, Round Rock, Texas 78664, who is replacing Horace R. Grace of Killeen whose term expired; M. Lance Phillips, 310 South Ross, Mexia, Texas 76667, who is replacing Everet E. Kennemer, of Lake Jackson whose term expired; Janet Kay Sparks, 502 Hyde Park, Cleburne, Texas 76031, who is replacing Karen C. Matkin of Waco whose term expired.

Appointments Made April 14, 1999

To be members of the Motor Vehicle Board of the Texas Department of Transportation for terms to expire January 31, 2005: Robena E. Jackson, 7406 Ophelia Drive, Austin, Texas 78752, who is replacing Stephen Paul Webb of Austin whose term expired; Kevin D. Pagan, 6004 North 28th Lane, McAllen, Texas 78504, who is replacing Laurie Brown Watson of Austin whose term expired; Joe W. Park, 5827 Mapleshade Lane, Dallas, Texas 75252, who is being reappointed.

To be members of the Air Conditioning and Refrigeration Contractors Advisory Board for terms to expire February 1, 2005: Guy F. Ellyson, 11422 Hendon Lane, Houston, Texas 77072, who is being reappointed; Lee Jaye Rosenberg, 46 Westelm Circle, San Antono, Texas 78230, who is being reappointed.

Appointments Made April 16, 1999

To be members of the Texas Board of Mental Health and Mental Retardation for terms to expired January 31, 2005: Kenneth Z. Altshuler, M.D., 5227 Meaders Lane, Dallas, Texas 75229-6647, who is replacing Janelle Smith Jordan of Houston whose term expired; Sharon Swift Butterworth, 6100 Pinehurst Drive, El Paso, Texas 79912, who is replacing Rosemary Vivero Neill of El Paso whose term expired; Lynda K. Scott, 2 East Rock Wing Place, The Woodlands, Texas 77381, who is replacing Edward Brunson Weyman of Midland whose term expired.

To be members of the Credit Union Commission for terms to expire February 15, 2001: Karen A. Jacks, 1005 Deer Park Court, Longview, Texas 75604, who is filling the unexpired term of Gail Mackie of San Antonio who resigned and terms to expire February 15, 2005: Floyde W. Burnside, Jr., CPA, 627 Patterson Avenue, San Antonio, Texas 78209, who is replacing Susan Chen Jackson of Houston whose term expired; Fran V. Hawkins, Route 1 Box 148-F, Robstown, Texas 78380, who is replacing Linda Mann of Bay City whose term expired; Carlos Puente, P.O. Box 331655, Fort Worth, Texas 76163, who is being reappointed.

To be members of the Texas State Board of Examiners of Professional Counsels for terms to expire February 1, 2005: Ana C. Bergh, 3211 Lakeshore Drive, Edinburg, Texas 78539, who is being reappointed; Judy Powell, 23 Thornbush Place, The Woodlands, Texas 77381, who is replacing Alice Jones of Houston whose term expired.

To be members of the Texas State Board of Chiropractic Examiners for a term to expire February 1, 2003: Cheryl Belinda Barber, 10311 Cedarhurst, Houston, Texas 77096, who is filling the unexpired term of Lisa Garza of Dallas who resigned and terms to expire February 1, 2005: Robert L. Coburn, D.C., 1636 Azalea, Sweeny, Texas 77480, who is replacing Keith Hubbard of Fort Worth whose term expired; Serge P. Francois, D.C., 2101 Creekside Circle South, Irving, Texas 75063, who is replacing Carolyn Davis Williams of Houston whose term expired.

To be members of the State Office of Risk Management for terms to expire February 1, 2005: Judge Micaela Alvarez, 6100 North 28th Street, McAllen, Texas 78504, who is being reappointed; James E. "Jim" Green, 3113 Woodridge Drive, Hurst, Texas 76054, who is replacing Frances Oliver of Dallas whose term expired.

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

Subchapter D. Early Childhood Intervention Advisory Committee

25 TAC §621.62

The Interagency Council on Early Childhood Intervention is renewing the effectiveness of the emergency adoption of amended §621.62, for an 11-day period. The text of amended section was originally published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 339).

Filed with the Office of the Secretary of State, on April 26, 1999.

TRD-9902453
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Effective date: May 5, 1999
Expiration date: May 16, 1999
For further information, please call: (512) 424–6750

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

The Office of the Governor proposes to repeal §§3.555, 3.790, 3.4150, 3.8300, 3.8305, 3.8310, 3.8315, and 3.8320. The Office of the Governor proposes amendments to §§3.5, 3.115, 3.130, 3.140, 3.150, 3.180, 3.215, 3.230, 3.235, 3.240, 3.250, 3.280, 3.305, 3.315, 3.340, 3.350, 3.380, 3.405, 3.410, 3.415, 3.430, 3.440, 3.450, 3.480, 3.500, 3.505, 3.510, 3.515, 3.540, 3.585, 3.615, 3.640, 3.685, 3.715, 3.740, 3.910, 3.940, 3.980, 3.985, 3.1010, 3.1050, 3.1105, 3.1110, 3.1115, 3.1140, 3.2000, 3.2020, 3.3065, 3.3070, 3.4020, 3.4055, 3.4080, 3.5004, 3.6075, 3.6080, 3.6095, 3.6110, and 3.7010. The Office of the Governor proposes new §§3.797, 3.1040, 3.1190, 3.4160, 3.4165, 3.4170, 3.4175, and 3.4180. This chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general for the first five year period the rules are in effect there will be no fiscal impact on the state. The funds remain stable and the method for allocating funds on a regional basis has not changed.

Mr. Jones also has determined that for the first five year period the proposed rules are in effect the public benefit will be clarification of funding sources. There will be no anticipated economic cost to persons or small businesses.

Comments on the proposed chapters may be submitted to Pamela Brown at the Criminal Justice Division of the Governor's Office, P. O. Box 12428, Austin, Texas 78711.

Subchapter A. Criminal Justice Division-General Powers

1 TAC §3.5

The amendment is proposed under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.5. Applicability.

These rules shall apply to applications and grants for the 1998 [~~1997~~] Texas Narcotics Control Program applications that begin on or after June 1, 1999 [~~1998~~], Violence Against Women Act applications that begin on or after June 1, 1999 [~~1998~~], Victims of Crime Act applications that begin on or after July 1, 1999 [~~1998~~], Criminal Justice Planning (421) Fund applications that begin on or after September 1, 1999 [~~1998~~], Safe and Drug-Free Schools and Communities Act applications that begin on or after September 1, 1999 [~~1998~~], Title V Delinquency Prevention Fund applications that begin on or after April 1, 1999 [~~1998~~], Crime Stoppers Assistance Program applications that begin on or after November 1, 1999 [~~1998~~], Residential Substance Abuse Treatment applications that begin on or after September 1, 1999 [~~1998~~], and Challenge applications that begin on or after September 1, 1999 [~~1998~~].

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 April 19, 1999.

TRD-9902310
James Hines
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 475-2594

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Subchapter B. Fund-Specific Grant Policies

Division 1. State Criminal Justice Planning (421) Fund

1 TAC §§3.115, 3.130, 3.140, 3.150, 3.180

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.115. Submission and Selection Process.

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

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division by the first working day in March each year. Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.]

§3.130. Years of Funding.

The maximum years of funding available for a single project is five years. Regional councils of governments may exempt projects from both this policy and the decreasing funding ratio policy up to an amount set each year by the Criminal Justice Division. [CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results, and continued need is documented. The executive director of CJD must approve such an exemption in writing.]

§3.140. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. [No project under this policy will be considered for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.]

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD, required as match in specific budget items, or earned as program income. The grantee may, however, be required to disclose those other funding sources. Additionally, if the grantee's number of personnel and their responsibility or expertise levels decrease from year to year, then the grantee must justify how a consistent level of service is being maintained with less personnel time or expertise.

(c) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region. Additionally, the regional councils of governments may exempt projects from this policy and the years of funding policy under §3.130 of this title (relating to Years of Funding) up to an amount set by CJD.

(d) CJD will not accept applications that request more money than this policy allows. As a result, it is important for the applicant to carefully calculate the maximum amount of the funding request using the ratios provided above.

[(c) Grants with original fiscal years of funding of 1994 or before are exempt from the benchmark policy and follow rules in effect at the time of original funding. Continuation funding, however, is not guaranteed.]

[(d) Projects to regional councils of governments for planning or regional law enforcement projects are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region.]

§3.150. Professional and Contractual Services.

In addition to the general policies referenced in §3.3050 of this title (relating to Professional and Contractual Services) CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software. The grantee may use CJD funds for such computer-related costs during the first year of funding only. A special discount can count as a match as long as this discount was for the project only and was not available to the general public.

§3.180. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Applicants with a plan should include the page that indicates the indirect cost from their allocation plan with the application. If the grantee uses the two-percent rule, indirect costs may be charged to CJD funds but not to cash match. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. [Additionally, such support services may not be listed under direct services if the grantee receives any indirect costs.]

(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 April 19, 1999.

TRD-9902309
James Hines
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 475-2594

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Division 2. Juvenile Justice and Delinquency Prevention Act Fund

1 TAC §§3.215, 3.230, 3.235, 3.240, 3.250, 3.280

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.215. Submission and Selection Process.

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

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division by the first working day in March each year. Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.]

§3.230. Years of Funding.

The maximum years of funding available for a single project is five years. Regional councils of governments may exempt projects from both this policy and the decreasing funding ratio policy up to an amount set each year by the Criminal Justice Division. [CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results, and continued need is documented. The executive director of CJD must approve such an exemption in writing.]

§3.235. Funding Levels.

In general, the minimum amount that may be applied for in grant funds is $1,000 in year one [$5,000]. If the decreasing funding ratio §3.240 of this title (relating to Decreasing Funding Policy) causes a continuation application to be eligible for less than that amount, then the lower amount is acceptable providing the minimum was met in the first year of funding. There is no maximum grant award.

§3.240. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. [No project under this policy will be considered for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.]

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD, required as match in specific budget items, or earned as program income. The grantee may, however, be required to disclose those other funding sources. Additionally, if the grantee's number of personnel and their responsibility or expertise levels decrease from year to year, then the grantee must justify how a consistent level of service is being maintained with less personnel time or expertise.

(c) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region. Additionally, the regional councils of governments may exempt projects from this policy and the years of funding policy under §3.230 of this title (relating to Years of Funding) up to an amount set by CJD.

(d) CJD will not accept applications that request more money than this policy allows. As a result, it is important for the applicant to carefully calculate the maximum amount of the funding request using the ratios provided above.

(e) The amount of the award in state fiscal year 1997 set the funding benchmark for following years of funding, if the grant was active in that year.

§3.250. Professional and Contractual Services.

In addition to the general policies in §3.3050 of this title (relating to Professional and Contractual Services), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software. The grantee may use CJD funds for these computer-related costs during the first year of funding only. A special discount can count as a match as long as this discount was for the project only and was not available to the general public.

§3.280. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Applicants with a plan should include the page that indicates the indirect cost from their allocation plan with the application. If the grantee uses the two-percent rule, indirect costs may be charged to CJD funds but not to cash match. [Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.]

(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 April 19, 1999.

TRD-9902308
James Hines
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 475-2594

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Division 3. Title V Delinquency Prevention

1 TAC §§3.305, 3.315, 3.340, 3.350, 3.380

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.305. Eligible Projects.

Projects must meet the requirements of §3.2005 of this title (relating to Juvenile Justice and Youth Projects). [Additionally, projects must address identified risk factors, including individual characteristics such as alienation, rebelliousness, and lack of bonding to society; family influences such as parental conflict, child abuse, and a family history of substance abuse, criminality, teen pregnancy, and school dropout; school problems such as early academic failure and lack of commitment to school; negative peer group influences in the areas of drugs, gangs, and violence; and neighborhood factors such as economic deprivation, high rates of substance abuse, crime, and

~~neighborhood decay.~~] Additionally all applications must include a comprehensive three-year plan that addresses identified risk factors, individual characteristics such as alienation, rebelliousness, and lack of bonding to society; family influences such as parental conflict, child abuse, and a family history of substance abuse, criminality, teen pregnancy, and school dropout; school problems such as early academic failure and lack of commitment to school; negative peer group influences in the areas of drugs, gangs, and violence; and neighborhood factors such as economic deprivation, high rates of substance abuse, crime, and neighborhood decay. Plans must also identify protective factors that counteract the risks described above. This approach requires a commitment by and the participation of the entire community in developing and implementing a comprehensive strategy. The strategy must include an inventory of all resources available to implement the strategy, including federal, state, local, and private. [~~Applicants must develop and implement a comprehensive community strategy. Strategies must include an inventory of all resources available to implement the strategy, including federal, state, local, and private.~~]

§3.315. Submission and Selection Process.

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

(c) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year. Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [~~Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.~~]

§3.340. Match Policy.

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

(f) If an applicant is required to show a match in the application and does not demonstrate an adequate match to meet the requirement, the CJD portion of the application will be decreased to compensate.

§3.350. Professional and Contractual Services.

In addition to the general policies in §3.3050 of this title (relating to Professional and Contractual Services) CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software. The grantee may use CJD funds for these computer-related costs during the first year of funding only. A special discount can count as a match as long as this discount was for the project only and was not available to the general public.

§3.380. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Applicants with a plan should include the page that indicates the indirect cost from their allocation plan with the application. If the grantee uses the two-percent rule, indirect costs may be charged to CJD funds but not to cash match. [~~Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.~~]

(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 April 19, 1999.

TRD-9902307
James Hines
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 475-2594

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Division 4. Safe and Drug-Free Schools and Communities Act Fund

1 TAC §§3.405, 3.410, 3.415, 3.430, 3.440, 3.450, 3.480

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.405. Eligible Projects.

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

(d) To ensure that SDFSC funds are used in ways that are most likely to reduce drug use and violence among youths, applicants should coordinate projects with other available prevention efforts. As a requirement of the Act, the U.S. Department of Education requires that all SDFSC-funded projects meet certain rules. Among these rules are the Principles of Effectiveness, which require each grant project to:

(1) Analyze objective information about the local drug and violence situation to narrowly define the problems in the community.

(2) Using the objective analysis and community planning efforts, establish a set of measurable goals and objectives and design a project to meet them.

(3) Implement a project based on curricula or methods that have been researched or evaluated and are shown to prevent or reduce drug use, violence, or disruptive behavior among youths.

(4) Conduct periodic evaluations to assess progress toward achieving goals and objectives, and use these evaluation results to refine, improve, and strengthen both the project and the goals and objectives of the project.

(e) These federal rules require grantees to either base their project fully on an already evaluated and proven project or to prove its effectiveness within two years. This federal requirement can be met in one of two ways: The project can be based on an existing method or curriculum that has already been evaluated and proven effective. If this method is chosen, a citation for the research study must be provided in the grant application. A grantee funded under this chapter may conduct an evaluation that proves its effectiveness by the end of their grant in fiscal year 2001, if another award is made. Funding for such an evaluation may be requested in the grant budget. If such an evaluation is not provided to CJD by the end of the second year, then federal rules require that CJD no longer fund the project.

§3.410. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local units of government, universities and colleges, independent school districts, nonprofit corporations, local crime control and prevention districts, state agencies, Native American tribes, [~~and~~] faith-based organizations, and regional education service centers. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.415. Submission and Selection Process.

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

(c) Funds are set aside by CJD for statewide projects. Application kits for statewide projects are available at CJD. Applications for statewide projects must be submitted to the Criminal Justice Division by the first working day in March each year. Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [~~Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.~~]

§3.430. Years of Funding.

The maximum years of funding available for a single project is five years. Regional councils of governments may exempt projects from both this policy and the decreasing funding ratio policy up to an amount set each year by the Criminal Justice Division. [~~CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results, and continued need is documented. The executive director of CJD must approve such an exemption in writing.~~]

§3.440. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. [~~CJD will not consider any project for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.~~]

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD, required as match in specific budget items, or earned as program income. The grantee may, however, be required to disclose those other funding sources. Additionally, if the grantee's number of personnel and their responsibility or expertise levels decrease from year to year, then the grantee must justify how a consistent level of service is being maintained with less personnel time or expertise.

(c) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region. Additionally, the regional councils of governments may exempt projects from this policy and the years of funding policy under §3.430 of this title (relating to Years of Funding) up to an amount set by CJD.

(d) (No change.)

(e) CJD will not accept applications that request more money than this policy allows. As a result, it is important for the applicant to carefully calculate the maximum amount of the funding request using the ratios provided above.

§3.450. Professional and Contractual Services.

In addition to the general policies in §3.3050 of this title (relating to Professional and Contractual Service), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software. The grantee may use CJD funds for these computer-related costs during the first year of funding only. A special discount can count as a match as long as this discount was for the project only and was not available to the general public.

§3.480. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. Applicants with a plan should include the page that indicates the indirect cost from their allocation plan with the application. If the grantee uses the two-percent rule, indirect costs may be charged to CJD funds but not to cash match. [~~Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.~~]

(b) (No change.)

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

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Division 5. Victims of Crime Act Fund

1 TAC §§3.500, 3.505, 3.510, 3.515, 3.540, 3.585

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.500. Source and Purpose.

The Victims of Crime Act of 1984, as amended, 421 USC 10603 [~~10601~~] et seq. authorizes the VOCA grant program under Public Law 98-473, title II, chapter XIV. The Office of Victims of Crime in the United States Department of Justice provides an annual formula grant to Texas. The program provides funds to operate

projects with the primary mission of providing assistance and services directly to victims of crime. These services do not include monetary compensation or financial assistance. VOCA provides funding for programs that provide victims with the assistance and services necessary to speed their recovery from a criminal act and aid them in the criminal justice process. New applicants must demonstrate that, at a minimum, 25% of their financial support comes from non-federal sources.

§3.505. Eligible Projects.

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

(e) Activities that are ineligible for grant funding include:

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

(4) VOCA funds cannot be used to pay for activities that are directed at improving the criminal justice system's effectiveness and efficiency, such as witness notification and management activities and expert testimony at trial. [~~Witness management or notification programs are ineligible. Victim/witness assistance programs that provide both victim services and witness notification services can receive funding support only for that portion of the program that provides direct services to crime victims.~~]

(5)-(6) (No change.)

(7) VOCA funds cannot be used to pay for non-emergency legal representation such as for divorces, custody cases, or civil restitution recovery efforts. [~~Legal assistance and representation in civil matters are ineligible, except obtaining protective orders, elder abuse petitions, and child abuse petitions.~~]

(8)-(23) (No change.)

(24) Funds cannot be used for capital improvements, security guards, and body guards.

(f) Eligible projects include:

(1) Immediate health and safety services that respond to the immediate emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; hospital accompaniment; hot line counseling; emergency food, clothing, transportation, and shelter; emergency short-term nursing home shelter; emergency legal assistance such as filing protective orders and obtaining emergency custody or visitation rights in cases of family violence when necessary to protect the health and safety of the victim; temporary measures to secure the home in situations where a violent crime occurs in the victim's home and it is necessary for the victim to remain there; one-time clothing and food purchases for the victim immediately following the crime; and other emergency services intended to restore the victim's sense of security. In situations where a violent crime occurs in the victim's home and it is necessary for the victim to remain there, projects may use CJD funding for temporary measures to secure the home. In no event can the total expenditures for clothing, food, and securing the home exceed $300 per victimization incident.

(2)-(8) (No change.)

(9) For sexual assault victims, forensic exams are allowable costs only to the extent that other funding sources are unavailable or insufficient and such exams conform with state evidentiary collection requirements.

§3.510. Eligible Applicants.

Eligible to apply for grant funds are local units of governments, state agencies, nonprofit corporations, Native American tribes, [~~regional education service centers,~~] state agencies, and faith-based organizations. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.515. Submission and Selection Process.

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

(c) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year.Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [~~Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.~~]

§3.540. Match Policy.

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

(f) If an applicant is required to show a match in the application and does not demonstrate an adequate match to meet the requirement, the CJD portion of the application will be decreased to compensate.

(g) VOCA projects must have volunteers.

(h) Cities and counties with continuation projects must contribute at least the same level of matching funds that they contributed in the preceding year.

§3.585. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds and grantee match. The project director of the grant must sign all progress reports. Progress reports are due [~~quarterly~~] twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. [~~The report is due 20 days after the end of each three month reporting period.~~] Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

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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Office of the Governor
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1 TAC §3.555

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

The repeal is proposed under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor,

Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.555. Transportation, Travel, and Training.

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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Division 6. Crime Stoppers Assistance Fund

1 TAC §§3.615, 3.640, 3.685

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.615. Submission and Selection Process.

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

(c) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year. Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [~~Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.~~]

§3.640. Match Policy.

(a) Programs that are in their first or second year of funding need not provide a cash match except on equipment. Programs in their third and subsequent years of funding must provide a match that is equivalent to the total amount of the grant award. This requirement may [~~must~~] be satisfied through cash or in-kind contributions [~~only~~]. The Criminal Justice Division may waive the match requirement if the applicant can adequately demonstrate that the project will benefit Crime Stoppers on a statewide basis. Grants to conduct a Crime Stoppers training conference have no cash match requirement.

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

(f) If an applicant is required to show a match in the application and does not demonstrate an adequate match to meet the requirement, the CJD portion of the application will be decreased to compensate.

§3.685. Progress Reports.

(a) Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due the 15th day of the month following the end of each quarter [~~monthly~~]. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

(b) (No change.)

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

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Division 7. Texas Narcotics Control Program

1 TAC §§3.715, 3.740, 3.797

The amendments and new section are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.715. Submission and Selection Process.

(a) An original and one copy of TNCP applications must be sent directly to the Criminal Justice Division and a copy must be sent to the criminal justice planner at the appropriate regional council of governments. [~~All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.~~]

(b) (No change.)

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division by the first working day in March each year. Once the applications arrive at CJD, staff members and other experts or board members selected by the CJD director will review the applications for eligibility and cost-effectiveness and rate them competitively by funding source. [~~Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.~~]

§3.740. Match Policy.

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

(e) Grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(f) If an applicant is required to show a match in the application and does not demonstrate an adequate match to meet the requirement, the CJD portion of the application will be decreased to compensate.

(g) The sources of match for TNCP projects must be current at the time of grant award, not anticipated. Additionally, the applicant must identify the sources in the application.

§3.797. Grant Officials.

In addition to the general policies in §3.6000 of this title (relating to Grant Officials), the project director for a multi-jurisdictional task force must be the chief of police for grants to cities or the sheriff or the district attorney for grants to counties. The project director may designate a project coordinator within their department or office or from a participating law enforcement agency to represent them in the day-to-day management of the task force. The project director, however, may not abrogate their responsibility to ensure that the project is operated efficiently, effectively, and in accordance with all laws, regulations, and guidelines that govern all CJD grants. The project director may not be the task force commander.

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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1 TAC §3.790

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

The repeal is proposed under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.790. Two-Year Application.

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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Division 8. Violence Against Women Act Fund

1 TAC §§3.910, 3.940, 3.980, 3.985

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.910. Eligible Applicants.

Eligible to apply for grant funds are state agencies, nonprofit organizations, local units of governments, Native American tribes, regional councils, state agencies, universities and colleges, [~~and~~] faith-based organizations, independent school districts, local crime control and prevention districts, and regional education service centers. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.940. Match Policy.

(a) All grantees, except nonprofit [~~and non-governmental victim services~~] programs and planning grants at the regional councils, must provide a 25% match. This requirement may be satisfied through cash contributions, in-kind contributions, or a combination of the two.

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

(f) If an applicant is required to show a match in the application and does not demonstrate an adequate match to meet the requirement, the CJD portion of the application will be decreased to compensate.

(g) Cities and counties with continuation projects must contribute at least the same level of matching funds that they contributed in the preceding year.

§3.980. Indirect Costs.

[~~(a)~~] Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. Applicants with a plan should include the page that indicates the indirect cost from their allocation plan with the application. If the grantee uses the two-percent rule, indirect costs may be charged to CJD funds but not to cash match.

[~~(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.~~]

§3.985. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. [~~Progress reports are due quarterly. The report is due 20 days after the end of each three month reporting period.~~] Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

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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Division 9. Challenge Grants

1 TAC §§3.1010, 3.1040, 3.1050

The amendments and new rule are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.1010. Eligible Applicants.

Eligible applicants for the first challenge activity set forth in §3.1005 of this title (relating to Eligible Projects), are independent school districts with alternative education programs that have high incidences [~~the highest reported incident~~] of crime, as determined by Texas Department of Public Safety survey data, as provided in Senate Resolution 879 of the 73rd Legislature. Eligible applicants for the second challenge activity set forth in §3.1005 of this title are counties with Juvenile Justice Alternative Education Programs [~~with populations over 125,000~~].

§3.1040. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. CJD will not consider any project for sixth- or subsequent-year funding.

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD, required as match in specific budget items, or earned as program income. The grantee may, however, be required to disclose those other funding sources. Additionally, if the grantee's number of personnel and their responsibility or expertise levels decrease from year to year, then the grantee must justify how a consistent level of service is being maintained with less personnel time or expertise.

(c) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region. These policies on exemptions only apply to the State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, and Safe and Drug Free Schools and Communities Act fund.

(d) CJD will not accept applications that request more money than this policy allows. As a result, it is important for the applicant to carefully calculate the maximum amount of the funding request using the ratios provided above.

§3.1050. Professional and Contractual Services.

In addition to the general policies in §3.3050 of this title (relating to Professional and Contractual Services), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software for first year grants only.

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Division 10. Residential Substance Abuse Treatment

1 TAC §§3.1105, 3.1110, 3.1115, 3.1140, 3.1190

The amendments and new rule are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.1105. Eligible Projects.

Projects must provide residential substance abuse treatment to adult and juvenile offenders [~~adults and juveniles~~] incarcerated in correctional facilities. Eligible projects must include both a residential phase and an aftercare phase. Project expenses such as food costs that are not directly related to providing direct treatment to incarcerated offenders are ineligible.

§3.1110. Eligible Applicants.

Eligible to apply for grant funds are state agencies and counties that operate secure correctional facilities and community supervision and corrections departments. Applicants who receive grants may provide services directly in correctional facilities that they operate or they may contract with qualified service providers who meet all licensing and certification requirements.

§3.1115. Submission and Selection Process.

Application kits are available at CJD. The original and six copies of the application are due to the Criminal Justice Division by the date listed in the annual Request for Applications published in the *Texas Register*. CJD staff will conduct an initial screening of applications to determine eligibility. The executive director of CJD may appoint an internal review team to score and rank applications. Team members may include CJD staff, regional council representatives, and other persons with expertise in corrections and substance abuse treatment. [~~Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.~~]

§3.1140. Match Policy.

Grantees must provide a cash match of 25% of the total project costs. In-kind match contributions cannot be used to meet match requirements. Costs for the aftercare phase cannot be used to meet the match requirements.

§3.1190. Two Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. The application requires only one project narrative and set of signatures and attachments but requires two separate budgets.

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

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Subchapter C. General Grant Program Policies

Division 1. General Eligibility Requirements

1 TAC §3.2000, §3.2020

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.2000. Community Plans.

(a) (No change.)

(b) The plan must reflect the participation of the whole community, including representatives of public agencies, private nonprofit organizations, education, health, mental health, juvenile justice, criminal justice, child welfare, law enforcement, the private sector, community associations, faith-based organizations, victim services, and concerned citizens. A community planning group must be comprised of many interests and must be written around the general public safety topic and not a single topic. When the community plan is submitted it must include a list of everyone who participated in the planning process and the organization, agency, or interest they represent. Members of the community planning group intending to apply for funding under this community plan should indicate their intent to do so.

(c)-(h) (No change.)

§3.2020. Continuation Funding Policies.

(a) There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan and the project is recommended in a COG's regional plan. Additionally, all continuation projects must be eligible for funding in accordance with the requirements set forth in this chapter; have completed all administrative, program and financial requirements; have a history of timely progress and financial reports; and CJD must have the funds available; and CJD has funded the project fewer than the maximum number of years allowed. Continuation applications must follow all guidelines in this chapter and are subject to the same review, selection, award, and other procedures as all other applicants.

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

(d) Statewide projects must be ranked high enough in the CJD review rankings to receive funding.

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Division 2. General Grant Budget Requirements

1 TAC §3.3065, §3.3070

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.3065. Supplies and Direct Operating Expenses.

(a)-(i) (No change.)

(j) Grantees receiving vehicle operating costs must maintain adequate travel logs that include, at a minimum, dates, destinations, mileage amounts, and explanations of grant-related activities performed during the travel.

§3.3070. Program Income.

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

(e) Under the Criminal Justice Planning Fund, the Juvenile Justice and Delinquency Prevention Act Fund, the Safe and Drug-Free Schools and Communities Act, and the Title V Delinquency Prevention Fund, the only option for program income is to add it to existing funds and use it for purposes that further eligible project objectives.

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Division 3. Special Conditions and Required Documents

1 TAC §§3.4020, 3.4055, 3.4080, 3.4160, 3.4165, 3.4170, 3.4175, 3.4180

The amendments and new sections are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.4020. Nonprocurement Debarment Certification.
All applications for $25,000 or more under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that neither the applicant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by a federal department or agency. If the prospective lower tier participant is unable to certify to any of the statements in this certification, the prospective participant must attach an explanation to each application.

§3.4055. Independent Annual Audit Certification [~~Single Audit Act Certification~~].
(a)-(c) (No change.)

§3.4080. Regional Law Enforcement Training.
If a grant is for a regional law enforcement academy, the grantee must submit CJD a copy of the "Report of Training" form required by the Texas Commission on Law Enforcement standards and Education (TCLEOSE), which indicates which students completed the training and the agency each student represented. Additionally, a CJD funded academy must be licensed by TCLEOSE and participants must receive TCLEOSE credit for the training. The peace officer training courses must be open to all local peace officers equally as defined in Article 2.12 Code of Criminal Procedure. Training for radio dispatchers and jailers is limited to basic training. Funding for basic peace officer training is limited to the TCLEOSE mandated contact hours. [~~Applications to operate regional law enforcement academies must abide by all of the following requirements:~~]

[~~(1) Grantee must provide the following with the six month progress report: a summary list of schools conducted during the six-month period which lists the dates of the school, number of classroom hours for the course, name of the specific courses, number of students enrolled, number of students completed, and number of total contact hours for the course. Actual TCLEOSE reports do not have to be submitted to CJD, but must be maintained by the grantee and be available for CJD review during monitoring or audit reviews.~~]

[~~(2) The training academy providing services must be appropriately licensed by TCLEOSE. Any training course paid for with CJD funds must result in participants receiving credit hours from TCLEOSE.~~]

[~~(3) Peace officer training courses shall be open to all local peace officers as defined in the Texas Code of Criminal Procedure, article 2.12, on an equal basis. Reserve law enforcement officers, law enforcement radio dispatchers, and jailers are also eligible for training provided by CJD grant funds; however, dispatcher and jailer training is limited to basic training courses only.~~]

[~~(4) Funding for Basic Peace Officer Certification courses will be limited to the TCLEOSE mandated contact hours for each trainee, unless the grantee provides adequate justification for additional hours.~~]

§3.4160. Tax Exempt and Nonprofit Information.
All nonprofit corporations applying for CJD grant funds must complete the form found in the CJD Forms Packet.

§3.4165. Board Member List.
All nonprofit organizations must submit a list of board members with their phone numbers, addresses, agency names, and titles.

§3.4170. Copy of Fidelity Bond.
All Non profit agencies applying for continuation funds from CJD must include a copy of a fidelity bond indemnifying CJD against the theft, loss, or misuse of the entire amount of grant funds. New nonprofit applicants may submit a copy of a bond after a grant award, but should do so immediately as CJD will withhold funds until a bond is received. See Bonding and Insurance §3.6070 of this title (relating to Bonding and Insurance).

§3.4175. Credit Report.
All nonprofit agencies that have never before received grant funds from CJD must secure a credit report and submit it with the grant application.

§3.4180. Level of Service Certification.
All applications under the State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act, and Safe and Drug-Free Schools and Communities Act Fund must include a signed copy of this certification found in the CJD Forms Packet.

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 April 19, 1999.

TRD-9902295
James Hines
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 475-2594

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1 TAC §3.4150

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

The repeal is proposed under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.4150. Organization Chart.
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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James Hines
Assistant General Counsel
Office of the Governor
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Division 4. Award and Grant Acceptance

1 TAC §3.5004

The amendment is proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.5004. Submission and Selection Process.

(a) (No change.)

(b) Once an application has undergone an initial review, CJD will send a deficiency report to the applicant. For local and regional projects, this is accomplished through the regional councils of governments and applicants must send their resolutions to deficiencies to the criminal justice planner at the COG by the deadline set by the COG. For statewide projects, these reports are sent directly to the applicant and resolutions may be returned directly to CJD. These reports are preliminary assessments only and do not represent any final action or determination by the Office of the Governor. Receipt of a deficiency report is not a commitment to fund any portion of the project. Additional items in need of resolution [~~deficiencies~~] may be identified after the date of a preliminary review [~~deficiency~~] report. It is within the complete discretion of the Governor's Office to determine whether an error or discrepancy [~~a deficiency~~] will result in notification to the applicant and a request for resolution or whether a funding cut will be made without resolution by the applicant.

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

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

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James Hines
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Division 5. Administering Grants

1 TAC §§3.6075, 3.6080, 3.6095, 3.6110

The amendments are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.6075. Withholding Funds.

(a) (No change.)

(b) CJD may withhold funds from a specific project for reasons that include, but are not limited to:

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

(3) significant problems [~~deficiencies~~] or irregularities in records maintained by the grantee or its agent of operation and administration;

(4)-(10) (No change.)

(11) A discovery that the applicant is delinquent on a state, federal, or other debt.

(c) CJD may withhold funds from all projects operated by a grantee for reasons that include, but are not limited to:

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

(4) A discovery that the applicant is delinquent on a state, federal, or other debt.

(d)-(f) (No change.)

§3.6080. Grant Termination.

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

(f) A grantee may appeal the termination of a grant by writing to the executive director of CJD within ten days from the date of the suspension or termination notification. The grantee may submit written documentation in support of the appeal. The executive director of CJD will consider any documentation submitted by a grantee in support of an appeal. The decision of the executive director concerning an appeal of a termination will be final [~~unless overturned by a court of competent jurisdiction~~].

§3.6095. Violations of Laws.

The grantee and its personnel must communicate in writing, immediately upon discovery, to CJD and, if applicable, to the local prosecutor's office, any knowledge, suspicion, or evidence of any legal violations encountered by the grantee or during monitoring visits, including misappropriation of funds, fraud, theft, embezzlement, forgery, or any serious irregularities or noncompliance with the requirements outlined in this chapter. Grantees whose projects or personnel become involved in any litigation, whether civil or criminal, must notify CJD immediately and forward a copy of any demand notices, law suits, indictments, etc. In the event a federal or state court or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, national origin, sex, age, or handicap against the project or project personnel, the grantee must forward a copy of the findings to CJD.

§3.6110. Progress Reports.

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

(c) CJD may prescribe forms for such reports, which the grantee must use. Grantees must use the correct grant number on the form. Failure to do so may delay processing of the report and, therefore, cause a delay in the reimbursement of grant funds.

(d)-(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.

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James Hines
Assistant General Counsel
Office of the Governor
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Division 6. Program Monitoring and Audits

1 TAC §3.7010

The amendment is proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.7010. Grantee Appeal and CJD Review Board.

(a) If CJD decides not to fund an application or any part of an application, an applicant may notify CJD of their intent to appeal the decision by writing to the director of CJD within 10 days from the date of notification. If the basis for the appeal involves actions by the regional council of governments, then applicants must pursue a remedy at the COG level before presenting information for an appeal to CJD. Further, appeals must be based on a verifiable error made during the prioritization or review process and the applicant must be able to show that the error actually caused the application or portion of the application to not be funded. The applicant should submit written documentation in support of the appeal. Letters and phone calls of support will not be considered as part of the official appeal process. The Governor or his designee will consider any documentation submitted by the applicant that meets the criteria as explained in this section. The decision concerning an appeal is final. [~~A grantee must, within 30 working days of an audit or monitoring report, submit documentation to respond to findings and questioned costs contained in an audit, management letter, or monitoring report. Any documentation may be submitted to CJD in person at 1100 San Jacinto, Second Floor, Austin, Texas 78701, or by mail to Program Compliance, Criminal Justice Division, P. O. Box 12428, Austin, Texas 78711. CJD will review the documentation for legal, financial, and program acceptability under state, federal, and CJD rule.~~]

(b) (No change.)

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

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James Hines
Assistant General Counsel
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Subchapter D. Criminal Justice Division Advisory Boards

Division 3. Governor's Drug Policy Advisory Board

1 TAC §§3.8300, 3.8305, 3.8310, 3.8315, 3.8320

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

The repeals are proposed under Texas Government Code, Title 7, §772.006 (a) (11) which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these proposed rules.

§3.8300. Establishment.
§3.8305. General Powers.
§3.8310. Composition.
§3.8315. Meeting.
§3.8320. Compensation.

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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James Hines
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TITLE 4. AGRICULTURE

Part XI. Texas Food and Fibers Commission

Chapter 201. Commission Administration

4 TAC §§201.1-201.9

The Texas Food and Fibers Commission proposes new rules, §§201.1-201.9, concerning commission administration. These new rules are being proposed to replace existing bylaws that address administrative operations.

Robert V. Avant, Jr., P.E., Executive Director, has determined that for the first five-year period that the sections are in effect there will be no new fiscal implications for state or local government as a result of administering the rules.

Mr. Avant also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be clarification and formalization of the commission's procedures. There will be no effect on small businesses as a result of enforcing these sections. There is no new anticipated economic cost to entities who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert V. Avant, Jr., P.E., Executive Director, Texas Food and Fibers Commission, P.O. Box 12046, Austin, Texas, 78711-2046.

The sections are proposed under the Agriculture Code, Chapter 42, which provides the commission with the authority to promulgate rules consistent with the Code.

No other articles, statutes, or codes are affected by these proposed rules.

§201.1. Definitions.

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

(1) Act–Texas Agriculture Code, Chapter 42, Texas Food and Fibers Commission.

(2) Commission–The Texas Food and Fibers Commission.

(3) Commissioners–The chancellor of The Texas A&M University System, the president of The University of Texas, the president of Texas Tech University, and the president of Texas Woman's University.

(4) Committee–The Industry Advisory Committee.

(5) Executive Director–the Executive Director of the Commission.

§201.2. Authority.

These rules are adopted pursuant to the authority granted to the Texas Food and Fibers Commission at Chapter 42, Texas Agriculture Code.

§201.3. Purpose.

The purpose of the Commission is to contract with universities engaged in agricultural research in the state to conduct surveys, research, and investigations relating to the production and increased use of cotton, oilseed products, wool, mohair, and other textile products.

§201.4. Organization.

(a) The Commission is composed of the chancellor of the Texas A&M University System, the president of The University of Texas, the president of Texas Tech University; and the president of Texas Woman's University.

(b) Each member of the Commission shall serve a two-year term as chairman, rotating the service in the order in which the members are listed in subsection (a) of this section.

(c) The Commissioners shall: set policy, approve rules, approve legislative appropriations requests, approve annual operating budgets, appoint the industry advisory committee, approve research projects, and employ an Executive Director. The Commissioners shall retain and exercise all authority and responsibility assigned to them by law and not delegated to the Executive Director or their designated representatives.

(d) Each Commissioner shall designate a liaison officer to work with committees and staff members of the Commission and agencies, departments, and institutions consulting or contracting with the Commission concerning the daily operations of the work of the Commission. A Commissioner may grant the liaison officer the authority to represent their respective university, but the liaison officer shall not have voting privileges at Commission meetings.

(e) The Executive Director shall: manage the day-to-day business of the Commission; employ staff; draft rules, agreements, contracts, and other documents for approval by the Commission; prepare the agency strategic plan, biennial legislative appropriations request, annual operating budget, annual financial report, and other reports required by the governor, legislature, and state and federal agencies; interact with staff and officials of universities, federal government, and state government concerning Commission programs; interact with producers and members of the industries that the Commission serves; coordinate with the Industry Advisory Committee; request and review research proposals; recommend research programs; coordinate approved research projects at the participating universities; monitor other private, federal, and state research; receive and review research reports; receive, review, and approve payment vouchers; approve disbursements in accordance with the Commission's operating budget; conduct an annual property inventory; and carry out other duties and responsibilities assigned by law or delegated by the Commission.

(f) All decisions of the Commission shall be by majority vote of Commissioners present and voting.

§201.5. Commission Meetings.

(a) The Commission shall meet at least once each fiscal year, prior to September 1, for budget approval, appointment of the Industry Advisory Committee, review of Industry Advisory Committee recommendations, review of Commission operations, and other business. The agenda and advance meeting materials and recommendations of the Industry Advisory Committee shall be mailed by the Executive Director to all members of the Commission at least ten calendar days prior to the meeting.

(b) Special meetings may be called by the chairman of the Commission by written notice to members at least 15 calendar days prior to such meetings.

(c) All Commission meetings shall be posted and held in accordance with the Texas Open Meetings Act.

(d) All formal actions by the Commission shall be approved by a majority vote of the Commissioners.

(e) Minutes of all Commission meetings shall be taken and recorded. A certified copy of the minutes shall be submitted to each of the Commissioners and to the Legislative Reference Library.

§201.6. Fiscal Management.

(a) All monies received directly by the Commission for work performed under contract, research grants, and matching funds shall be deposited with the State Treasury according to law. Copies of the instruments relating to such transactions shall be maintained in the offices of the Commission.

(b) Purchase vouchers received by Commission shall be: verified for accuracy, compliance with State of Texas requirements, and compliance with the Commission's contract or memorandum of agreements; approved and signed by the Executive Director; and processed for payment.

(c) The period September 1 through August 31 shall constitute a fiscal year.

(d) The records of all funds may be audited at the discretion of the State Auditor.

(e) The Commission shall prepare an annual financial report in accordance with state law.

§201.7. Administration of Texas Public Information Act.

(a) The Commission, pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, shall provide copies of public records upon request. All requests must be in writing and clearly identify the requested records.

(b) The Executive Director is designated the custodian of public records of the Commission. All public records and public information shall be made available upon written request in the offices of the Commission during normal business hours. If the requested information is in active use or in storage, the applicant will be so notified in writing and a date and hour set within a reasonable time when the record will be available.

(c) All reproduction fees shall conform to the Texas General Services Commission schedule.

(d) Inspection of records. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the department. However, if the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees shall be provided.

§201.8. Complaints.

Upon request, the public or persons contracting with the Commission shall be provided notice of the Commission's name, the mailing address and the telephone number where complaints may be directed. Notice shall be effective if provided by any of the following methods:

(1) By typed or stamped notice placed on an agreement between the Commission and persons contracting with the Commission;

(2) By posting notice at the Commission's premise accessible to the Commission's consumers, service recipients or persons contracting with the Commission; or

(3) By written notice from the Executive Director of the Commission to the directors of all other state agencies and entities that are consumers, service recipients or persons contracting with the Commission.

§201.9. Written Communications with the Texas Food and Fibers Commission.

Applications and other written communications to the Commission should be addressed to the attention of the Texas Food and Fibers Commission, P.O. Box 12046, Austin, Texas, 78711-2046.

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 April 22, 1999.

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Robert V. Avant, Jr., P.E.
Executive Director
Texas Food and Fibers Commission
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For further information, please call: (512) 936-2451

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Chapter 202. Industry Advisory Committee

4 TAC §§202.1-202.3

The Texas Food and Fibers Commission proposes new rules, §§202.1-202.3, concerning the industry advisory committee. These new rules are being proposed to replace existing bylaws that address the industry advisory committee.

Robert V. Avant, Jr., P.E., Executive Director, has determined that for the first five-year period that the sections are in effect there will be no new fiscal implications for state or local government as a result of administering the rules.

Mr. Avant also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be clarification and formalization of the commission's procedures. There will be no effect on small businesses as a result of enforcing these sections. There is no new anticipated economic cost to entities who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert V. Avant, Jr., P.E., Executive Director, Texas Food and Fibers Commission, P.O. Box 12046, Austin, Texas, 78711-2046.

The sections are proposed under the Agriculture Code, Chapter 42, which provides the commission with the authority to promulgate rules consistent with the Code.

No other articles, statutes, or codes are affected by these proposed rules.

§202.1. Industry Advisory Committee.

(a) The Industry Advisory Committee shall be limited to 50 members and shall be appointed by the chairman of the Commission with approval of the Commission. Appointment to the Industry Advisory Committee shall be for a period of two years coinciding with the biennium.

(b) The Committee shall have two divisions–the Food Protein Advisory Committee and the Natural Fibers Advisory Committee.

(1) The Food Protein Advisory Committee shall be limited to 25 members. Members shall elect a chairman annually for each fiscal year.

(2) The Natural Fibers Advisory Committee shall be limited to 25 members. Members shall elect a chairman annually for each fiscal year.

(c) All recommendations of the Committee shall be approved by majority vote of Committee members present. Recommendations of the Committee shall be approved by the Executive Committee and routed through the Executive Director to the Commission.

(d) Vacancies occurring in the Industry Advisory Committee shall be filled by the chairman of the Commission, with approval by the Commission. Recommendations for the filling of vacancies of the Industry Advisory Committee may be made by the Executive Advisory Committee by submitting candidates to the Executive Director.

(e) All special study committees or other activities shall be approved by the Executive Advisory Committee and the Executive Director.

§202.2. Industry Advisory Committee Meetings.

(a) The Committee shall meet at least once each year at a time specified by the Committee chairman to review current the research, make annual recommendations to the Commission for implementation of programs and further research, and to discuss the research needs of industry.

(b) All meetings of the Industry Advisory Committee shall be called by the Executive Director after consultation with the respective Committee chairman.

(c) Minutes of all Committee meetings shall be taken and recorded. A copy of the minutes shall be submitted to each of the Commissioners and the Committee members.

(d) Each participating university shall be given advance notice of all meetings of the Industry Committee and Executive Advisory Committee and may have representatives present at all of those meetings.

§202.3. Executive Advisory Committee.

(a) The chairman of the Commission, with the approval if the Commission, shall appoint five persons to an Executive Advisory

Committee. One person shall be representative of the wool industry, one from the mohair industry, two from the cotton industry, and one from the food protein industry. In addition to the appointed members, the Executive Advisory Committee shall consist of the chairman of the Natural Fibers Advisory Committee, the chairman of the Food Protein Advisory Committee, a representative of the Texas Department of Economic Development, and a representative of the Texas Department of Agriculture.

(b) The Executive Advisory Committee shall elect a chairman annually for each fiscal year.

(c) Appointment of any special study committees shall be by the Executive Advisory Committee with approval of the Executive Director and the Commissioners.

(d) The Executive Advisory Committee shall meet semiannually each fiscal year at times specified by the Committee chairman for budget recommendations, project reviews, research reports, and other business. The chairman of the commission may call or authorize special meetings of the Executive Advisory Committee.

(e) All recommendations of the Executive Advisory Committee shall be presented to the Executive Director.

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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Robert V. Avant, Jr., P.E.
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Texas Food and Fibers Commission
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For further information, please call: (512) 936-2451

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Chapter 203. Primary Research Areas

4 TAC §§203.1-203.3

The Texas Food and Fibers Commission proposes new rules, §§203.1-203.3, concerning university research programs. These new rules are being proposed to replace existing bylaws that address university research programs.

Robert V. Avant, Jr., P.E., Executive Director, has determined that for the first five-year period that the sections are in effect there will be no new fiscal implications for state or local government as a result of administering the rules.

Mr. Avant also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be clarification and formalization of the commission's procedures. There will be no effect on small businesses as a result of enforcing these sections. There is no new anticipated economic cost to entities who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert V. Avant, Jr., P.E., Executive Director, Texas Food and Fibers Commission, P.O. Box 12046, Austin, Texas, 78711-2046.

The sections are proposed under the Agriculture Code, Chapter 42, which provides the commission the authority to promulgate rules consistent with the Code.

No other articles, statutes, or codes are affected by these proposed rules.

§203.1. Primary Research Areas.

(a) The Executive Director shall be responsible for coordination of the approved research projects and for carrying out the policies set out for the most effective utilization of the equipment, capabilities, and experience at each participating university.

(b) Research programs of the Commission shall be categorized into the following areas:

(1) Cotton research;

(2) Sheep and goat research;

(3) Food protein research;

(4) Textile research;

(5) Nutrition utilization research;

(6) Natural fibers utilization research; and

(7) Food and fibers information resources.

(c) The primary designated research area of each participating university is as follows.

(1) Texas A&M University:

(A) Texas Engineering Experiment Station–oilseed processing, food, feed, and industrial protein products, and fats and oils;

(B) Texas Agricultural Experiment Station–cotton breeding, cotton production practices, and cotton economics; and

(C) Texas Agricultural Experiment Station–wool and mohair production and quality and sheep and goat meat production and quality.

(2) The University of Texas–information resources and educational materials.

(3) Texas Tech University, International Textile Center–textile processes research, product development, and fiber testing.

(4) Texas Woman's University:

(A) Department of Nutrition & Food Sciences–sensory/fry lab for oils, oil nutrition studies, oil health studies, and flavor studies for sheep and goat meat;

(B) Department of Fashion & Textiles–dry cleaning research laboratory, fabric acceptability, washability, flammability studies, and wear-life studies, and fashion design; and

(C) Collegiate design competition.

§203.2. University Cooperation.

The participating universities shall, to the extent possible, cooperate and share resources so that maximum utilization is achieved from Commission funds and equipment.

§203.3. Special Projects.

(a) The participating universities are not specifically limited to the areas identified in §203.1(c) of this title (relating to Primary Research Areas), and may submit proposals in any research area.

(b) Submission of project proposals shall not duplicate or be directly competitive with existing research projects at the other participating universities.

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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Robert V. Avant, Jr., P.E.
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Texas Food and Fibers Commission
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For further information, please call: (512) 936-2451

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Chapter 204. Pre-proposal Submission

4 TAC §§204.1–204.5

The Texas Food and Fibers Commission proposes new rules, §§204.1-204.5, concerning administration of research projects. These new rules are being proposed to replace existing bylaws that address the administration of research projects.

Robert V. Avant, Jr., P.E., Executive Director, has determined that for the first five-year period that the sections are in effect there will be no new fiscal implications for state or local government as a result of administering the rules.

Mr. Avant also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be clarification and formalization of the commission's procedures. There will be no effect on small businesses as a result of enforcing these sections. There is no new anticipated economic cost to entities who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Robert V. Avant, Jr., P.E., Executive Director, Texas Food and Fibers Commission, P.O. Box 12046, Austin, Texas, 78711-2046.

The sections are proposed under the Agriculture Code, Chapter 42, which provides the commission with the authority to promulgate rules consistent with the Code.

No other articles, statutes, or codes are affected by these proposed rules.

§204.1. Pre-proposal Submission.

(a) The participating universities may prepare and submit to the Executive Director pre-proposals on forms provided by the Executive Director no later than April 1 of each even-numbered year. Pre-proposals shall not exceed one page.

(b) Information provided shall include:

(1) Title;

(2) Investigators (List principal investigators.);

(3) Scope (Describe project scope.);

(4) Objectives (List major anticipated project objectives.);

(5) Continuation status (If a continuation project, identify the previous project.);

(6) Duration (Give the anticipated life of the project before completion/termination.);

(7) Budget (Itemize Commission and matching funds. Categorize funds by costs of personnel, materials, and capital equipment. Estimate the amount and source of matching funds to the extent possible.);

(8) Capital equipment needs (List capital equipment needs.); and

(9) Number of reports (Estimate of number of reports to be prepared.)

(c) Pre-proposals shall be responsive to the primary research area(s) of the participating university in accordance with §203.1(c) of this title (relating to Primary Research Areas).

(d) Special projects in accordance with §203.3 of this title (relating to Special Projects), may also be submitted for consideration.

(e) Pre-proposals shall be received by the Executive Director in accordance with subsection (a) of this section, and categorized, as necessary.

(f) Pre-proposals will be submitted to the Committee for review.

(g) Information from the pre-proposals will be processed and used as a basis for preparing the Commission's updated strategic plan and legislative appropriations request.

§204.2. Proposal Submission.

(a) No later than March 1 of each odd-numbered fiscal year, the Executive Director shall request final proposals. The participating universities may prepare and submit to the Executive Director proposals in the following format no later than May 1 of each odd-numbered fiscal year. Proposals shall not exceed three pages.

(b) Information provided shall include:

(1) Title (Project title);

(2) Investigators (List names and titles of investigators.);

(3) University/department (Provide university name and department.);

(4) Scope (Describe project scope.);

(5) Objectives (List and discuss anticipated project objectives.);

(6) Justification (Provide a brief discussion of the need for the research.);

(7) Results (Discuss anticipated project results including when results might be achieved.);

(8) Core project/continuation status (If a continuation project, identify the previous project.);

(9) Duration (Give the anticipated life of the project before completion/termination.);

(10) Budget (Itemize budget for Commission funds and matching funds including a breakdown of costs for personnel, materials, and capital equipment. The source of matching funds shall be identified to the extent possible.); and

(11) Reports (List anticipated reports.).

§204.3. Proposal Review and Selection.

(a) Upon receipt from the universities, proposals shall be categorized by the Executive Director in accordance with §203.1(b) of this title (relating to Primary Research Areas).

(b) A summary sheet for each research category shall be prepared showing the titles of the projects and funding amount for Commission funds and matching funds.

(c) A summary sheet for all research categories shall be prepared showing the research categories and funding amount for Commission funds and matching funds.

(d) The project proposals shall be organized in a binder by research category.

(e) Binders shall be submitted to the Committee no less than 14 days prior to the annual Committee meeting of each odd-numbered year.

(f) Each division of the Committee (Food Protein and Natural Fibers) will review and rank proposals that respond to their respective research area and submit their recommendations to the Executive Committee.

(g) The Executive Committee will resolve any conflicts and prepare a research program recommendation for consideration by the Commissioners. The Executive Committee recommendation shall be routed through the Executive Director to the Commissioners.

(h) At their annual meeting each odd-numbered year, the Commissioners shall consider the recommendation of the Executive Committee and approve a research program for the next biennium.

§204.4. Memorandum of Agreement.

(a) Prior to the annual meeting of the Commissioners in each odd-numbered year, the Executive Director shall make changes to the memorandum of agreement for each university, if necessary, and submit the draft memorandum to each university for comment.

(b) Upon approval of a research program by the Commissioners, the Executive Director shall prepare a memorandum of agreement, incorporating changes from subsection (a) of this section, for each university for the approved research projects of that university.

(c) No later than 30 days prior to the end of each odd-numbered fiscal year, Executive Director shall submit to each university the memorandum of agreement for the research projects approved for that university for the upcoming biennium.

(d) Upon receipt of the executed memorandum, the Executive Director shall distribute a signed copy to the respective universities and shall file a copy at the Commission's offices.

§204.5. Research Project Conditions.

(a) Research shall be conducted in accordance with the proposal submitted to the Commission and the memorandum of agreement.

(b) Changes in project scope shall only be authorized, in writing, by the Executive Director after consultation with the Executive Committee.

(c) Reimbursement of Expenses:

(1) The Commission shall be billed on a calendar month basis for reimbursable expenses.

(2) All expenses including travel, supplies, materials, and capital equipment shall be procured and reimbursed on a cost reimbursal basis in accordance with the Constitution of the State of Texas and other appropriate statutes and rules governing such transactions.

(3) The Commission shall make compensation for reimbursable expenses within 30 days after receipt of satisfactory payment vouchers and supporting documentation.

(4) Final project billing shall be submitted to the Commission no later than 90 days after the end of each fiscal year. The Commission may lapse project funds after 90 days from the end of each fiscal year.

(d) Capital equipment:

(1) Any purchase of capital equipment shall be approved, in advance, in writing, by the Executive Director. A property acquisition form shall be attached to any payment voucher that requests reimbursement for capital equipment purchases.

(2) Any capital equipment purchased with Commission funds shall remain the property of the Commission.

(3) A Commission inventory number shall be permanently and prominently placed on the equipment by the university.

(4) An inventory of Commission equipment shall be conducted by each university on an annual basis and a written report shall be submitted no later than November 1 of each year.

(e) All records related to research projects funded by the Commission shall be available for inspection at reasonable times during work hours. All records are subject to audit by the Commission and/or the State Auditor.

(f) In accordance with the Appropriations Act, each university shall maintain a policy which clearly establishes and protects the property rights of the state with regard to any patentable product, process, or idea that might result from research supported by the Commission.

(g) Any publications, presentations, or press releases related to projects funded by the Commission shall prominently acknowledge the participation of the Commission in funding the project.

(h) Each university shall provide reports to the Commission as follows:

(1) Quarterly performance reports on forms and at times specified by the Executive Director.

(2) An annual report for each research project due no later than November 1 of each year that provides a:

(A) One-page executive summary of the research project in a standard format specified by the Executive Director;

(B) Technical report in a format of the researcher's professional organization;

(C) Financial accounting that shows the total amount of funds expended on the project; a breakdown of matching funds; and an itemization of costs for personnel, materials and supplies, and capital equipment;

(D) List of publications and presentations related to the project; and

(E) List of equipment purchased with Commission funds.

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 April 22, 1999.

TRD-9902380
Robert V. Avant, Jr., P.E.
Executive Director
Texas Food and Fibers Commission
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 936-2451

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TITLE 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 29. Sale of Checks Act

7 TAC §29.11

The Finance Commission of Texas (the commission) proposes new §29.11, concerning the effect a criminal conviction of certain officials of an applicant for or holder of a license to engage in the business of selling checks may have on the application or license.

As required by Texas Civil Statutes, Article 6252-13d, the section defines the crimes that are considered to be directly related to the duties and responsibilities of selling checks, the persons whose conviction of such a crime could adversely affect a proposed or existing license, and specifies the administrative and judicial review available if a criminal conviction results in the denial of a license application, or revocation of a license.

Everette Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jobe also has determined that for each year of the first five-year period the sections as proposed will be in effect, the public benefit anticipated as a result of the proposed sections will be that applicants for a license can better assess the prospects of obtaining a license prior to expending the resources necessary to do so when an official of the applicant has a criminal conviction, and existing license holders may avoid adverse action with respect to the license because of such a conviction. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted in writing to Loren E. Svor, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to loren.svor@banking.state.tx.us.

The sections are proposed under Texas Civil Statutes, Article 6252-13d, which requires a licensing authority to issue guidelines relating to the suspension, revocation, or denial of a license because of a conviction of a crime which directly relates to the licensed occupation, and Finance Code, §152.102(a), which authorizes the commission to adopt rules to enforce and administer Finance Code, Chapter 152, including rules related to an application for a license.

Finance Code, §152.203 and §152.306, are affected by the proposal.

§29.11. Effect of Criminal Conviction on Licenses.

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

(1) Commissioner–The banking commissioner of Texas.

(2) Official–An individual applying for or holding a license, or an owner, director, or officer of an entity license applicant or holder.

(3) License–The authorization issued by the commissioner to sell checks, or to maintain, utilize or otherwise control an account for the purpose of engaging in the business of selling checks, as required by Finance Code, §152.201, or Texas Civil Statutes, Article 489d, §3.

(b) Effect of conviction for a felony or a crime involving moral turpitude on proposed or existing license. As required by Finance Code, §152.203(a)(3), the commissioner shall deny an application for a license if the applicant is an individual who has been convicted of any felony, or a crime involving moral turpitude that is reasonably related to the individual's fitness to hold a license. For purposes of this subsection, the crimes listed in subsections (d)(1)-(3) of this section are considered to be crimes involving moral turpitude.

(c) Effect of other criminal convictions on proposed or existing license. The commissioner may deny an application for a license, or revoke an existing license if an official of the license applicant or holder has been convicted of a crime which directly relates to the duties and responsibilities of a check seller.

(d) Crimes directly related to fitness for a license. The sale of checks involves or may involve the making of representations to prospective check purchasers, the maintenance of fund accounts sufficient to pay the checks upon presentment, and filing reports with governmental agencies relating to certain currency transactions, the financial condition and performance of the license holder, and the adequacy of the bond or alternate security maintained. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, or a crime involving failure to file a governmental report or filing a false report is a crime directly related to the duties and responsibilities of a license holder, including a crime involving:

(1) fraud, misrepresentation, deception, or forgery;

(2) breach of trust or other fiduciary duty;

(3) dishonesty or theft;

(4) violation of a statute governing check issuers of this or another state;

(5) failure to file a required report with a governmental body, or falsification of such a report; or

(6) attempt, preparation, or conspiracy to commit one of the preceding crimes.

(e) Mitigating considerations. In determining whether a conviction for a directly-related crime renders a person or an entity related to the person presently unfit to be a license holder, the commissioner shall consider:

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

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

(3) the time elapsed since the person's last criminal activity;

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

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

(6) the person's present fitness for a license, evidence of which may include letters of recommendation from prosecution, law

enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person, the sheriff and chief of police in the community where the person resides, and other persons in contact with the convicted person.

(f) The applicant must, to the extent possible, secure and provide to the commissioner reliable documents and/or testimony evidencing the information required to make a determination under subsection (e), including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(g) Notification of adverse action. If a license application is to be denied, or if a license is to be revoked because of the criminal conviction of an official, the commissioner will so notify the applicant or license holder in writing. The notification must include a statement of the reasons for the action and a description of the procedure for administrative and judicial review of the action.

(h) Administrative hearing on adverse action. Before an application is denied or a license revoked, the applicant or license holder is entitled to an administrative hearing. The commissioner will schedule the hearing and notify the applicant or license holder. A hearing is subject to the provisions of the Administrative Procedure Act, Government Code, Chapter 2001, and the provisions of Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).

(i) Judicial review. An applicant whose license application has been denied, or a license holder whose license has been revoked because of the criminal conviction of an official, and who has exhausted all administrative appeals, may petition a district court in Travis County for a review of the evidence presented to the department and its decision. The petition must be filed within 30 days of the date the decision is final and appealable.

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 April 23, 1999.

TRD-9902387
Everette D. Jobe
General Counsel
Texas Department of Banking
Proposed date of adoption: June 25, 1999
For further information, please call: (512) 475–1300

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Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Subchapter G. Lending Powers

7 TAC §§91.701–91.719

The Texas Credit Union Commission is republishing for comment the proposed new Subchapter G, §§91.701 through 91.719, concerning loans and extensions of credit by or involving a credit union. Notice of the withdrawal of the previously published proposal is published elsewhere in this issue of the *Texas Register*. In conjunction with these proposed new sections, the Commission has proposed the repeal of existing §§91.701 and 91.705. Notice of the repeals was published in the February 5, 1999, issue of the *Texas Register*.

In July 1998, the Commission identified its lending rules as an important area for updating and streamlining. Lending is a key area of credit union operations and these rules had not been comprehensively reviewed in a number of years. In order to grant credit unions the maximum flexibility to exercise the authorities granted to them by the Texas Finance Code, the Commission has determined to revise the general approach to regulating lending activities. Accordingly, Subchapter G will now address only the authority of credit unions to limit, interpret or recognize incidental authority. Credit unions may exercise all of the authority granted by the Texas Finance Code subject only to limitations contained in the rules.

Credit union rules traditionally have been lengthy, generally providing far more detail and leaving less room for the exercise of judgement by credit unions and examiners than have other financial institution lending regulations. By proposing to remove some specific lending rules and to rely more heavily on general safety and soundness standards, the Commission is in no way signaling that a credit union would not need to properly underwrite loans or maintain adequate loan documentation. Generally accepted accounting principles and principles of safety and soundness will still require these steps to be taken. In most circumstances, supervisory guidance and other sources can and should be relied upon to define safe and sound practices.

Provided both management and examiners understand the proper role of rules and guidance, and the overarching requirements for safe and sound operations and practices, a move away from detailed rules and toward greater reliance on guidance should provide credit unions with more flexibility without diminishing safety and soundness. The Commission believes that rules should be reserved for core safety and soundness requirements. Details on prudent operating practices should be relegated to guidance. Otherwise, credit unions can find themselves unable to respond to market innovations because they are trapped in a rigid regulatory framework developed in accordance with conditions prevailing at an earlier time.

This proposal represents the Commission's current best judgement about the right balance between which provisions affecting lending should be binding regulations and which should be guidance conveying the Commission's more detailed view on what generally constitutes safe and sound standards under current market conditions. Based on comments received on the originally published version, the Commission has made substantive revisions to proposed §91.701, §91.704, and §91.712. Minor changes also have been made to §91.711 and §91.713.

Lynette Pool, Deputy Commissioner, has determined that there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new sections.

Ms. Pool has also determined that for each of the first five years the new sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing the rules will be a greater flexibility in originating loans provided certain safety and soundness concerns are addressed, clarifications of confusing language, and greater readability. There will be no effect on small businesses as a result of enforcing this section as

amended. There is no economic cost anticipated to the entities that are required to comply with the rules as proposed, nor will there by any impact on local employment.

Written comments on the proposed new sections must be submitted within 30 days after their publication in the *Texas Register* to Lynette Pool-Harrris, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new sections are proposed under the provisions of the Texas Finance Code, §124.001 and §15.402. The Commission interprets §124.001 as providing the Credit Union Commission with the authority to adopt rules governing loans made to credit union members. The Commission interprets §15.402 as authorization for the commission to adopt reasonable rules for administering the Texas Credit Union Act.

The specific sections affected by the proposed amendments are contained within Texas Finance Code, Chapter 124, Subchapter A through Subchapter G.

§91.701. Lending Powers.

(a) A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Each credit union, before engaging in any lending activity, shall establish written policies approved by its board of directors that establish prudent credit underwriting and documentation standards for each specific type of lending in which the credit union will engage. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

(1) Be consistent with safe and sound credit union practices;

(2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;

(3) Be compatible with the size and expertise of the credit union's lending staff;

(4) Be compliant with all related laws and regulations;

(5) Be reviewed and approved by the credit union's board of directors at least annually;

(6) Address loan portfolio diversification standards to avoid undue concentrations of risk;

(7) Address underwriting standards that are clear and measurable;

(8) Address loan administration procedures for monitoring the condition of the loan portfolio; and

(9) State the lending authority delegated to any individuals or committees by the board of directors.

(c) A credit union shall address specific lending procedures for determining and documenting the following, as applicable:

(1) The capacity of the member to adequately service the debt from the source(s) specified by the member;

(2) The value of the collateral;

(3) The overall creditworthiness of the member;

(4) The level of equity invested in the collateral;

(5) Loan-to-collateral value limits;

(6) Any secondary sources of repayment;

(7) Any additional collateral or credit enhancement (such as guarantees or mortgage insurance);

(8) Maximum loan maturities for each type of lending;

(9) Repayment terms and conditions;

(10) Collateral protection insurance; and

(11) Lien filing/recordation.

(d) Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of a loan to a member may not exceed 15 years unless the purpose of the loan is to finance the purchase of a manufactured home and the loan is secured by a first lien, in which case the maturity may not exceed 20 years. Open-end credit is not subject to a regulatory maturity limit. Amortization of line of credit balances and the type and amount of security on any line of credit shall be as determined by the contract between the credit union and the member but the amortization scheduling on a line of credit balance shall not exceed 15 years.

(e) The commissioner in the exercise of discretion may grant a waiver in writing of any of the lending requirements described in this chapter. A decision to deny a requested waiver, however, is not appealable.

§91.702. Records for Lending Transactions.

A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgement in exercising the lending powers granted under the Act, these rules, or other applicable law. At a minimum, each credit union shall establish and maintain loan documentation practices that ensure that the credit union can make an informed lending decision and can assess risk on an ongoing basis; and ensure that any claims against a member, guarantor, security holders, and collateral are legally enforceable.

§91.703. Interest.

(a) A credit union's board of directors may delegate all or part of its power to determine the interest rates on all lending transactions. The board may also authorize any refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

§91.704. Real Estate Lending.

(a) A credit union, before engaging in any real estate lending activity, shall establish, in addition to the requirements of §91.701(c) of this title (relating to Lending Powers), loan administration procedures that address the following, as applicable:

(1) Title insurance;

(2) Escrow administration;

(3) Loan payoffs;

(4) Collection and foreclosure; and

(5) Servicing and participation agreements.

(b) Loan to Value Limitations.

(1) The board of directors shall establish their own internal loan-to-value limits for real estate loans based on type of

loan. These internal limits, however, shall not exceed the following regulatory limits:

(A) Unimproved land held for investment/speculation - Loan to value limit 60%

(B) Interim Construction - Loan to value limit 90%

(C) Owner-occupied - Loan to value limit 95%

(D) Home equity - Loan to value limit 80%

(E) Other - Loan to value limit 80%

(2) In determining the loan to value limit, a credit union shall include all loans secured by the same property and the recourse obligation of any such loan sold with recourse.

(c) Notwithstanding the general 15-year maturity limit on lending transactions to members, the board of directors shall establish in policy internal maximum maturities for real estate lending transactions. These maturities should not exceed the following regulatory limits:

(1) Improved Residential real estate loans (owner-occupied) - 40 years

(2) Improved Residential real estate loans (not to be occupied by owner) - 30 years

(3) Interim construction loans - 18 months

(4) Manufactured Home (first lien) - 20 years

(5) Home equity loans - 20 years

(6) Home improvement loans - 20 years

(7) All other loans - 15 years

(d) Exceptions to subsections (b) and (c) are permitted for the following:

(1) Loans that subsequently become compliant with loan-to-value ration limits due to reduction in principal amount, elimination of senior liens, or contribution of additional collateral or equity (e.g. improvements to the real property securing the loan).

(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(3) Loans backed by the full faith and credit of the state, provided that the amount of the assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(4) Loans guaranteed or insured by the state, a municipal or local government, or an agency thereof, provided that the amount of loan that exceeds the regulatory loan-to-value limit, and provided that the credit union has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

(5) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(6) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(e) Exception loans granted in compliance with subsection (d) of this section shall be identified in the credit union's records and reported to the board of directors.

§91.705. Home Improvement Loans.

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

§91.706. Home Equity Loans.

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

§91.707. Reverse Mortgages.

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

§91.708. Real Estate Appraisals.

For real estate loans in which the transaction value exceeds $100,000 or in the case of a member business loan exceeding $50,000, a professional appraisal report by a state certified or licensed appraiser, as required by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, is necessary. Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the credit union, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, NW, Washington, D.C. 20005. In the case of renewal of a loan where additional funds are advanced by the credit union, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

§91.709. Member Business Loans.

(a) Definition. A member business loan includes any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose, except that the following shall not be considered a member business loan for the purposes of this rule:

(1) A loan secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;

(2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(3) Loan(s) otherwise meeting the definition of a member business loan made to a member or associated member that, in the aggregate, is less than $50,000; or

(4) A loan where a federal or state agency or one of its political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.

(b) A credit union that engages in this type of lending shall adopt specific member business loan policies and review them at

least annually. The policies, at a minimum, shall address all of the following areas:

(1) Types of business loans to be made.

(2) The maximum amount of credit union assets, relative to credit union equity, that will be invested in member business loans.

(3) The maximum amount of credit union assets, relative to credit union equity, that will be invested in a given category or type of member business loan.

(4) The maximum amount of credit union assets, relative to credit union equity, that will be loaned to any one member or group of associated members, subject to subsection (c) of this section.

(5) The qualifications and experience requirements for personnel involved in making and servicing business loans.

(6) Analysis of the member's initial and ongoing financial capacity to repay the debt.

(7) Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit, which shall address all of the following:

(A) A balance sheet;

(B) An income statement;

(C) A cash flow analysis;

(D) Tax returns;

(E) Leveraging; and

(F) Receipt and the periodic updating of financial statements, tax returns, and other documentation.

(8) Collateral requirements which include all of the following:

(A) Loan-to-value (LTV) ratios;

(B) Appraisal, title search, and insurance requirements; and

(C) Steps to be taken to secure various types of collateral.

(9) Identification, by position, of the officials and senior management employees who are prohibited from receiving member business loans.

(c) The aggregate amount of outstanding member business loans to any one member or group of associated members shall not be more than 15% of the credit union's equity (less the Allowance for Loan Losses account) or $75,000.00, whichever is higher. If any portion of a member business loan is secured by shares in the credit union or deposits in another financial institution, or is fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 15% limit.

(d) For the purposes of this section, "associated member" means any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.

§91.710. Overdraft Protection.

A credit union which permits withdrawal of funds from an account payable to third parties may offer in connection with such accounts overdraft protection to members in the form, on the terms and in amounts consistent with the credit union's policies. For purposes of financial reporting, funds advanced to or for the benefit of a member in connection with an overdraft condition shall be considered as a loan to the member.

§91.711. Loan Participations.

A credit union may participate in loans jointly with other credit unions, credit union organizations, corporations or other financial organizations pursuant to written policies established by the board of directors. Before participating in a loan transaction, each credit union shall perform its own due diligence of the transaction.

§91.712. Plastic Cards.

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

(1) Card Activation - process of sending new plastic cards from the issuer to the legitimate cardholder in an "inactive" mode. Once the legitimate cardholder receives the card, they must call the issuer/processor and go through a member verification process before the card is "activated".

(2) Card Security Code - a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.

(3) Neural Network - a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity. Strategies are then used to determine actions to mitigate frauds. Human intervention occurs to validate if the activity is actually fraudulent.

(4) Plastic Cards - includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.

(b) A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:

(1) Credit policies to set individual limits for credit card accounts:

(2) A process for reviewing each member's payment and/or credit history periodically for the purpose of determining risk; and

(3) The credit underwriting standards for each type of card program offered.

(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

(A) Losses caused by theft and fraud;

(B) Loss prevention measures and their adequacy; and

(C) The availability and use of appropriate loss prevention measures including card activation, card security codes, neural networks, and other evolving technology.

(2) The review shall be documented in writing, with any changes to the plastic card program being entered into the minutes of the board meeting.

(d) At least annually, the credit union's board shall cause to be performed an assessment of earnings and the capital position to ensure that the credit union can absorb potential related plastic card program losses. This review shall include a cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

Establishment of a segregated contingency reserve may be utilized to further mitigate the credit union's risk exposure for losses resulting from its plastic card program.

§91.713. Indirect Financing of Motor Vehicles or Other Chattels.

(a) Credit unions may implement a program of indirect financing of motor vehicles and other chattels. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting. Although the seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, responsibility for membership eligibility decisions must be the credit union's first consideration.

(b) A retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 124 of the Texas Finance Code.

(c) The board of directors shall establish, implement, and maintain prudent and reasonable written policies that specify guidelines and criteria to be used in purchasing contracts consistent with safe and sound credit union practices.

§91.714. Leasing.

(a) Definitions. For the purposes of this section:

(1) The term net lease means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for:

(A) the servicing, repair or maintenance of leased property during the lease term;

(B) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of subsection (c) (2) (A) of this section;

(C) the loan of replacement or substitute property while the leased property is being serviced;

(D) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) the renewal of any license, registration, or filing for the property unless such action by the credit union is necessary to protect its interest as an owner or financier of the property.

(2) The term full-payout lease means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the credit union to yield the return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term realization of investment means that a credit union that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals; and

(B) The estimated residual value of the property at the expiration of the term of the lease.

(b) Permissible Activities. Subject to the limitations of this section, a credit union may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) Finance Leasing.

(1) A credit union may conduct leasing activities that are functional equivalent of loans made under those leases. Such financing leases are subject to the same restrictions that would be applicable to a loan.

(2) To qualify as the functional equivalent of a loan:

(A) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(B) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(C) At the termination of the financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or the value carried on the credit union's books.

(d) General Leasing. A credit union may invest in tangible personal property, including vehicles, manufactured homes, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) Leasing Salvage Powers. If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth subsection (e)(1) and (e)(2) of this section.

§91.715. Exceptions to the General Lending Policies.

Credit unions may provide for the consideration of loan requests from creditworthy members whose credit needs do not fit within the credit union's general lending policies. A credit union may provide for prudently underwritten exceptions to its lending policies. However, the Board is responsible for establishing standards for the review and

approval of exception loans. Each credit union should establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan should be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans should be maintained as a part of the permanent loan file. Each credit union should monitor compliance with its lending policies and individually report exception loans of a significant size to its board of directors.

§91.716. Prohibited Fees.

A credit union shall not make any loan or extend any credit if, either directly or indirectly, any commission, fee, or other compensation from any person or entity other than the credit union is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or extension of credit.

§91.717. More Stringent Restrictions.

The Commissioner may impose more stringent restrictions on a credit union's loans if the Commissioner determines that such restrictions are necessary to protect the safety and soundness of the credit union.

§91.718. Charging Off or Setting Up Reserves.

(a) The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established.

(b) A credit union's financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.

(c) As a minimum, adjustments to the valuation allowance for loan losses shall be made prior to the distribution or posting of any dividends to the accounts of members so that the valuation allowance established fairly presents the value of loans and probable losses for all categories.

§91.719. Loans to Officials and Employees.

(a) The rates, terms, conditions, and availability of any loan or other extension of credit made to, or endorsed or guaranteed by, a director, employee, member of the credit committee or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, employee, member of the credit committee, or an immediate family member of such individual, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and the members of the person's immediate family is greater than 15% of the credit union's net capital. A loan fully secured by shares in the credit union or deposits in other financial institutions shall not be subject to, or included in the aggregate amounts included in this section.

(c) For purposes of this section, the term immediate family member includes spouse or other family member living in the same household.

(d) The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by all directors, credit committee members, senior executive staff, and immediate family members of all such individuals shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) At least semiannually, the president shall make a report to the board of directors on the outstanding indebtedness of all directors, credit committee members, senior executive staff, and immediate family members of such individuals. The report required by this section shall include the following information:

(1) The amount of each indebtedness; and

(2) A description of the terms and conditions (including the interest rate, the original amount and date, maturity date, payment terms, security, if any, and any other unusual term or condition) of each extension of credit.

(f) At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived if the aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and the members of the person's immediate family is less than $25,000. Each report must ordinarily be retained at the credit union for a period of three years and shall not be filed with the Department unless specifically requested.

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 April 23, 1999.

TRD-9902414
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 837–9236

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Subchapter N. Emergency Closing of Office or Operation

7 TAC §91.5001, §91.5002

The Texas Credit Union Commission proposes new §91.5001 and §91.5002, concerning a credit union's closing of an office or operation. Section 91.5001 is being proposed to provide specific authorization for a state-chartered credit union to close its place of business in the event of an emergency, which is defined in the rule. The new rule also limits the number of consecutive days that a credit union can be closed without first obtaining the approval of the commissioner. New §91.5002 prescribes that an emergency closing shall be deemed a legal holiday for all purposes with respect to any credit union business affected by the closed office or operation.

Lynette Pool, Deputy Commissioner, has determined that for the first five-year period the new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Pool has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be that it will standardize procedures for handling credit union emergency closings which should ease member concerns and ensure that members are not unduly inconvenienced by their inability to access funds because of such a closure. There will be no effect on small businesses as a result of adopting these sections. There is no anticipated economic cost to entities that will be required to comply with the new sections, nor will there be an impact on local employment.

Written comments on the proposed rules must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new sections are proposed under the provisions of Texas Finance Code, Section 15.402, which authorizes the commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code. The Commission interprets this section as authorizing it to address the issue of emergency closings in its rules to foster member confidence in the safety of their deposits and of their credit unions.

The specific section affected by the proposed rule is Texas Finance Code, Section 123.001 pertaining to general powers of a credit union.

§91.5001. Emergency Closing.

(a) If the officer in charge of a credit union determines that an emergency that affects or may affect one or more of the credit union's offices or operations exists or is impending, the officer may determine:

(1) not to conduct the involved operations or open the offices on any normal business day of the credit union until the emergency has passed; or

(2) if the credit union is open, to close the offices or the involved operations for the duration of the emergency.

(b) Subject to subsection (c) of this section, a closed office or operation may remain closed until the officers determine that the emergency has ended and for any additional time reasonably required to reopen.

(c) A credit union that closes an office or operation under this section shall notify the commissioner of its action by any means available and as promptly as conditions permit. An office or operation may not be closed for more than three consecutive days, excluding days on which the credit union is customarily closed, without the commissioner's written approval.

(d) In this chapter, the following words and terms shall have the following meanings:

(1) Emergency - means a condition or occurrence that physically interferes with the conduct of normal business at the offices of a credit union or of a particular credit union operation or that poses an imminent or existing threat to the safety or security of persons, property, or both. The term includes a condition or occurrence arising from:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice or snow storm;

(B) labor dispute or strike;

(C) disruption or failure of utilities, transportation, communication or information systems;

(D) shortage of fuel, housing, food, transportation, or labor;

(E) robbery, burglary, or attempted robbery or burglary;

(F) epidemic or other catastrophe; or

(G) riot, civil commotion, enemy attack, or other actual or threatened act of lawlessness or violence.

(2) Officer in charge - means the president of the credit union, or a person designated by the president, who shall have the authority to take all necessary and appropriate actions to deal appropriately with the emergency. The president of a credit union shall always have an individual designated as an officer in charge during his/her absence or unavailability.

§91.5002. Effect of Closing.

A day on which a credit union or one or more of its operations is closed during its normal business hours as provided by this chapter shall be deemed a legal holiday for all purposes with respect to any credit union business affected by the closed credit union or credit union operation.

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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Harold E. Feeney
Commissioner
Credit Union Department
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Chapter 93. Administrative Proceedings

The Texas Credit Union Commission proposes the repeal of 7 TAC Chapter 93 Administrative Proceedings. Specifically, the Commission proposes to repeal §93.1 Definitions contained in Subchapter A, Common Definitions; and §93.11 Delegation of Authority; §93.12 Finality and Request for SOAH Hearing; §93.13 Referral to ADR; §93.14 Appeals of Applications Decisions; §93.15 Appeals of Applications for Certificates of Authority and all Other Applications for which No Specific Procedure is Provided by This Title; §93.16 Appeals of Cease and Desist Orders and Orders of Removal; §93.17 Appeals of Orders of Conservation; §93.18 Failure to Appear at Hearing; §93.19 Notice and Service; §93.20 Interrogatories to Parties; §93.21 Requests for Admissions; §93.22 Pre-Hearing Conference; §93.23 Witness Placed Under Rule; §93.24 Prefiled Direct Testimony; and §93.25 Administrative Record, all contained in Subchapter B, General Rules.

The Appropriations Act of 1997, House Bill 1, Article IX, §167, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. After conducting a preliminary review of its rules, the Commission determined that the chapter should be updated to (1) repeal rules that are not necessary, (2) update existing rules based on rules adopted

by the State Office of Administrative Hearings, (3) adopt new rules for pertinent issues that are not addressed in current rules, and (4) reorganize the rules based on the type of application decision or action being appealed.

Lynette Pool, Deputy Commissioner, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal of these sections.

Lynette Pool has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of the repeals will be a set of new rules that are more clear and comprehensive. There will be no effect on small businesses as a result of repealing these sections. There is no anticipated economic cost to entities that are currently required to comply with these sections as result of their repeal.

Written comments on the proposed repeals must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool-Harris, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

Subchapter A. Common Terms

7 TAC §93.1

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

This repeal is proposed under the provisions of Section 15.402 of the Texas Finance Code, which authorizes the commission to adopt reasonable rules.

The specific sections affected by this proposal are §§122.007, 122.011, 122.013, 122.153, 122.257, 122.259, and 126.105 of the Texas Finance Code pertaining to appeals of certain actions taken by the Commissioner.

§93.1. Definitions.

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

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Harold E. Feeney
Commissioner
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Subchapter B. General Rules

7 TAC §§93.11-93.25

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

The repeals are proposed under the provisions of Section 15.402 of the Texas Finance Code, which authorizes the commission to adopt reasonable rules.

The specific sections affected by this proposal are §§122.007, 122.011, 122.013, 122.153, 122.257, 122.259, and 126.105 of the Texas Finance Code pertaining to appeals of certain actions taken by the Commissioner.

§93.11. Delegation of Authority.

§93.12. Finality and Request for SOAH Hearing.

§93.13. Referral to ADR.

§93.14. Appeals of Applications to Decisions

§93.15. Appeals of Applications for Certificates of Authority and All Other Applications for Which No Specific Procedure is Provided by This Title.

§93.16. Appeals of Cease and Desist Orders and Orders of Removal.

§93.17. Appeals of Orders of Conservation.

§93.18. Failure to Appear at Hearing.

§93.19. Notice and Service.

§93.20. Interrogatories to Parties.

§93.21. Requests for Admissions.

§93.22. Pre-Hearing Conference.

§93.23. Witness Placed Under Rule.

§93.24. Prefiled Direct Testimony.

§93.25. Administrative Record.

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

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Harold E. Feeney
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Chapter 93. Contested Cases

The Texas Credit Union Commission proposes new Chapter 93 pertaining to administrative hearings. Under this proposal, Chapter 93 would be comprised of the following sections: §93.101 Scope; Definitions; Severability; §93.201 Party Status; §93.202 Computation of Time; §93.203 Ex Parte Communications; §93.204 Presiding Officer or Body; §93.205 Notice of Hearing; §93.206 Default; §93.207 Service; §93.208 Delegation of Authority; §93.209 Subpoenas; §93.210 Protective Orders; Motions to Compel; §93.211 Administrative Record; §93.212 Proposed for Decision; §93.301 Finality and Request for SOAH Hearing; §93.302 Referral to ADR; §93.303 Hearings of Applications to Incorporate, Amend Bylaws, or Merge or Consolidate; §93.304 Appeals of Applications for Certificates of Authority; §93.305 Appeals of all Other Applications for Which No Specific Procedure is Provided by this Title; §93.401 Appeals Of Cease And Desist Orders And Orders of Removal; §93.402 Stays; §93.501 Request for Hearing to Appeal an Order of Conservation; §93.601 Motion for Appeal to the Commission; §93.602 Decision by the Commission; §93.603 Oral Arguments before the Commission; §93.604 Motion for Rehearing;

§93.605 Final Decisions and Appeals. Notice of the proposed repeal of existing Chapter 93 rules §93.1 and §§93.11-93.25 is published elsewhere is this issue of the *Texas Register*.

During the past few years the Credit Union Department has seen an increase in the number of decisions on applications appealed by interested parties. As these cases have progressed, various procedural questions have arisen that the existing rules do not address. Furthermore, while some of the procedures contained within the proposed rules are addressed in the Texas Administrative Procedures Act, the Commission believes it appropriate to include those procedures in the rules so credit union management will have a better understanding of the appeal process and what will be required of them as a party to the matter.

The 1997 General Appropriations Act, House Bill 1, Article IX, Rider 167, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Although Chapter 93 was scheduled for review at the January 1999 Commission meeting, agency staff had already reviewed the corresponding rules, recognized the need to rewrite them for the reasons previously stated, and made such a recommendation to the Commission. Nonetheless, the Credit Union Department published a Notice of Intention to Review Chapter 93 as required by the 1997 General Appropriations Act, House Bill 1, Article IX, Rider 167, in the *Texas Register* on December 25, 1998 (23 TexReg 13107), for the purpose of accepting public comment.

Lynette Pool, Deputy Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Lynette Pool has also determined that for each year of the first five years the proposed new rules are in effect, the public benefits anticipated as a result of enforcing the rules will be that state-chartered credit unions will have procedures for appealing Commissioner decisions that are more comprehensive and well-defined. There is no anticipated effect on small businesses as a result of adopting the new chapter and its corresponding rules. There is no economic cost anticipated to entities that are required to comply with the new rules as a result of their adoption.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

Subchapter A. Common Terms

7 TAC §93.101

The new rule is proposed under the provisions of the following sections of the Texas Finance Code that authorize the Credit Union Commission to adopt rules for the purposes noted: §15.402 for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D); §122.007 for the appeal by an incorporator or other aggrieved person of the commissioner's order pertaining to a new charter application; §122.011 for the appeal of a commissioner's decision regarding an amendment to bylaws or articles of incorporation; §122.259 for the appeal of a cease and desist order or a removal order; and for the appeal of a conservatorship order. The Commission interprets §15.402 as authorizing the Commission to adopt reasonable rules. The Commission interprets the remaining sections to authorize the Credit Union Commission to adopt rules pertaining to the appeal of certain decisions made and actions taken by the commissioner for the purposes of supervising and regulating state-chartered credit unions.

The specific sections affected by this proposed rule are Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.101. Scope; Definitions; Severability.

(a) These rules of practice are applicable to contested cases arising under the Texas Credit Union Act.

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

(1) ADR–alternative dispute resolution.

(2) ALJ–administrative law judge employed by the State Office of Administrative Hearings.

(3) Contested case–a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commissioner or the Commission after an opportunity for adjudicative hearing. A contested case at the Department commences upon the filing of a proper and timely request for hearing.

(4) Party–an applicant, a protestant, a respondent, or department staff, who is admitted as a party.

(5) PFD–a proposal for decision issued by an ALJ.

(6) SOAH–the State Office of Administrative Hearings.

(c) If any section of this chapter is found to be invalid, the invalidity shall not affect the validity of any other provision of this chapter.

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

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Harold E. Feeney
Commissioner
Credit Union Department
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Subchapter B. General Rules

7 TAC §§93.201-93.212

The new rules are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these proposed rules are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.201. Party Status.

Party status will be conferred on persons or entities that have a current and cognizable interest in the subject matter of the contested case other than an interest that is common to members of the general public.

§93.202. Computation of Time.

Unless otherwise required by law, in computing any period of time set forth in this chapter, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a state legal holiday.

§93.203. Ex Parte Communications.

(a) Upon receipt of a request for hearing and continuing until the time a motion for rehearing is denied, the time for ruling on such a motion has expired, or the proceeding is otherwise final, the commissioner and members of the commission may not communicate directly or indirectly with any party or a representative of a party in a contested case in connection with any issue of fact or law in the contested case except upon notice and opportunity for each party to participate.

(b) The commissioner and members of the commission may communicate ex parte with employees of the department who did not participate in any hearing in the case in order to utilize special skills or knowledge of the department's staff in evaluating the record in the case. Prohibited ex parte communications shall not include any written communication if the communicator contemporaneously serves copies of the communication on all parties to the contested case.

§93.204. Presiding Officer or Body.

All hearings in contested cases will be conducted by SOAH pursuant to the Administrative Procedures Act and these rules. The commissioner at any time during the proceedings may make an informal disposition of a contested case by stipulation of the parties, agreed settlement, consent order, or default.

§93.205. Notice of Hearing.

(a) A notice of hearing shall include:

(1) A statement of the time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short, plain statement of the matters asserted;

(5) A description of the relief requested; and

(6) At the discretion of the Commissioner, the following disclosure language set forth in capital letters: "IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE ___TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU, OR IF YOU FAIL TO ATTEND THE HEARING, THE COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT HEARING AND GRANT THE RELIEF SET FORTH IN THIS NOTICE. THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE DEPARTMENT AND STATE OFFICE OF ADMINISTRATIVE HEARINGS".

(b) The commissioner may require any or all parties to file a written response to the matters asserted in the notice of hearing and the relief requested. If required, the response shall specifically admit or deny each of the assertions contained in the notice of hearing. Any assertion not denied will be deemed to be admitted.

(c) If required pursuant to subsection (a) of this section, a written response to a notice of hearing shall be filed in Austin, Texas, with the Department and SOAH. Failure of a party to timely file a written response as provided in this subsection shall entitle the Department to the remedies relating to default set forth in §93.206 of this title (relating to Default).

§93.206. Default.

(a) The commissioner may make an informal disposition of a contested case by default by issuing an order in which the relief requested in the notice of hearing is granted and the matters set forth in the notice are deemed admitted as true upon proof to the commissioner of proper notice to the parties in a contested case and that parties failed to file a written response as provided in §93.205 of this title (relating to Notice of Hearing), or failed to appear in person or through a legal representative on the day and at the time set for the hearing of the case, whether or not a written response has been filed.

(b) In a case of default, the ALJ assigned to a contested case shall promptly grant a motion by department staff for remand for informal disposition by entry of a default order.

(c) Upon the motion of a respondent or protesting party, the commissioner may, for good cause shown, set aside a default order and reschedule a hearing with SOAH.

(d) A motion by a respondent or protesting party to set aside a default order shall be filed with the commissioner not later than the 20th day after the date of service of notice to the party(s) of the default order. A reply by the department staff to the motion to set aside a default order must be filed with the commissioner not later than the 30th day after the date of service of notice of the default order. If the commissioner does not, in writing, grant or deny the motion to set aside a default order not later than the 45th day after the date of service of notice of the default order, the motion shall be considered denied by operation of law.

§93.207. Service.

(a) Unless otherwise specified in this chapter, notice to an interested person or a party in a contested case shall be by personal service or certified mail to the party's last known address. Service by mail shall be complete upon deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(b) A certificate by the party, who files a pleading stating that it has been served on all other parties, is prima facie evidence of service.

§93.208. Delegation of Authority.

Unless otherwise provided by law, any duty imposed on the commission or the commissioner may be delegated to a duly authorized representative. The provisions of any rule referring to the commission or the commissioner shall be construed to also apply to the duly authorized representative of the commission or the commissioner.

§93.209. Subpoenas.

(a) Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing shall file a written application with the ALJ setting forth the name and address of the witness, time and place of appearance, and any documents or tangible things sought to be produced.

(b) The party requesting the subpoena shall arrange for service of the subpoena in the manner as provided in civil actions. Subpoenas issued at the request of the department staff may be served by an employee of the department.

(c) A party may request issuance of an amended subpoena, which shall be served as provided in subsection (b) of this section.

(d) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the return date if the return date is less than ten days after service, serve upon the commissioner, the ALJ, and the attorney or party designated in the subpoena, written objection to the appearance or to the inspection or copying of any or all of the designated material. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the commissioner or ALJ. The party serving the subpoena shall have five days within which to file a written response to the objection. The commissioner's order on the objection shall be based upon the written objection and response. No oral argument shall be heard on the objection unless the commissioner or ALJ directs.

§93.210. Protective Orders; Motions To Compel.

All exemptions and privileges recognized under Texas laws are recognized in hearings to the same extent as they are recognized in civil cases in the courts of this state. If a party or witness is asked to produce privileged information, the party, in addition to filing a written objection under §93.209(d) of this title (relating to Subpoenas), may make a motion with the ALJ for such protective orders as are reasonable and necessary. The requested information may be withheld until a ruling on its production is obtained in response to a motion to compel. The ALJ shall hold such hearings and issue such orders on motions to compel or requests for protective orders as are required by the law applicable to the facts and circumstances of the case.

§93.211. Administrative Record.

(a) Arguments taken at any hearing on a contested matter will be recorded stenographically and transcribed by a court reporter. The costs of transcribing the hearing and for the preparation of an original transcript of the record for the department shall be assessed against all parties to the proceeding, excluding department staff, in such proportions as the ALJ may determine.

(b) In the event a decision of the commission is appealed or otherwise taken to district court and the department is required to transmit to the court a copy of the record of the department proceeding, or any part thereof, the appealing party shall pay all of the costs of preparing the copy of the record that is to be transmitted to the reviewing court at rates approved by the General Services Commission. If more than one party appeals the decision, the cost of the preparation of the record shall be divided equally among the appealing parties or as agreed by the parties. The ALJ shall prepare and certify the record on behalf of the department and is responsible for transmitting the certified copy to the commissioner.

§93.212. Proposal for Decision.

(a) Following the hearing the ALJ shall review the evidence and testimony, and prepare a PFD containing a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary for the proposed decision. The ALJ shall also prepare a proposed final order for the commissioner to sign adopting the proposed decision. Upon completion, the ALJ shall serve copies of the PFD and proposed final order on all parties and give each adversely affected party an opportunity to file exceptions and present briefs. If a party files exceptions or presents briefs, the ALJ shall give an opportunity to other parties to file replies to the exceptions or briefs. Unless otherwise indicated, exceptions, replies to exceptions, and related briefs must be filed within deadlines established by the ALJ. The ALJ may amend the PFD and proposed final order in response to the exceptions, replies, or briefs submitted. If the ALJ makes substantive revisions, the ALJ shall circulate the amended PFD and proposed final order to the parties for additional exceptions and briefs before submitting the PFD and proposed final order to the Commissioner.

(b) No additional briefs may be submitted after the case is under submission to the commissioner for decision unless requested by the commissioner. The commissioner may:

(1) Adopt the PFD and proposed final order, in whole or in part;

(2) Modify and adopt the PFD and proposed final order, in whole or in part;

(3) Decline to adopt the PFD and proposed final order, in whole or in part;

(4) Remand the proceedings for further examination by the ALJ, including for the limited purpose of receiving additional briefing or evidence from the parties on specific issues; or

(5) Take another lawful and appropriate action with regard to the case.

(c) The commissioner shall make a final determination within 30 days of the date of receipt of the PFD and proposed final order.

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 April 26, 1999.

TRD-9902431
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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Subchapter C. Appeals of Preliminary Determinations on Applications

7 TAC §§93.301-93.305

The new rules are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these proposed rules are Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.301. Finality and Request for SOAH Hearing.

Except as provided otherwise by this chapter, the preliminary decision of the commissioner becomes final 20 days from the date of service, unless prior thereto, an applicant or protestant files with the commissioner a written request for hearing. The commissioner may, at the commissioner's sole discretion, refer any matter to SOAH for hearing prior to entering a preliminary decision when a hearing is requested by a party, whether or not it has been referred to ADR.

§93.302. Referral to ADR.

The commissioner may order the parties to participate in non-binding ADR if the commissioner determines that any two of the following conditions are present:

(1) the parties have not engaged in meaningful negotiation;

(2) the controversy is reasonably susceptible to compromise or resolution; or

(3) ADR may produce cost savings.

§93.303. Hearings of Applications to Incorporate, Amend Bylaws, Or Merge or Consolidate.

(a) If ADR is not utilized or fails to resolve the controversy, the commissioner shall furnish to the ALJ all information upon which the preliminary decision was based.

(b) The ALJ shall consider this information along with the evidence developed at the hearing in preparing a proposal for decision.

(c) Burden of Proof for Unprotested Applications. The applicant must establish by a preponderance of the evidence all statutory criteria.

(d) Burden of Proof for Protested Applications. The applicant must establish by a preponderance of the evidence the criteria set forth in the applicable statutes and rules. In cases in which field of membership is at issue, the protestant must establish by a preponderance of the evidence that overlapping fields of membership will unreasonably harm the protestant.

§93.304. Appeals of Applications for Certificates of Authority.

If ADR is not utilized or fails to resolve the controversy, whether the application is unprotested or protested, the applicant for a certificate of authority must establish by a preponderance of the evidence the criteria set forth in §91.211(c) of this title (relating to Application for a Certificate of Authority to Do Business in the State of Texas).

§93.305. Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title.

If ADR is not utilized or fails to resolve the controversy, whether the application is protested or unprotested, the applicant has the burden of proof.

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

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Subchapter D. Appeals of Cease and Desist Orders of Removal

7 TAC §93.401, §93.402

The new rules are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D); and §122.259 that authorizes the Commission to adopt rules for the appeal of a cease and desist order or a removal order.

The specific section affected by these proposed rules is Texas Finance Code, §122.259.

§93.401. Appeals Of Cease And Desist Orders And Orders Of Removal.

(a) The commissioner's cease and desist order or order of removal is final, unless within ten days of service of the order, the board of directors or the person removed files a written request for hearing to the commissioner's order.

(b) If a request for hearing is filed, the commissioner shall forward the matter to SOAH to set a hearing.

(c) The hearing on a cease and desist order or order of removal is closed to the public. The orders and correspondence and records relating thereto are confidential and cannot be revealed to the public.

(d) At the hearing, the commissioner has the burden to prove by a preponderance of the evidence the violations or unsafe or unsound practices that justify the cease and desist order or order of removal.

§93.402. Stays.

Where an order by its terms, by statute or by these rules will become effective before a hearing can be held, any aggrieved party who has filed a timely request for hearing under this chapter may file a written request with the Commissioner to stay the effectiveness part or all such order until the matter has been heard and a final decision issued. The Commissioner may grant a stay where the respondent has adequately demonstrated that the respondent has a reasonable defense which might result in his prevailing on the merits at the hearing; the respondent will be irreparably injured in the absence of the stay; the stay would not substantially or irreparably harm other interested persons; and the stay would not jeopardize the public interest or contravene public policy.

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

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Subchapter E. Appeals of Orders of Conservation

7 TAC §93.501

The new rule is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D) .

The specific section affected by this proposed rule is Texas Finance Code, §126.105.

§93.501. Request for Hearing to Appeal an Order of Conservation.

(a) The commissioner's order of conservation is final, unless, within 20 days of service of the order, the credit union's former board of directors files a written request for hearing.

(b) If a request for hearing is timely filed, the commissioner shall forward the matter to SOAH to set a hearing not sooner than ten days nor more than 30 days from the date of receipt of the request for hearing.

(c) The credit union's former board of directors has the burden to prove by a preponderance of the evidence that the board should regain control of the credit union.

(d) The SOAH hearing on an order of conservation is closed to the public. All orders and correspondence relating thereto are confidential and may not be revealed to the public.

(e) The deadline for filing exceptions to the PFD shall be within five days of the date of service of the PFD. Replies to exceptions shall be filed within 8 days of the date of service of the PFD.

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

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Subchapter F. Appeal of the Commissioner's Final Determination to the Commission

7 TAC §§93.601-93.605

The new rules are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these proposed rules are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.601. Motion for Appeal to the Commission.

(a) A motion for appeal to the Commission must be filed with the Commissioner within ten days of service of the Commissioner's final determination.

(b) The motion must state the identities and interests of the parties, the particular matters complained of, any specific objections, and the action sought from the Commission.

§93.602. Decision by the Commission.

The commission may consider any aspect of the case whether or not included in the motion for appeal. Decisions by the commission must be based solely on the hearing record. The commission may adopt or decline to adopt, with or without changes, all or part of the commissioner's decision or the ALJ's proposed for decision and the underlying findings of fact and conclusions of law. The commission may remand the proceeding for further consideration by the commissioner with or without reopening the hearing.

§93.603. Oral Arguments before the Commission.

The Commission will not entertain oral argument unless oral argument is granted on a written motion of a party. A written request for oral argument must be received by the Commissioner at least 15 days before the scheduled commission meeting and state the length of time the party seeks. The commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that commission members may have.

§93.604. Motion for Rehearing.

(a) A party may file a motion for rehearing in accordance with the procedures of Administrative Procedures Act §2001.146.

(b) A party may file a motion for rehearing with the commission not later than 20 days after the date on which the party or the party's attorney was notified of the final decision of the commission. A reply to a motion for hearing must be filed not later than the 30th day after the party or party's attorney was notified of the final decision of the commission. The commission shall act on a timely filed motion for rehearing not later than the 45th day after the date on which the party or the party's attorney was notified of the final decision. A timely filed motion for rehearing is overruled by operation of law if the commission does not act on it within the 45 day period or another period that is ordered by the commission upon the agreement of the parties.

(c) The Commission by written order may shorten the times for filing motions for rehearing and replies and for commission action or overruling by operation of law, provided all parties agree in writing to the modifications.

§93.605. Final Decisions and Appeals.

(a) The Commission's decision is final and appealable:

(1) if a motion for reconsideration is not filed on time, upon the expiration of the period for filing a motion for rehearing; or

(2) if a motion for rehearing is filed on time, upon the date the order overruling the motion for reconsideration is rendered; the decision on the motion for rehearing is not rendered before the expiration of the deadline; or the motion is overruled by operation of law.

(b) A person who is aggrieved by a final decision of the commission in a contested case may seek judicial review of the decision. Judicial review of a final decision is under the substantial evidence 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.

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Harold E. Feeney
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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 80. Manufactured Housing

Subchapter D. Standards and Requirements

10 TAC §§80.53–80.55

The Texas Department of Housing and Community Affairs (Department) proposes amending §§80.53 - 80.55, concerning the home manufacturer's design requirements, moisture and

ground vapor control measures, generic standards for installing manufactured homes, and alternate generic cross drive rock anchor installation instructions.

Section 80.53(e) is amended to communicate that installers may install cross drive rock anchors in accordance with the generic installation standards.

Section 80.54(a)(2) is amended so that the generic standards may be modified by an appendix filed in accordance with §80.51(a)(2). If the design of a home requires a change in the generic standards to protect the structural integrity of the home, the home manufacturer may file an appendix to the state's generic standards as part of the home manufacturer's installation instructions.

Section 80.54(b) is amended to delete the requirement to install a ground vapor barrier material under every manufactured home installed. Retailers or installers are only required to install the ground vapor barrier material if the home is installed per the department's generic standards or if the manufacturer's installation instructions require the material to be installed.

Section 80.54(b)(3) is amended to explain the standards for ground clearance requirement if a home is installed per the generic standards. If a home is installed in accordance with the home installation instructions, the installer must follow the ground clearance requirement of the home installation instructions.

Section 80.54(b)(5) is amended to explain the standards for moisture and ground vapor controls and the generic requirement for access openings since this is a measure for monitoring moisture and ground vapor controls. If the space underneath the home is to be enclosed, the retailer and/or installer must notify the purchaser that moisture and ground vapor control measures are required. If a home is installed in accordance with the home installation instructions, the installer must follow the moisture and ground vapor control requirements of the home installation instructions. For the purpose of safety and durability, installers are required to pass the clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet through the skirting to the outside, if those items are present.

Section 80.54(c), the Site Preparation Notice, is amended to explain that if skirting is provided, the consumer must be notified that moisture and ground vapor control measures are required. The phrase "ground vapor retarder" was updated to "ground vapor control measures." These changes are required since home installation instructions may require moisture and ground vapor control measures other than a vapor retarder on the ground.

Figure: 10 TAC §80.55(d)(1) and Figure: 10 TAC §80.55(d)(2) are amended to add references to refer to §80.55(d)(4) concerning alternative generic cross drive rock anchor installation instructions.

New §80.55(d)(4) is added because there are no cross drive rock or soil auger anchors individually designed for mixed rock and soil conditions or hard caliche soil. Presently, the department has approved anchors for installation in soil and in rock, but has no approved anchors for mixed soil. Even if there were such anchors available, there is a 12-month time period for testing new anchors under the department's requirements, with a cost to the anchor manufacturer of approximately $50,000. Alternative anchoring systems approved by the department, such as custom-designed anchor systems or concrete pads with embedded anchors, are economically prohibitive for most consumers and homeowners who live in areas of difficult soils, or the systems are not designed for all home widths.

The department found that there was an immediate need for safe, affordable anchoring of new and used manufactured homes in difficult soils, without which there is an imminent peril to occupants and neighboring homes if such anchoring systems are not implemented.

An emergency rule is in effect until June that addresses the cross drive rock anchor installation requirements in §80.54(a) and the requirement for a ground vapor retarder in subsections (b) and (c). The emergency rules require that installers double the amount of cross drive rock anchors and diagonal ties (use two for each specified) when inserted in mixed rock and soil conditions or hard caliche soil in order to meet necessary holding requirements for wind resistance.

Based upon information provided by license holders and the public, the rule for doubling the amount of cross drive rock anchors and diagonal frame ties should continue. Installers need an additional method for anchoring homes until more devices and systems are invented and approved for use in difficult soils.

Bobbie Hill, Director of Manufactured Housing, has determined that for each year of the first five years the sections as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Hill also has determined that for each year of the first five years the sections as proposed will be in effect, the public benefit as a result of enforcing the sections is improved quality of home installation and increased safety and durability of homes. The public benefit/probable economic costs for each section of the rules is as follows:

Amendment of §80.53 will improve communication about the choice that installers have to follow the generic installation instructions for cross drive rock anchors installed in difficult soil types. This improvement will benefit consumers and benefit large and small manufactured home retailing and installing businesses. There are no anticipated economic costs to persons/businesses who are required to comply with the section as proposed.

Amendment of §80.54 will enhance preservation of structural integrity for manufactured homes, lower energy costs for cooling, increase assurance that appliance drain and duct terminations will be properly installed, and increase public knowledge of the moisture and ground vapor control measures. This increased public knowledge of the moisture and ground vapor control measures will also benefit small and large businesses by enabling consumers to make more informed decisions about purchasing home site preparation services and moisture and ground vapor control measures. The anticipated economic costs to persons/businesses who are required to comply with the section as proposed will be minimal, since the additional costs will be passed on to consumers who choose to have the moisture and ground vapor control measures installed. The cost of compliance per home will be the same for small and large businesses. The material and installation cost of a ground vapor retarder will be approximately $100 for a single section home and $200 for a

double section home. Any benefit resulting from lower energy costs for cooling cannot be precisely predicted, but a vapor barrier installed over the soil in the crawl space is recommended by the Texas State Energy Conservation Office publication, "Manufactured Homes."

The proposed ground vapor control measures do not increase the cost of every manufactured home installation. The proposed rule only requires the retailer or installer to install any required moisture and ground vapor control measures if the retailer or installer provides the materials for skirting or contracts for the installation of skirting. Retailers and installers may contract with consumers to install homes in accordance with the home installation instructions or the generic installation standards. If the home installation instructions only recommend or suggest a vapor retarder on the ground, the retailer or installer may follow the required home installation instructions and is not required to place a vapor retarder on the ground. When retailers or installers follow the proposed generic standards and contract to enclose the space under the home with skirting, the retailers or installers must install the moisture and ground vapor control measures required by the proposed generic standards in §80.54. The proposed rule about requiring a crawl space access opening will increase the manufactured home installation cost if the retailer or installer provides materials to enclose the crawl space under a home. The cost will be less than $50 per home.

Since the installation instructions for solid fuel burning fireplaces and direct vent system appliances presently require combustion air inlets to pass through skirting to the outside, the proposed rule does not increase the manufactured home installation cost.

Since the installation instructions for clothes dryer exhaust ducts and air conditioning condensation drains presently require proper terminations, the proposed rule does not increase the manufactured home installation cost when the retailer and/or installer provides the clothes dryer exhaust duct or air conditioning.

Amendment of §80.55 will provide a moderate cost anchoring method for difficult soils in the generic standards. This moderate cost anchoring method will also benefit small and large retailing and installing businesses. The anticipated economic costs to persons/businesses who are required to comply with the section as proposed will be more than the costs of a soil auger anchoring system, but the costs will be less than the costs of a slab with concrete anchors.

The generic rule (§80.55(d)(4)) will double the amount of cross drive rock anchors for difficult soils, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock. The amendment to rule §80.55(d)(4) will modify Table 4A in §80.55(d)(2). For difficult soils, a manufactured home installer cannot insert a soil auger anchor. The installer also cannot properly install a cross drive rock anchor, which is only designed for solid rock. A manufactured home installer must use another approved method. The following list describes the other approved methods and their limitations.

Alternative anchoring systems described by the home installation instructions: The limitation is that only a few home installation instructions describe anchoring systems other than soil auger anchors.

A custom designed anchoring system: The limitation is that an installer, retailer, or consumer must employ a Texas licensed engineer or architect to design the custom designed anchoring system. The anchoring system cost may range from moderate ($1000) to high ($3500).

An anchoring system pre-approved by the department: The limitation is that department pre-approved anchoring systems do not exist for all home dimensions, home weights, and installation conditions. The costs for these pre-approved anchoring systems may range from low ($400) to high ($3500).

Modified Table 4A in §80.55(d)(2): The limitation is that some homes designed for Wind Zone I have built-in vertical ties, but the notes for modified Table 4A do not describe a method for connecting vertical ties. For a home designed with built-in vertical ties, the installer must install custom designed anchors or pre-approved concrete anchors for the built-in vertical ties. A pre-approved concrete anchor must be installed in a concrete component with a weight conforming to the anchor installation instructions and the home installation instructions. The anchoring cost for a system conforming to the modified Table 4A would be a moderate cost (approximately $1000) if the home is designed without built-in vertical ties, and approximately $2000 if two built-in vertical ties must be connected to custom designed anchors or pre-approved concrete anchors.

The benefit for installers and consumers anticipated as a result of enforcement of these amendments would be a generic standard that provides a moderate cost anchoring method for difficult soils.

Comments may be submitted to Bobbie Hill, Director of Manufactured Housing, Texas Department of Housing and Community Affairs, 507 Sabine Street, Austin, Texas 78701 within 30 days of the date of this publication.

The amendments are proposed under the Texas Manufactured Housing Standards Act, Article 5221f, §9, which provides the department authority to amend, add, and repeal rules governing the Manufactured Housing Division of the department.

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

§80.53. Manufacturer's Design Requirements.

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

(e) The manufacturer shall provide printed instructions with each new home specifying the location, orientation and required capacity of stabilizing components on which the design is based. The installer must use stabilizing components that have the required capacity and install them according to the anchor or stabilizing component manufacturer's current installation instructions. When soil auger anchor shafts are not installed in-line with the diagonal frame ties or the combined loads of two ties, approved stabilizer plates, or other approved methods, must be used in accordance with the installation instructions for the soil auger anchors and stabilizer plates. <u>If a difficult soil, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock, exists at the homesite, the installer may install a home in accordance with the generic standards and §80.55(d)(4) of this title (relating to Anchoring Systems).</u>

(f) (No change.)

§80.54. Standards for the Installation of Manufactured Homes.

(a) All manufactured homes shall be installed in accordance with one of the following:

(1) the home manufacturer's installation instructions;

(2) the state's generic standards set forth in this section, [and] §80.55 of this title (relating to Anchoring Systems), [and] §80.56 of this title (relating to Multi-Section Connection Standards), and modified by any appendix filed in accordance with §80.51(a)(2) of this title (relating to Manufactured Home Installation Requirements);

(3) a custom designed stabilization system;

(4) a stabilization system pre-approved by the department; or

(5) on a permanent foundation.

(b) Site Preparation Responsibilities and Requirements:

(1) The purchaser is responsible for the proper preparation of the site where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. Except in rental communities, the purchaser shall remove all debris, sod, tree stumps and other organic materials from all areas where footings are to be located. In areas where footings are not to be located, all debris, sod, tree stumps and other organic material shall be trimmed, cut, or removed down to a maximum height of 8 inches above the ground [or to a lower level if needed to properly install the vapor retarder material]. The retailer must give the purchaser a site preparation notice as described in this section prior to the execution of any binding sales agreement. If the installation is a secondary move, not involving a retail sale, the installer must give the homeowner the site preparation notice prior to any agreement for the secondary installation of the home.

(2) If the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for installing any required [the] moisture and ground vapor control measures in accordance with the home installation instructions or the generic standards [retarder] and for providing for the proper cross ventilation of the crawl space. If the purchaser or homeowner contracts with a person other than the retailer or installer for the skirting, the purchaser or homeowner is responsible for installing the moisture and ground vapor control measures [retarder] and for providing for the proper cross ventilation of the crawl space.

(3) Clearance: If the manufactured home is installed according to the state's generic standards, a [A] minimum clearance of 18 inches between the ground and the bottom of the floor joists must be maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.56 of this title (relating to Multi-Section Connection Standards) for additional requirements for [access openings to the crawl space and] utility connections. It is strongly recommended that the installer not install the home unless all debris, sod, tree stumps and other organic materials are removed from all areas where footings are to be located.

(4) Drainage: Except in rental communities, proper drainage is the responsibility of the homeowner. It is strongly recommended that the installer not install the home unless the exterior grade is sloped away from the home or another approved method to prohibit surface runoff from draining under the home is provided. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

(5) Generic Moisture and Ground Vapor Controls [Control]: If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, an access opening not less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so that any water supply and sewer drain connections located under the home are accessible for inspections. If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside. [a vapor retarder that keeps ground moisture out of the home must be installed to prevent moisture damage to the structure. The installer shall ensure that a minimum 6 mil polyethylene sheeting or its equivalent is properly installed and the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.] In addition, crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area. At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation. The retailer and/or installer must notify the purchaser that moisture and ground vapor control measures are required if the space under the home is to be enclosed. [The vapor retarder prevents water vapor build-up under the home.] Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. [For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.] The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.

(c) Notice: The site preparation notice to be given to the consumer shall be as follows:
Figure: 10 TAC §80.54(c)

(d) (No change.)

§80.55. Anchoring Systems.

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

(d) WIND ZONE I Installation:

(1) Typical anchor layout, single and multi-section units (WIND ZONE I ONLY):
Figure: 10 TAC §80.55(d)(1)

(2) Table 4A: The following table describes the maximum spacing for diagonal ties along each side of the unit.
Figure: 10 TAC §80.55(d)(2)

(3) (No change.)

(4) When approved auger anchors cannot be inserted into a difficult soil, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock, approved cross drive rock anchors may be used in accordance with the values and notes for Table 4A in paragraph (2) of this subsection modified as follows:

(A) since the ultimate anchor pull out in the difficult soil will be reduced, the maximum spacing for diagonal ties per side is one half the spacing allowed by Table 4A which will require adding one additional cross drive rock anchor for each anchor specified;

(B) the rods of the approved cross drive rock anchors must be fully inserted, have at least 24 inches of the rod lengths embedded in the difficult soil, and be restrained from horizontal movement, when feasible, by a stabilizer plate between the rods and the home; and

(C) each cross drive rock anchor is connected to one diagonal tie and is not connected to a vertical tie.

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

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

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Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475–3726

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Part V. Texas Department of Economic Development

Chapter 180. Industrial Projects

10 TAC §180.1, §180.2

The Texas Department of Economic Development (Department) proposes amendments to §180.1 and §180.2, relating to Industrial Projects. The amendments change the name of the Department to reflect the abolishment of the Texas Department of Commerce by Senate Bill 932 of the 75th Legislature and the transfer of that agency's functions to the Department, effective September 1, 1997, and update statutory citations to reflect other legislative action.

The proposed amendment to §180.1 changes the name of the Department.

The proposed amendment to §180.2 also changes the name of the Department to reflect the abolishment of the Texas Department of Commerce as well as changing the name of the Texas Employment Commission to the Texas Workforce Commission. These amendments also change legal citations to correctly reference sections of the Government Code, Tax Code and United States Code Annotated.

Craig Pinkley, Director of Finance, has determined that for each year of the first five years that the amendments will be in effect there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the amendments. No cost to either government or the public will result from amendments. There will be no impact on small businesses. No economic cost is anticipated to persons as a result of amending Chapter 180.

Mr. Pinkley has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the rules will be the avoidance of any confusion that may be caused by incorrect legal citations or agency names. No economic costs are anticipated to persons who are required to comply with the proposed amendments.

Written comments on the proposed amendments should be submitted, within 30 days of the publication of the proposed amendments, to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas, 78701, for hand-deliveries, P.O. Box 12728, Austin, Texas, 78711-2728, for US Mail, and (512) 936-0415 for Facsimiles.

The amendments are proposed pursuant to Government Code, §481.0044(a), which directs the Governing Board of the Department to adopt rules for administration of Department programs, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

Texas Civil Statutes, Article 5190.6 is affected by this proposal.

§180.1. General Rules.

(a) Introduction. Pursuant to the authority granted by the Administrative Procedure and Texas Register Act, as amended, the Texas Department of Economic Development [~~Commerce~~] prescribes the following rules regarding practice and procedure before the department. The rules promulgated under this chapter are not applicable to local development corporations created pursuant to Texas Civil Statutes, Article 5190.6, §4A.

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

§180.2. Industrial Revenue Bond Program.

(a) General.

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

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

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

(D) Blighted area–Those areas and areas immediately adjacent thereto within a city which, by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in a tax incremental district [~~created under the 66th Legislature, 1979, Texas Civil Statutes, Chapter 695, Article 1066d~~], or any combination of the foregoing, which the city finds and determines, after a hearing held pursuant to subsection (b)(9)(A) of this section, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and/or a menace to the public health, safety, or welfare in their present condition and use. Blighted areas includes the terms "development area" as to any area designated by a city as a development area prior to October 1, 1985, and "economically depressed area," which must comply with the requirements set forth in subsection (b)(9)(B) and (10) of this section for eligibility as a blighted area.

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

(K) Department–Texas Department of Economic Development [~~Commerce~~].

(L)-(N) (No change.)

(O) Federally assisted new community–Those federally assisted areas which have received or will receive assistance in the form of loan guarantees under the National Housing Act, Title X, and a portion of the federally assisted area has received grants under the 42 U.S.C.A. §5307 [~~Housing and Community Development Act of 1974, §107(a)(1), as amended~~].

(P)-(X) (No change.)

(4) (No change.)

(b) Application contents.

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

(9) Special rules for commercial projects in blighted areas and development areas. Under the Act, the financing of projects for commercial use is confined to, among others, geographic areas within the corporate limits of a city found and determined by the governing body of such city to be either a blighted area (or areas immediately adjacent thereto) or a development area. Rules for establishing a blighted area are set forth in subparagraph (A) of this paragraph. Rules for establishing a development area are set forth in subparagraph (B) of this paragraph.

(A) Establishment of eligible blighted areas. The provisions of this subparagraph govern the method of establishing blighted areas and set forth the criteria to be used by a city in declaring an area (whether one or more) within its jurisdiction to be a blighted area.

(i) (No change.)

(ii) The department may refuse to approve all or any part of an area designated by a city as an eligible blighted area if the governing body of such city does not find that the designated area (whether one or more) is in a tax incremental district established by the city [~~pursuant to and in accordance with the provisions of Texas Civil Statutes, Article 1066d~~], or contains a substantial number of substandard, slum, deteriorated, or deteriorating structures, or suffers from a high relative rate of unemployment, or any combination of the foregoing. If the area or areas proposed to be designated as eligible blighted areas are not located in a tax incremental district [~~as provided in Texas Civil Statutes, Article 1066d~~], the determination of the existence of either a substantial number of slum, deteriorated, or deteriorating structures of a high relative rate of unemployment shall be in accordance with the following criteria.

(I) Substandard structures. A geographic area constituting all or less than all of the geographic area within the corporate limits of a city may be designated as an eligible blighted area if:

(-a-) the area is designated as a reinvestment zone pursuant to Tax Code, Chapter 311 [~~Texas Civil Statutes, Article 1066e~~], or Tax Code, Chapter 312 [~~Texas Civil Statutes, Article 1066f~~];

(-b-) the area is designated as an enterprise zone by the city and the state Enterprise Zone Board as provided in Government Code, Chapter 2303 [~~Senate Bill 752, 70th Legislature, 1987~~], and such designation is based in whole or in part on substandard structures; or

(-c-) (No change.)

(II) Unemployment.

(-a-) A geographic area constituting all of the geographic area within the corporate limits of a city may be designated as an eligible blighted area if the governing body of the city finds that the city's actual civilian labor force unemployment rate for the most recent month for which data has been published by the Texas Workforce [~~Employment~~] Commission is equal to or in excess of one and one-half times the actual state unemployment rate for the same month, or the city's actual civilian labor force unemployment rate for the most recent calendar quarter or calendar year for which data has been published by the Texas Workforce [~~Employment~~] Commission is equal to or in excess of one and one-half times the average actual state unemployment rate for the same calendar quarter or calendar year, provided that in no event shall the resulting product be less than 9.0%.

(-b-) A geographic area constituting less than all of the geographic area within the corporate limits of a city may be designated as an eligible blighted area if the governing body of the city finds that the percentage of unemployment of the civilian labor force residing in such area is equal to or in excess of the percentage of unemployment which would otherwise justify a designated area as provided in item (-a-) of this subclause, or that such area has been designated and approved by the state as an enterprise zone as provided by Government Code, Chapter 2303 [~~Senate Bill 752, 70th Legislature, 1987~~], or that such area constitutes all or part of an area designated by any state or federal agency as an area of economic distress, blighted area, targeted area, or other similar designation, and which designation is based in whole or in part on unemployment, or any combination of the foregoing.

(-c-) With respect to any area for which the unemployment data referred to in item (-a-) and item (-b-) of this subclause is not published or otherwise reasonably available from the Texas Workforce [~~Employment~~] Commission, a city may substitute alternative unemployment statistics upon a representation by the city that the substituted data is reasonably accurate and verifiable and is available for inspection by the department.

(iii)-(vi) (No change.)

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

(10)-(12) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State, on April 20, 1999.

TRD-9902327
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 936-0177

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Chapter 197. Private Donations

10 TAC §§197.1, 197.2, 197.4, 197.6

The Texas Department of Economic Development (Department) proposes amendments to §§197.1, 197.2, 197.4, and 197.6 relating to Private Donations. The proposed amendments change the name of the Department to reflect the abolishment of the Texas Department of Commerce by Senate Bill 932 of the 75th Legislature and the transfer of that agency's

functions to the Department, effective September 1, 1997. The amendments also change the Department's policy on acceptance of gifts to make it consistent with Government Code, Chapter 575, Acceptance of Gift by State Agency. The amendments further update legal citations to correctly reference sections of the Government Code.

The proposed amendments to §197.1 change the name of the Department, change the dollar value of gifts affected from $250 to $500, and update the name and citation of the Public Information Act.

The proposed amendment to §197.2 makes the donation process consistent with Government Code, Chapter 575.

The proposed amendment to §197.4 changes the reference of the state treasurer to the comptroller's treasury division.

The proposed amendment to §197.6 clarifies the process for notifying the agency of donations from prospective contractors.

Robin Abbott, General Counsel, has determined that for each year of the first five years that the amendments will be in effect there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the amendments. No cost or reduction in cost to either government or the public is anticipated as a result of the amendments. There will be no impact on small businesses. No economic cost is anticipated to persons as a result of amending Chapter 197.

Ms. Abbott has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the rules will be the avoidance of any confusion that may be caused by incorrect wording, legal citations or agency names. No economic costs are anticipated to persons who are required to comply with the proposed amendments.

Written comments on the proposed amendments should be submitted, within 30 days of the publication of the proposed amendments, to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas, 78701, for hand-deliveries, P.O. Box 12728, Austin, Texas, 78711-2728, for US Mail, and (512) 936-0415 for Facsimiles.

The amendments are proposed pursuant to Government Code, §481.0044(a), which directs the Governing Board of the Department to adopt rules necessary for the administration of the Department, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Government Code, Chapter 481 is affected by this proposal.

§197.1. General Provisions.

(a) Introduction. Private sector donations to the Texas Department of Economic Development [~~Commerce~~] can have a significant impact on the agency's success in stimulating economic development for the State of Texas. The Department of Economic Development [~~Commerce~~] is statutorily authorized to accept donations pursuant to the Texas Government Code, §481.021(a)(3). It shall be the policy of the department to accept only those donations that advance the purpose of the agency.

(b) (No change.)

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

(1) (No change.)

(2) Department–Texas Department of Economic Development [~~Commerce~~].

(3) Donation–The conveyance of a property interest or service the value of which is [~~$250~~] or more. Donations may include, among other things, transfers of cash gifts, services, real property, leasehold estates, loaned employees, and grants, as well as in-kind personal gifts such as equipment, books, art, or memorabilia.

(4) Donation agreement–The document [~~donative instrument executed by the department and the donor~~] which identifies the donated property and outlines any special conditions of the donation.

(5)-(7) (No change.)

(8) Officer–The executive director, governing [~~policy~~] board members, and advisory board members who serve the department [~~through appointment by the governor~~].

(d) Examination of records. Any party requesting the examination of records pursuant to the Public Information [~~Open Records~~] Act, Texas Government Code, Chapter 552 [~~Civil Statutes, Article 6252-17a~~], shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, agree to pay the appropriate fee [~~must accompany the request~~]. The department may seek a determination from the attorney general regarding the confidentiality of information relating to a donation before releasing requested information if the department determines an exception to the Public Information [~~Open Records~~] Act is applicable.

(e) Written communication with the department. Communications to the department regarding donations should be addressed to the Executive Director, Texas Department of Economic Development [~~Commerce~~], P.O. Box 12728, Austin, Texas 78711.

§197.2. Procedure for Acceptance of Donations.

(a) (No change.)

(b) Donation agreement. The donor and the department shall execute a donation agreement which documents the name of the donor, a description of the donation, and the purpose of the donation. Acceptance of donations to the department shall be approved by the governing board in accordance with Texas Government Code, Chapter 575. [~~includes the following information:~~]

[~~(1) a description of the donation, including a determination of the value;~~]

[~~(2) a statement by the donor attesting to its ownership rights in the property;~~]

[~~(3) the signature of the donor if the donor is an individual or its official representative if the donor is a business organization;~~]

[~~(4) the signature of the executive director or his or her designee;~~]

[~~(5) any conditions restricting the use of the donation if the donor imposes restrictions agreed to by the department;~~]

[~~(6) the mailing address of the donor and principal place of business if the donor is a business entity;~~]

[~~(7) a statement identifying any official relationship between the donor and the department;~~]

[~~(8) a statement advising the donor to seek legal and/or tax advice from its own legal counsel.~~]

(c) Deposited funds. The department shall deposit monetary contributions from private sources in a separate fund kept and held

in escrow and in trust by the comptroller's treasury division [~~state treasurer~~] for and on behalf of the department as funds held outside the treasury under the Texas Government Code, §404.073. The money contributed shall be used to carry out the purposes of the department and, to the extent possible, the purposes specified by the donors.

§197.4. Acceptance of Donations.

[~~(a) All donations made to the department shall be accepted by the executive director or his or her designee.~~]

[~~(b)~~] All donations will be accepted on behalf of the department or corporation. No officer or employee of the department can accept donations in their individual capacity.

§197.6. Standard of Conduct between the Department and Private Donors.

The department shall contract with all persons and entities on a competitive basis to the greatest extent possible. Any person or entity seeking to contract with the department on a non-competitive [~~bid~~] basis [~~or otherwise~~] shall disclose all known [~~previous~~] donations to the department occurring within the proceeding two years [~~to the department or any other state agency~~]. The disclosure shall include the following information:

(1) the nature and value of the donation; and

(2) the date the donation was made [~~and the recipient~~]. If the donation is ongoing the last date that the donation was available to the department [~~agency~~] shall be used to determine the date of the donation.

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 April 20, 1999.

TRD-9902328
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 936-0177

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TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

Subchapter A. Records Retention Scheduling

13 TAC §§6.1–6.9

The Texas State Library and Archives Commission proposes amendments to §§6.1-6.9, relating to records retention scheduling by state agencies. The amendments revise the definitions and language of the rules to conform with Government Code, Chapter 441, Subchapter L, enacted by the 75th Legislature. In addition, the amended rules propose a definition of when a new agency is effectively established and subject to records retention scheduling requirements, those instances in which a records retention schedule of a state agency must be amended during a certification period, and a means by which the records retention schedule of a state agency may be decertified for failure to cooperate with the state archivist in the identification of archival state records.

Michael Heskett, State Records Administrator and Director of the State and Local Records Management Division of the Texas State Library and Archives Commission, has determined that for the first five years the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Government Code, Chapter 441, Subchapter L requires each state agency to manage and preserve the records of its activities in the interests of itself, the state, and its citizens. The records retention schedule developed, certified, and implemented under these rules is central to the effective fulfillment of that statutory duty. The anticipated public benefit of the adoption of these rules is that the rules are amended to conform to the requirements and intent of Government Code, Chapter 441, Subchapter L. There are no cost implications to either small businesses or persons required to comply with these rules.

Comments on these proposed rules may be submitted to Tim Nolan, Program Planning and Research Specialist, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, by fax to 512-323-6100, or by e-mail to tim.nolan@tsl.state.tx.us.

These amendments are proposed under Government Code, §441.185(e), which provides authorization for the commission to adopt rules relating to the submission of records retention schedules to the state records administrator.

These sections affect Government Code, §441.185 and §441.186.

§6.1. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in [~~the~~] Government Code, §441.180 [~~§§441.031-441.039 and §§441.051-441.062~~].

(1) Agency head-The appointed or elected official who serves by the state constitution, state statute, or action of the governing body of a state agency as the chief executive and administrative officer of a state agency.

[~~(1) Agency-A state executive, educational, judicial, legislative, or eleemosynary department, institution, board, or commission.~~]

(2) Archival state record-Any state record of enduring value that will be preserved on a continuing basis by the commission or another state agency until the state archivist indicates that based on a reappraisal of the record it no longer merits further retention.

[~~(2) Archival value-The determination in appraising the value of state records that they have historical value and are worthy of preservation by an archive.~~]

(3) Certification-The process, inclusive of recertification, by which a records retention schedule or amendments to a schedule are approved [~~by the Texas State Library~~] for use by a state [~~an~~] agency during a certification period.

(4) Certification period-The period of time during which a records retention schedule, including certified amendments to the schedule, may be used by a state [~~an~~] agency in the final disposition of state records without additional authorization from the director and librarian [~~Texas State Library~~].

(5) Commission-The Texas State Library and Archives Commission.

(6) [~~(5)~~] Component-A division, department, program, or other sub-division of a state [~~an~~] agency.

(7) Confidential state record-Any state record to which public access is denied under Government Code, Chapter 552, or other state or federal law.

(8) Decertification-The process by which an approved records retention schedule of a state agency is disapproved because of failure of the state agency to adhere to the requirements of Government Code, Chapter 441, Subchapter L, and these rules adopted under that subchapter.

[~~(6) Director-The director of the State and Local Records Management Division of the Texas State Library.~~]

(9) Director and librarian-The chief executive and administrative officer of the Texas State Library and Archives Commission.

[~~(7) Essential records-Records that are necessary to resume or continue a state agency's business; to recreate its legal and financial status; and to preserve the rights of the agency, its employees, and its clients.~~]

(10) [~~(8)~~] Final disposition-Final processing of state records by either destruction or archival preservation by the commission, by a state agency, or by an alternate archival institution as permitted by Government Code, Chapter 441, Subchapter L.

(11) [~~(9)~~] Records management officer [~~administrator~~]-The agency head [~~of an agency~~] or the person appointed by the agency head [~~of an agency~~] to act as the state agency's representative in all issues of records management policy, responsibility, and statutory compliance pursuant to [~~the~~] Government Code, §441.184 [~~§441.037~~].

(12) [~~(10)~~] Records retention schedule-A document prepared in accordance with §6.2 of this title (relating to Submission of Records Retention Schedules for Certification).

(13) [~~(11)~~] Records series-A group of identical or related records that are normally used and/or filed together and that permit evaluation as a group for retention scheduling purposes.

(14) [~~(12)~~] Retention period-The period of time during which state records must be maintained before final disposition.

(15) State agency-Any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government created by the constitution or a statute of this state, including an eleemosynary institution; any university system and its components and any institution of higher education as defined by Section 61.003, Education Code, except a public junior college, not governed by a university system board; the Texas Municipal Retirement System and the Texas County and District Retirement System; and any public non-profit corporation created by the legislature whose responsibilities and authority are not limited to a geographical area less than that of the state.

(16) State archivist-The person designated by the director and librarian to administer the state archives program under Government Code, §441.181.

(17) [~~(13)~~] State record-Any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents [~~its~~] activities in the conduct of state business or use of public resources. The term does not include library or museum material made or acquired and preserved solely for reference or exhibition purposes; [~~,~~] an extra copy of recorded information preserved only for reference; [~~, or~~] a stock of publications or blank forms; or any records, correspondence, notes, memoranda, or other documents associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

(18) State records administrator-The person designated by the director and librarian to administer the state records management program under Government Code, §441.182.

(19) [~~(14)~~] Texas State Records Retention Schedule-Figure 1 of §6.10 of this title (relating to Texas State Records Retention Schedule).

(20) [~~(15)~~] Vital state record [~~records~~]- Any state record necessary to the resumption or continuation of state agency operations in an emergency or disaster; the re-creation of the legal and financial status of the agency; or the protection and fulfillment of obligations to the people of the state [~~Essential records~~].

§6.2. Submission of Records Retention Schedules for Certification.

(a) Each state agency must submit a records retention schedule to the state records administrator [~~director~~] for initial certification within one year of the effective date of this section or within one year of the effective date of establishment [~~creation~~] of a new state agency, whichever later.

(b) For the purposes of this section, a state [~~an~~] agency is considered a new state agency if through legislative action subsequent to the adoption of this section, it:

(1) is created to carry out a new function or activity; [~~or~~]

(2) is the product of a merger between components of two or more state agencies; [~~or~~]

(3) is a component or components separated from a state [~~an~~] agency or agencies and designated as an independent state agency, or

(4) becomes a state agency by amendment to the definition of a state agency in Government Code, §441.180.

(c) At the discretion of the state records administrator [~~director~~] and on petition from the records management officer [~~an agency~~] that it will be impossible for the state agency to comply fully with the requirements of subsection (a) of this section, the state records administrator [~~director~~] may extend the deadline for the filing of a records retention schedule for a period on which the state records administrator [~~director~~] and the records management officer [~~agency~~] agree. One or more additional extensions may be granted, but in no case may the first extension and any additional extensions be for a combined period of more than two [~~three~~] years from the effective date of this section or of the establishment of a new agency.

(d) At the discretion of the state records administrator [~~director~~] and on petition from the records management officer [~~an agency~~], the state records administrator [~~director~~] may permit the state agency to submit records retention schedules on a component by component basis for certification in lieu of a single submission. The petition must state the reason why the state agency believes this alternative method of submission is in the best interests of its records management program and must provide an estimated timetable for the submission of schedules for the other components of the state

agency. Schedules submitted and certified under this alternative method may be combined by the state records administrator [director] for the purposes of recertification under §6.3 of this title (relating to Submission of Records Retention Schedules for Recertification), with submission for recertification of the combined schedule due on the applicable anniversary date of the first schedule submitted and certified.

(e) For the purposes of this section, a new state agency is considered established on the effective date the first agency head assumes the position of the elected or appointed chief executive and administrative officer of the state agency.

§6.3. Submission of Records Retention Schedules for Recertification.

(a) A records retention schedule must be submitted to the state records administrator [director] for recertification annually for the first two years after initial certification.

(b) After the second recertification, a records retention schedule must be submitted for recertification once every two years, except for the following situations.

(1) If a state [an] agency with a certified schedule absorbs another state agency; the records retention schedule must be submitted for recertification within one year of the effective date of the reorganization, and then will revert, when the schedule is recertified, to annual or biennial certification depending on the certification status of the absorbing agency under this section at the time of absorption.

(2) A state [An] agency may choose to submit a complete retention schedule for recertification at any time during a certification period [annual certification].

(c) A records retention schedule due for recertification under this section must be submitted to the state records administrator [director] no later than one year from the end of the month in which the schedule was certified or last recertified (or two years if the state agency is due for biennial recertification).

(d) At the discretion of the state records administrator [director] and on petition from the records management officer of a state [an] agency that it will be impossible to comply fully with the requirements of subsection (c) of this section, the state records administrator [director] may extend the deadline for submission of the records retention schedule for up to 90 days from the end of the month the recertification of the schedule was due. One or more additional extensions may be granted, but in no case may the first extension and any additional extensions be for a combined period of more than one year from the end of the month the recertification was due.

§6.4. Submission of Amendments to Records Retention Schedules.

[(a)] During a certification period the records management officer must keep [agency records administrator is responsible for keeping the information in] the agency's retention schedule current by submitting amendments to the [amending the certified] schedule to: [as needed.]

(1) add or drop a records series;

(2) propose an amended period of time a records series will be retained;

(3) propose an amended period of time a records series will be retained in storage by the commission; and

(4) indicate changes to information concerning a records series required under subsection (a)(2) of §6.5 (relating to Certification of Records Retention Schedules and Amendments).

[(b) Amendments must be submitted in the form and manner prescribed by the director.]

§6.5. Certification of Records Retention Schedules and Amendments.

(a) To be a candidate for certification, a records retention schedule must:

(1) list all records series maintained by the state agency, regardless of medium;

(2) indicate [identify] the following for each record series:

(A) whether the records are confidential state records or open to access by the public [open or confidential];

(B) whether the records are archival state records [that have archival value] or state records that must be reviewed by the state archivist for potential archival value prior to their destruction;

(C) the medium of the records and if the records are converted from one medium to another; and

(D) whether the records [that] are vital state records [essential (vital)];

(3) ensure that state records maintained by the state agency listed in the Texas State Records Retention Schedule are retained for the minimum periods prescribed in that schedule;

(4) ensure that state records not listed in the Texas State Records Retention Schedule are kept for a length of time sufficient to meet administrative, legal, fiscal, and archival requirements; and

(5) be submitted in a manner and form prescribed by the state records administrator [director].

(b) To be a candidate for certification, an amendment to a records retention schedule must meet the criteria in paragraphs (2)-(5) of subsection (a) of this section.

[(c) The records administrator must certify that the records retention schedule or an amendment to the schedule was prepared in accordance with Chapter 441, Subchapter C, Government Code and rules adopted under that chapter].

(c) [(d)] To be certified, a records retention schedule or an amendment to the schedule must be approved by the state auditor [State Auditor's Office] and the director and librarian [of the Texas State Library].

§6.6. Decertification [Expiration of Certification].

(a) If a state [an] agency fails to submit a records retention schedule to the state records administrator [director] for recertification by a required deadline or fails to request an extension, the certification of the currently approved schedule and any approved amendments to the schedule expires one year from the end of the month in which the schedule was initially certified or last recertified (or two years if the state agency is due for biennial recertification) [and the agency is no longer authorized to dispose of state records based on the schedule].

(b) If a state agency refuses to permit the inspection of a state records series by the state archivist or fails to respond to questions from the state archivist concerning the content, use, or other aspects of a state records series in order for the state archivist to determine if the series contains archival state records in accordance with Government Code, §441.186, the director and librarian may order the decertification of its approved records retention schedule, with decertification effective 30 days from the date of the order.

(c) If its records retention schedule is decertified according to this section, a state agency is no longer authorized to destroy records based on the schedule and must submit requests for the destruction of

its records in accordance with §6.7 of this title (relating to Destruction of State Records).

§6.7. Destruction of State Records.

(a) Without a certified records retention schedule, a state [~~an~~] agency must request authorization from the director and librarian [~~of the Texas State Library~~] for the destruction of any state record.

(b) A state [~~An~~] agency with a certified records retention schedule must request authorization from the director and librarian [~~of the Texas State Library~~] for the destruction of any state record that does not appear on the schedule or a certified amendment to the schedule.

(c) Requests for authorization for the destruction of state records shall be in a form and manner prescribed by the state records administrator [~~director~~].

§6.8. Implementation of Certified Records Retention Schedules.

(a) A state [~~An~~] agency must establish policies and procedures to ensure state records are maintained until the expiration of the retention periods on its records retention schedule.

(b) Final disposition of state records must ensure that:

(1) archival state records [~~having archival value and~~] scheduled to be preserved by [~~at~~] the commission [~~State Archives~~] are transferred to the commission [~~archives~~] on paper, [~~or~~] on microform that meets the specifications in the then most current version of *American National Standard for Imaging Materials - Silver-Gelatin Type Black-and-White Film - Specifications for Stability* (ANSI/NAPM IT9.1,) [~~American National Standard for Imaging Media (Film)-Silver-Gelatin Type-Specifications for Stability (ANSI IT9.1-1992)~~] or in another medium with prior approval of the state archivist;

(2) records scheduled for destruction are destroyed [~~disposed of~~] in a manner that ensures protection for any sensitive or confidential information; and

(3) the final disposition of records is documented by the state agency.

§6.9. Notification by State Records Administrator [~~Director~~].

Within 30 days of the effective date of these sections, the state records administrator [~~director~~] shall furnish a written notice to each state agency that is not in current compliance with the submission requirements of §6.2 of this title (relating to Submission of Records Retention Schedules for Certification) and §6.3 of this title (relating to Submission of Records Retention Schedules for Recertification).

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 April 21, 1999.

TRD-9902351
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 463–5440

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TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 273. General Rules

22 TAC §273.9

The Texas Optometry Board proposes the adoption of an amendment to §273.9, to inform licensees of the requirement of providing public interest information to patients by displaying at every location where optometric services are provided information regarding the board's name, address and telephone number for the purposes of filing complaints.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Ms. Ewald also has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the amended rule is that the general public will have information on procedures by which complaints are filed with and resolved by the board. It has also been determined that there will be no cost to licensees over the first five years as a result of enforcing or administering the rule. The rule does not impose any additional duties on licensees, but only acknowledges that some optometric services may be performed outside a normal office setting, and that these settings have the same requirements for the protection of the public as the office setting. Since no additional duties are being imposed, there will be no economic effects for small businesses.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is June 1, 1999.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, §2.14 and §2.17.

The Texas Optometry Board interprets §2.14 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §2.17 to require public interest information be provided to the general public.

Texas Civil Statutes, Article 4552, is affected by this proposal.

§273.9. Public Interest Information.

(a) In order for the public to be informed regarding the functions of the board and the board's procedures by which complaints are filed with and resolved by the board, each licensee is required to display [~~in each~~] at every location where optometric services are provided [~~office~~] information regarding the board's name, address, and telephone number.

(b)-(d) (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 April 22, 1999.

TRD-9902384
Lois Ewald
Executive Director
Texas Optometry Board
Proposed date of adoption: July 9, 1999
For further information, please call: (512) 305–8502

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Chapter 279. Interpretations

22 TAC §279.13

The Texas Optometry Board proposes an amendment to §279.13, to inform licensees of the requirement of follow-up care to patients when examinations are performed in a nursing home or other abode to confined patients, an industrial site, and a school when requested by the school administration. To provide the initial care and follow-up care, the optometrist or therapeutic optometrist must have an office location or place of practice within 100 miles of such examination site. As an alternative written arrangements with a qualified eye health professional who has an office location within 100 miles of the examination site must be executed.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Ms. Ewald also has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the amended rule is that the general public will be able to obtain eye examinations away from the doctor's office, with the responsibility for follow-up care being established. It has also been determined that there will be no additional costs to licensees over the first five years as a result of enforcing or administering the rule. The rule does not impose any additional duties on licensees, but simply clarifies that all optometric services provided under Article 4552 § 5.04 must comply with the same requirements regarding office locations. Since no additional duties are being imposed, there will be no economic effects for small businesses.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is June 1, 1999.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, § 2.14 and §5.04.

The Texas Optometry Board interprets § 2.14 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets § 5.04 as authorizing the practice of optometry away from the principal office of the examining doctor in certain instances.

Texas Civil Statutes, Article 4552, is affected by this proposal.

§279.13. Board Interpretation Number Thirteen.

The Texas Optometry Act was enacted in part to safeguard the visual welfare of the public and the optometrist-patient relationship and to fix professional responsibility with respect to the patient. In order to comply with these objectives and to assure patients will have adequate follow-up care, licensed optometrists or therapeutic optometrists who[~~, when requested to do so,~~] practice optometry or therapeutic optometry at [~~an industrial site~~], including the examination and prescribing or supplying of lenses to patients, at:

(1) a nursing home or other abode to patients confined therein,

(2) an industrial site, when requested to do so, or

(3) a school site when requested to do so by the school administration, must have an office location or place of practice within 100 miles of such examination site, or, in the alternative must have made arrangements, confirmed in writing prior to offering or providing services, for continued care with a qualified eye health professional with an office location or place of practice within 100 miles of such examination site. Failure to comply with this rule shall be deemed as practicing from house-to-house and the improper solicitation of patients in violation of the Act, 5.04(5). In addition, the optometrist must comply with the requirements of 5.02 to maintain current information regarding practice locations with the board office.

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 April 22, 1999.

TRD-9902383
Lois Ewald
Executive Director
Texas Optometry Board
Proposed date of adoption: July 9, 1999
For further information, please call: (512) 305–8502

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Subchapter G. Clinical Health Services

25 TAC §1.91

The Texas Department of Health (department) proposes an amendment to §1.91, concerning fees for clinical health services.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.91 has been reviewed, and the department has determined that the reasons for adopting the section continue to exist.

The Health and Safety Code, §12.032, states that the board may charge fees to a person receiving public health services from the department or any of its programs' contractors. While state law does not require the department to adopt rules, it is appropriate to have rules to clarify the requirements of the department for consumers and contractors and to provide consistency throughout department programs. Other minor changes were made for the purpose of updating language and for further clarification of the section.

The department published a Notice of Intention to Review the section as required by Rider 167 in the *Texas Register* on September 4, 1998, (23 TexReg 9076). No comments were received by the department on this section.

Jack Baum, D.D.S., Acting Associate Commissioner for Community Health and Resources Development, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Dr. Baum has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of enforcing or administering the section will be clarification of and consistency in the process of collecting fees for clinical health services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Zanette Hammonds, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6445. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §12.032, which provides the board with the authority to adopt rules for collecting fees for clinical health services; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects the Health and Safety Code, §12.032; the Health and Safety Code, §12.001; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§1.91. Fees for Clinical Health Services.

(a) (No change.)

(b) Schedule of fees.

(1) The department shall base the calculation of fees upon the federal poverty [~~income~~] guidelines published annually by the U.S. Department of Health and Human Services. The commissioner of health shall adjust the income guidelines annually to determine the schedule of fees for clinical health services [~~as needed to conform to changes in federal guidelines as those changes occur~~]. The current Income Guidelines and Schedule of Charges [~~income guidelines~~] will be filed with this section in the offices of the Associateship for Community Health and Resources Development [~~Bureau of Community Oriented Primary Care~~] of the department and will be available for public inspection during office hours. The Income Guidelines and Schedule of Charges shall [~~Income guideline adjustments will~~] also be published in the *Texas Register* not later than 30 days after the date on which they have been adopted by the commissioner of health.

(2) The following schedule of fees lists the fees covering clinical health services provided at public health clinics. Local health department contractors may use the following schedule or their own schedule. Public health regions shall [~~will~~] use the following schedule.

Figure: 25 TAC, §1.91(b)(2)

(3) (No change.)

(4) The clinic shall [~~will~~] determine if a person is able to pay in accordance with the appropriate schedule; however, the clinic shall [~~will~~] not deny services because of a person's inability to pay.

(5) Patients or clients whose incomes are above the 200%+ poverty level shall[~~will~~] be referred to the private sector for care unless extenuating circumstances exist. Such circumstances include provision of immunization services, prevention and control of communicable diseases, unusually high medical expenses or the unavailability of specific care needed. Such exceptions may receive care at the public health clinic in accordance with the schedule of fees.

(6)-(10) (No change.)

(c) Modification, suspension, or termination of services.

(1) The department may modify, suspend, or terminate services to a person[~~,~~] determined able to pay[~~,~~] for nonpayment of fees after notice to the person and opportunity for hearing. The criteria upon which the department will take such action is when the person fraudulently or deliberately misrepresents a material fact about his or her eligibility, ability to pay, or the application of the schedule of fees to him/her.

(2) The department shall [~~will~~] conduct the hearing in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

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

Filed with the Office of the Secretary of State, on April 20, 1999.

TRD-9902317
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 38. Chronically Ill and Disabled Children's Services Program

25 TAC §§38.2, 38.3, 38.6, 38.13

The Texas Department of Health (department) proposes amendments to §§38.2, 38.3, 38.6, and 38.13 concerning the administration of the Chronically Ill and Disabled Children's Services (CIDC) Program. Specifically, the sections cover Definitions, Eligibility for Client Services, Providers, and Payment of Services.

The amendment to §38.2 defines retroactive eligibility as 15 days preceding the date of receipt of a complete application, further defines newborns, and adds definitions of eligibility dates for clients who are comatose, clients who are born prematurely, clients who must meet spenddown eligibility requirements, and clients who must provide additional documentation to make their applications complete. A definition of "spenddown" has been added, and all the definitions have been numbered in *Texas Register* format, as required by 1 Texas Administrative Code (TAC) §91.1.

The amendment to §38.3(3)(A) clarifies the 12-month eligibility period for clients who meet spenddown eligibility requirements and deletes criteria for provisional eligibility. Section 38.3(3)(A)(vi) is renumbered to §38.3(3)(A)(v) and language is added to clarify program policy and to specify the 60-day time limit allowed for clients to submit an eligibility determination made by Medicaid or by the Supplemental Security Income Program (SSI). The amendment to §38.3(7)(B)(ii) provides that an application for CIDC eligibility which lacks any data or documents required to process the application, specifically including a determination of Medicaid eligibility, shall be considered incomplete.

The amendment to §38.6(a) adds "dietitians" to this subsection, and in §38.6(a)(5), corrects grammar concerning overpayments made on behalf of clients to CIDC Program providers. The amendment to §38.6(b)(2) authorizes denial or suspension of approved provider status based on disciplinary action taken by the licensing board of any provider or by the Texas Medicaid Program. The amendment to §38.6(d)(4) corrects grammar in the sentence concerning podiatrists accepting responsibility for actions of staff members. The amendment to §38.6(e) adds provisions under which licensed dietitians may be approved providers in the CIDC Program, as authorized by Senate Bill 1313, 75th Legislature, 1997. Dietitians were added as providers in policy effective September 1, 1997. This amendment names them as providers in rule.

The amendment to §38.13(3)(A)(iv) designates the current edition of the Drug Topics Red Book as the source of price reimbursement information for nutritional supplements rather than the 1996 edition of the Drug Topics Red Book. This change reflects program and provider practice. The amendment to §38.13(3)(B)(v) corrects the methodology used to determine reimbursement for ambulatory surgical centers. The current rule is inaccurate and does not reflect program practice.

Lesa Ross-Brown, Director, Division of Financial Management, Associateship for Community Health and Resources Development, has determined that for the five-year period the sections are in effect, there will be no fiscal implications to state and local government as a result of administering the sections as proposed.

Susan Penfield, M.D., Director, Children with Special Health Care Needs Planning and Policy Development Division, Children's Health Bureau, Associateship for Community Health and Resources Development, has determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be improved service and more accurate statement of program rules for CIDC clients and program providers. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposals may be submitted in writing to Susan Penfield, M.D., Children's Health Bureau, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, by fax at (512) 458-7238, or by telephone at (800) 252-8023 or (512) 458-7111, extension 3104. Comments will be accepted for 60 days following publication of this proposal in the *Texas Register*. Also, a public hearing will be held to receive public comments at 1:00 p.m., on Wednesday, May 19, 1999, at the Texas Department of Health, Moreton Building, Room M-652, 1100 West 49th Street, Austin, Texas 78756.

The amendments are proposed under Health and Safety Code, §§35.004-35.005, which authorizes the Texas Board of Health (board) to adopt rules necessary to administer the CIDC Program; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The amendments will affect the Health and Safety Code, Chapter 35.

§38.2. Definitions.

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

(1) Act–The Chronically Ill and Disabled Children's Services Act, Health and Safety Code, Chapter 35.

(2) Advisory committee–Those individuals appointed by the Texas Board of Health to serve in an advisory capacity to the Chronically Ill and Disabled Children's Services (CIDC) Program staff.

(3) Applicant–An individual making application for CIDC Program services, but not currently determined eligible.

(4) Board–Texas Board of Health.

(5) Bona fide–In or with good faith; honestly, openly, and sincerely; without deceit or fraud.

(6) Case management–The assessment of a client's overall service needs and the development and implementation of a course of action or plan for meeting those needs, which is family centered, community-based, culturally sensitive, comprehensive, and is intended to assist those clients who need a variety of services.

(7) Chronically ill and disabled child–An individual whose physical function, condition, movement, or sense of hearing is impaired to the extent that the individual is or may be expected to be partially or totally incapacitated for educational purposes or for acquiring remunerative occupation and who is under 21 years of age and has one or more of the following conditions, in accordance with §38.3(1)(B) of this title (relating to Eligibility for Client Services):

(A) a joint, bone, ossicular chain, muscle, or neurological defect or deformity, including craniofacial anomaly, neurofibromatosis, and spina bifida;

(B) cancer as defined by the Health and Safety Code, §35.002;

(C) a disease or condition referenced in this chapter;

(D) AIDS or HIV infection; or

(E) cystic fibrosis, regardless of the individual's age.

(8) CIDC Program–The Chronically Ill and Disabled Children's Services Program, as described in §38.1 of this title (relating to Purpose).

(9) Claim form–The CIDC Program approved document for submitting the unpaid claim for processing and payment.

(10) Client–An individual who meets all CIDC Program requirements for eligibility for specified services to be provided.

(11) Commissioner–The commissioner of health.

(12) Date of service–The actual date the service was initiated or provided.

(13) Dentist–An individual licensed by the State Board of Dental Examiners to practice dentistry in the state.

(14) Department–The Texas Department of Health.

(15) Diagnosis and evaluation–The process of performing specialized examinations, tests, and/or procedures in order to determine whether the individual has a condition (diagnosis) covered by the CIDC Program.

(16) Early identification–The process of performing initial or screening examinations on those individuals thought to be at

risk, or who are suspected of having chronic illness or handicapping conditions, in order to identify such conditions as early as possible after their onset. The purpose of early identification is to enable early definitive diagnosis and evaluation and, thus, early health care intervention.

(17) Eligibility date–The effective date of [~~initial~~] eligibility for the CIDC Program is 15 days prior to the date of receipt of the complete application, except in the following circumstances.

(A) The effective date of eligibility for newborns who are not born prematurely will be the date of birth. Newborn means a child 30 days old or younger.

(B) The effective date of eligibility based upon traumatic injury will be the day after the acute phase of treatment ends.

(C) The effective date of eligibility for applicants who are comatose at the time of application will be the day the applicant is no longer comatose.

(D) The effective date of eligibility for an applicant that is born premature will be the day after the applicant has been out of the hospital for 14 consecutive days.

(E) The effective date of eligibility for applicants with spenddown is the day after the earliest Date of Service (DOS) on which the cumulative bills are sufficient to meet the spenddown amount.

(F) If the application is received without a Medicaid determination or other data/documents needed to process the application, it will be considered incomplete. The applicant will be notified that the application is incomplete and given 60 days to submit the Medicaid determination or other missing data/documents to CIDC. If the application is made complete within the 60 day time limit, the client's eligibility effective date will be established as 15 days retroactive from the date when the application was first received. If the application is made complete after the 60 days, the eligibility effective date will be established as 15 days retroactive from the date the application is made complete.

(18) Emergency–A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the individual's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction to any bodily organ or part.

(19) Expectation of improvement–The reasonable determination that as a result of treatment the problem will be corrected or controlled or that increased function will be gained.

(20) Family–The nuclear family, which consists of the mother, father, and children, including stepparents.

(21) Facility–A hospital, ambulatory surgical center, specialty center, and/or outpatient clinic.

(22) Financial independence–The individual currently files his or her own personal U.S. income tax return and is not claimed as a dependent by any other person on his or her U.S. income tax return.

(23) Health insurance–A policy or plan, either individual, group, or government sponsored, that an individual purchases or in which an individual participates that provides benefits when medical and/or dental costs are or would be incurred. Health insurance includes, but is not limited to, health insurance policies, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, CHAMPUS, CHAMPVA, Medicaid, and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based cost, cash payment based upon a schedule, or access without charge or at minimal charge to providers of medical and/or dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a medical school are not health insurance.

(24) Household–The living unit in which the applicant resides and which includes one or more of the following:

(A) mother;

(B) father;

(C) stepparent;

(D) managing conservator;

(E) siblings;

(F) stepbrother(s); or

(G) stepsister(s).

(25) Increase in functional independence–An improvement in the ability of an individual to perform the basic activities of daily living, with or without assistive devices, based on progress in relation to age appropriate tasks or developmental milestones.

(26) Other benefits–Any other resources (other than what is specified under health insurance definition) available to the client or the parent/guardian/conservator or other adult caretaker if the client is a minor, for the costs of CIDC Program covered early identification services, diagnostic and evaluation services, rehabilitation services, and case management services, including, but not limited to, health insurance, liability insurance, casualty insurance, workers' compensation benefits, personal financial resources, available trust funds, government-sponsored compensation or reimbursement programs, or a legal cause of action, agreed settlement, or judgment in behalf of the client if such relates to CIDC Program covered services. Excluded from this definition are benefits made available through state law containing specific language to the effect that the payor of such benefits is secondary payor to the CIDC Program.

(27) Person–An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(28) Physician–An individual licensed by the Texas State Board of Medical Examiners to practice medicine in the state.

(29) Provider–A person and/or facility approved by the board that delivers services which are purchased by the CIDC Program for the purposes of implementing the Act.

(30) Rehabilitation–The process of physically restoring the functions of the body destroyed or impaired by congenital defect, disease, or injury.

(31) Resident–A bona fide resident means a person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) does not claim residency in any other state or country;

(E) is a minor child residing in Texas and his/her parent(s), or managing conservator or guardian of the child's person is a bona fide resident;

(F) is an individual residing in Texas and who is the legal dependent spouse of a bona fide resident; or

(G) is an adult residing in Texas and his/her legal guardian is a bona fide resident.

(32) Social service organization–A for-profit or nonprofit corporation or other entity, not including individual persons, that provides travel, meal, and/or lodging expenses in advance to enable CIDC clients to obtain medical care.

(33) Specialty center–A facility and staff which meets the CIDC Program requirements in this chapter and is designated by the board for CIDC Program use for comprehensive diagnostic and treatment services for a specific medical condition.

(34) Spenddown–Financial eligibility achieved when household income exceeds 200% of the federal poverty guidelines if it can be shown that the applicant is responsible for household medical bills equal to or greater than the amount in excess of the 200% level.

(35) State–The State of Texas.

(36) Support–The contribution of money or services necessary for an individual's maintenance, including, but not limited to, funds, food, clothing, shelter, transportation, and health care.

(37) Treatment plan–The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a CIDC Program approved physician.

(38) United States Public Health Service (USPHS) price–The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (Public Law 102-585, November 4, 1992).

(39) Usual and customary–The least of the following:

(A) the customary charge, based on the provider's own historical charges;

(B) the prevailing charge, based on the customary charges of all providers in the same geographical locality with the same medical specialty; or

(C) the provider's actual charge.

§38.3. Eligibility for Client Services.

In order for an individual to be eligible for the Chronically Ill and Disabled Children's Services (CIDC) Program, the individual must meet the medical, financial, and other criteria in this section.

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

(3) Financial criteria. Financial need is established on the basis of household income and assets which are legally available to the family.

(A) Household income.

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

(iii) The income level for eligibility currently is established at 200% of the federal poverty guidelines. If the household income exceeds this level and it can be shown that the applicant is responsible for medical bills equal to or greater than the amount in excess of the 200% level, the client may be financially eligible for 12 months from the eligibility date [~~until the end of the calendar year~~].

(iv) (No change).

~~f(v)~~ ~~Applicants who appear to be financially eligible for Medicaid and meet all other CIDC Program requirements will be given provisional eligibility for 30 days. During that time the applicant must apply for Medicaid, including the Medically Needy Program, and notify the CIDC Program of Medicaid's determination, the Medically Needy Program determination. Once a Medicaid determination has been received within the time frame specified by the CIDC Program, CIDC eligibility may be made retroactive according to criteria set by CIDC. If the applicant fails to follow through with the Medicaid application, eligibility will automatically expire at the end of the 30 days. Claims for services provided within the 30-day period will not be paid if no Medicaid determination is received in the time period specified by the program. Under unusual circumstances, the program may grant a 30-day extension of provisional eligibility.~~]

(v) [~~(vi)~~] If actual or projected CIDC program expenditures for a client exceed $2,000 per year, the client may be required to apply periodically for Medicaid, specifically including the Medically Needy Program and, if eligible, to participate in those programs [~~that program~~] in order to remain eligible for further CIDC program benefits. CIDC also may require a client for whom actual or projected expenditures exceed $2,000 per year to apply for the Supplemental Security Income Program (SSI), and, if eligible, to participate in that program in order to remain eligible for further CIDC program benefits. The client must submit to the CIDC program an eligibility determination based upon a timely and complete Medicaid or SSI application within 60 days of the date of the notification letter. During this 60-day period, CIDC program coverage will continue. If the client does not provide an eligibility determination within the 60-day time limit, program coverage shall be terminated and may not be reinstated unless an eligibility determination is received. The program may grant the client a 30-day extension to obtain the determination.

(B) (No change).

(4)-(6) (No change).

(7) Application.

(A) (No change).

(B) An individual is considered to be an applicant from the time that the CIDC Program receives an application. The CIDC Program will respond in writing regarding eligibility status within 30 working days after the completed application is received. Applications will be considered:

(i) (No change).

(ii) incomplete if required information that includes a Medicaid determination or any other data/document needed to process the application is not provided or if an outdated form is submitted; or

(iii) (No change).

(C)-(D) (No change).

(8)-(9) (No change).

§38.6. Providers.

(a) General requirements for participation. The Chronically Ill and Disabled Children's Services (CIDC) Act, Health and Safety

Code, §35.004 provides the Texas Board of Health (board) with the authority to approve the physicians, dentists, podiatrists, dietitians, facilities, specialty centers, and other providers to participate in the CIDC Program according to criteria and procedures adopted by the Texas Board of Health.

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

(5) Overpayments made on [~~in~~] behalf of clients to CIDC Program approved providers must be reimbursed to the CIDC Program refund account by lump sum payment or, at the discretion of the Texas Department of Health, in monthly installments or out of current claims due to be paid the provider.

(6)-(7) (No change.)

(b) Denial, modification, suspension, and termination of provider approval.

(1) (No change.)

(2) The CIDC Program may deny or suspend [~~a physician's/dentist's/ podiatrist's~~] approved provider status based on the CIDC Program's knowledge of disciplinary action taken against the provider by the licensing authority under which the provider practices in the State of Texas or by the Texas Medicaid Program [~~Texas State Boards of Medical Examiners, Dental Examiners, and Podiatry Examiners~~].

(3) (No change.)

(c) (No change.)

(d) Podiatrists. The CIDC Program approves for CIDC Program participation podiatrists who are working under a treatment plan prescribed by a CIDC Program approved physician. To be approved for CIDC Program participation, a podiatrist must:

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

(4) accept responsibility for actions of his or her staff performed on [~~in~~] behalf of the provider.

(e) Dietitians. To be approved for CIDC Program participation, an individual must:

(1) have a Texas dietitian practice license;

(2) be an active provider with the Texas Medicaid Program;

(3) agree to allow on-site visits and/or audit privileges to the CIDC Program staff; and

(4) accept responsibility for actions of his or her staff performed on behalf of the provider.

(f) [~~(e)~~] Hospitals. The criteria for hospital approval includes, but is not limited to, the following. Hospitals must:

(1) have current approval by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association;

(2) be located within Texas, except in those situations that develop in Texas where it is a financial hardship or clearly a great medical risk for a client to be transported to an adequate medical facility within Texas when an out-of-state facility within 50 miles of the Texas border is closer. Under these circumstances, all CIDC Program policies and procedures will apply, including the legal requirement that physicians, dentists, and podiatrists who are licensed to practice in Texas and who are active Texas Medicaid providers be utilized;

(3) allow on-site visits and/or audits; and

(4) qualified pediatric hospitals must have a definable pediatric unit or facilities, equipment, and qualified staff necessary to meet the special needs of CIDC Program eligible clients, in accordance with the specified CIDC Program criteria.

(g) [~~(f)~~] Other CIDC Program approved providers and facilities. Examples of other approved providers and facilities are:

(1) pharmacists;

(2) private therapists;

(3) medical supply and/or equipment companies;

(4) meal and lodging facilities;

(5) transportation companies or providers; and

(6) funeral homes.

(h) [~~(g)~~] Out-of-state coverage. The commissioner of health may allow CIDC payment to out-of-state providers in unique circumstances in which a CIDC provider (Texas physician) and the patient, parent or guardian and the CIDC medical director agree that an out-of-state provider is the provider of choice for quality care, the same treatment or another treatment of equal benefit or cost is not available through Texas CIDC providers, and the treatment results in a decrease in the patient's cost of treatment to the CIDC program. The medical literature must indicate that the out-of-state treatment is accepted medical practice and is anticipated to improve the patient's quality of life. The cost of transportation, meals and lodging may be reimbursed for the CIDC-approved out-of-state treatment. Travel costs will be negotiated, with approval based on overall cost effectiveness.

§38.13. Payment of Services.

The Chronically Ill and Disabled Children's Services (CIDC) Program reimburses for covered services for CIDC Program eligible clients. Payment may be made only after the delivery of the service. The client or client's family must not be billed for the service or be required to make a preadmission or pretreatment payment or deposit. Providers and facilities must agree to accept established fees as payment in full. The program may negotiate reimbursement alternatives to reduce costs through requests for proposals, contract purchases, and/or incentive programs.

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

(3) CIDC Program fee schedules. The CIDC Program shall reimburse claims for covered medical, dental, and other services according to the following fee schedules and/or methodologies.

(A) The CIDC Program central office shall process claims as follows:

(i)-(iii) (No change.)

(iv) nutritional supplements–the billed amount, up to $450 per month per client, according to the prices in the current [~~1996~~] edition of the Drug Topics Red Book, published by Medical Economics Company, Inc., Montvale, New Jersey 07645-1742, on file with the CIDC Program;

(v)-(xii) (No change.)

(B) The National Heritage Insurance Company (NHIC) shall process claims as follows:

(i)-(iv) (No change.)

(v) hospital ambulatory surgical centers–the amount billed, not to exceed the maximum fee allowable according to the Ambulatory Surgical Code Groupings payment schedule approved by HCFA [~~reimbursed at 80% of the rate authorized by the (TEFRA), which is equivalent to the hospital's Medicaid interim rate~~];

(vi)-(vii) (No change.)

(C) (No change.)

(4)-(5) (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 April 22, 1999.

TRD-9902381
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 130. Code Enforcement Registry

25 TAC §130.19

The Texas Department of Health (department) proposes new §130.19 concerning the Sanitarian/Code Enforcement Officers' Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of rules regarding registered professional sanitarians and code enforcement offices.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule, §337.182, relating to the Sanitarian/Code Enforcement Officers' Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2003. However, the rule currently found in Chapter 337 of this title on water hygiene should be moved to Chapter 265 on general sanitation. The existing rule at §337.182 is being proposed for repeal so that it can be replaced by new §265.131. Since this committee also deals with code enforcement officers, it is appropriate to include a cross-reference to §265.131 in the Chapter 130 on code enforcement registry.

Elias Briseno, Director, General Sanitation Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Briseno also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Elias Briseno, General Sanitation Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6635. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The new section is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The new section affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§130.19. Sanitarian/Code Enforcement Officers' Advisory Committee.

(a) The Sanitarian/Code Enforcement Officers' Advisory Committee (committee) provides advice to the Texas Board of Health (board) in the area of rules regarding registered professional sanitarians and code enforcement officers.

(b) The committee is governed by §265.131 of this title (relating to Sanitarian/Code Enforcement Officers' Advisory Committee).

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

Filed with the Office of the Secretary of State, on April 23, 1999.

TRD-9902389
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 229. Food and Drug

Subchapter O. Licensing of Wholesale Disbributors of Drugs-Including Good Manufacturing Practices

25 TAC §229.255

The Texas Department of Health (department) proposes an amendment to §229.255, concerning the Wholesale Drug Distributors Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of licensure of wholesale drug distributors.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Wholesale Drug Distributors Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Government Code; to continue the committee until September 1, 2003; to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in September rather than August; and to reference reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Ms. Culmo also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Angela K. Bensel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237 extension 474. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§229.255. Wholesale Drug Distributors Advisory Committee.

(a) (No change.)

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c)-(d) (No change.)

(e) Review and duration. By September 1, 2003 [~~1999~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) (No change.)

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The chairman of the board [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

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

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [~~elected~~] to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board [~~at the next committee meeting~~].

(5)-(6) (No change.)

(7) The presiding officer and assistant presiding officer serving on April 1, 1999, will continue to serve until the chairman of the board appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

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

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.]

(k)-(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year [and any amendments to this section requested by the committee].

(2) The report shall identify the costs related to the committee's existence, including the cost of department [agency] staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each September [August]. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [Texas Civil Statutes, Article 6252-33], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1)-(5) (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 April 20, 1999.

TRD-9902288

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: June 6, 1999

For further information, please call: (512) 458–7236

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Subchapter X. Licensure of Device Distributors and Manufacturers

25 TAC §229.444

The Texas Department of Health (department) proposes an amendment to §229.444, concerning the Device Distributors and Manufacturers Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of licensure of device distributors and manufacturers. The committee is required by the Health and Safety Code, 431.275.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1996, the board established a rule relating to the Device Distributors and Manufacturers Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2003.

In addition the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 229.444 has been reviewed and the department has determined that the reasons for adopting the section continue to exist.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Health and Safety Code, §11.016 and the Government Code; to continue the committee until September 1, 2003; to reflect the statutory composition of the committee; to clarify that members holdover until their replacement is appointed; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in September rather than August; and to reference reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. Other minor changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

The department published a Notice of Intention to Review this section as required by Rider 167 in the *Texas Register* (23 TexReg 9078) September 4, 1998. No comments were received by the department on this section.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Ms. Culmo also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons

who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Tom Brinck, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §431.275, which requires the board to establish a committee on the licensing of device distributors and manufacturers; Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapters 11 and 431; the Government Code, Chapter 2110; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§229.444. Device Distributors and Manufacturers Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is required to be established by the Texas Board of Health (board) by Health and Safety Code, §431.275 and is subject to the Health and Safety Code, §11.016.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c)-(d) (No change.)

(e) Review and duration. By September 1, 2003 [~~1999~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of five members appointed by the board. The composition of the committee shall include:

(1) two consumer representatives; [~~and~~]

(2) one person representing a distributor of devices; and [~~three nonconsumer representatives, to include device distributors and manufacturers.~~]

(3) two persons representing manufacturers of devices.

(g) Terms of office. The term of office of each member shall be three years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) (No change.)

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

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

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[~~(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.~~]

(k)-(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year[~~, and any amendments to this section requested by the committee~~].

(2) The report shall identify the costs related to the committee's existence, including the cost of department [~~agency~~] staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each September [~~August~~]. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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 April 19, 1999.

TRD-9902289
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 265. General Sanitation

Subchapter J. Advisory Committee

25 TAC §265.131

The Texas Department of Health (department) proposes new §265.131 concerning the Sanitarian/Code Enforcement Officers' Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of rules regarding registered professional sanitarians and code enforcement officers.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule, §337.182, relating to the Sanitarian/Code Enforcement Officers' Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2003. However, the rule currently found in Chapter 337 of this title on water hygiene should be moved to Chapter 265 on general sanitation. The existing rule at §337.182 is being proposed for repeal so that it can be replaced by new §265.131.

This section incorporates existing provisions in §337.182 relating to the operation of the committee. In addition, language is revised to delete the reference to the repealed law on the sanitarians' advisory committee; to reference the Government Code; to continue the committee until September 1, 2003; to change the composition of the committee; to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in September rather than August; and to reference reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. Other minor language changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Elias Briseno, Director, General Sanitation Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Briseno also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Elias Briseno, General Sanitation Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6635. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The new section is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The new section affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§265.131. Sanitarian/Code Enforcement Officers' Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Sanitarian/Code Enforcement Officers' Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding registered professional sanitarians and code enforcement officers.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to registered professional sanitarians and code enforcement officers.

(2) The committee shall assist the department in establishing regulations regarding the registration of professional sanitarians and promoting the registration of qualified individuals as professional sanitarians and shall advise the department on the adoption and enforcement of regulations regarding the registration of code enforcement officers.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By September 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include:

(1) three consumer representatives;

(2) three code enforcement officers; and

(3) three registered sanitarians.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The chairman of the board shall appoint a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(7) The presiding officer and assistant presiding officer serving on August 1, 1999, will continue to serve until the chairman of the board appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department)staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee 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.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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 April 23, 1999.

TRD-9902390
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 289. Radiation Control

Subchapter C. Texas Regulations for Control of Radiation

25 TAC §289.130

The Texas Department of Health (department) proposes an amendment to §289.130 concerning the Radiation Advisory Board (advisory board). The advisory board provides advice to the Texas Board of Health (board) in the area of state radiation policies and programs. The advisory board is required by the Health and Safety Code, Chapter 401.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence. The advisory board is subject to Chapter 2110.

In 1995, the board established a rule relating to the Radiation Advisory Board. The rule states that the advisory board will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the advisory board and has determined that the advisory board should be reviewed by September 1, 2003, to determine whether a recommendation should be made to appropriate government officials, such as the governor or the heads of other state agencies, to continue the advisory board, consolidate the advisory board with another one, or abolish the advisory board.

This section amends provisions relating to the operation of the advisory board. Specifically, language is revised to reference the Government Code; to articulate the duties of the advisory board under the Health and Safety Code, §401.019; require review of the committee by September 1, 2003; to clarify that members holdover until their replacement is appointed; to include the requirements in the Health and Safety Code, §401.018 on calling a meeting; to clarify that the advisory board is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the advisory board and its members may not participate in legislative activity in the name of the board or the department except with certain approval; to require the advisory board's annual report in September rather than August; and to reference reimbursement for an advisory board member's expenses if authorized by General Appropriations Act. Other minor changes were made for clarification. These changes will clarify procedures for the advisory board.

Richard Ratliff, Chief, Bureau of Radiation Control has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Ratliff also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory board and clarification of the role and procedures of the advisory board. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Cindy Cardwell, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 401, which addresses the advisory board; Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapters 11 and 401, and the Government Code, Chapter 2110.

§289.130. Radiation Advisory Board.

(a) (No change.)

(b) Applicable law. The board is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c) Purpose. The purpose of the board is to provide advice to the Texas Board of Health, [~~and to~~] the Texas Department of Health's (department) radiation program, the Texas Natural Resource Conservation Commission, the Railroad Commission, and other state agencies in the area of state radiation policies and programs.

(d) Tasks.

(1) The board shall advise the Texas Board of Health and the department's radiation program concerning rules relating to state regulation of radiation.

(2) The board shall:

(A) review and evaluate policies and programs of the state relating to radiation;

(B) make recommendations and [~~to the department,~~] furnish technical advice as may be required on matters relating to development, use, and regulation of sources of radiation to the department, the Texas Natural Resource Conservation Commission, the Railroad Commission of Texas, and other state agencies; and

(C) review proposed [~~department~~] rules and guidelines of any state agency relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to sources of radiation.

(e) Review and duration. By September 1, 2003 [~~1999~~], the Texas Board of Health will initiate and complete a review of the board to determine whether a recommendation should be made to appropriate government officials to continue the board, consolidate the board with another advisory board or committee, or abolish the board. [~~the board should be continued, consolidated with another board, or abolished. If the board is not continued or consolidated, the board shall be abolished on that date.~~]

(f) (No change.)

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The board shall elect a chairman, vice-chairman and secretary at its first meeting after August 31st of each year.

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

[~~(5) The board may reference its officers by other terms, such as chairperson and vice-chairperson.~~]

(i) Meetings. The board shall meet quarterly on dates set by the board to conduct board business.

(1) A special meeting may be called by the chairman [~~Commissioner of Health (commissioner)~~] or at least five [~~three~~] members of the board.

(2) (No change.)

(3) The advisory board is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the board shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

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

(j) Attendance. Members shall attend board meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[~~(4) The attendance records of the members shall be reported to the board. The report shall include attendance at board and subcommittee meetings.~~]

(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

(5) Minutes of each board meeting shall be taken by department staff.

(A) A summary of the meeting [~~draft of the minutes approved by the chairman~~] shall be provided to the Texas Board of Health [~~board~~] and each member of the board within 30 days of each meeting.

(B) (No change.)

(m) Subcommittees. The board may establish subcommittees as necessary to assist the board in carrying out its duties.

(1) The chairman shall appoint members of the board to serve on subcommittees and to act as subcommittee chairpersons. The chairman [~~presiding officer~~] may also appoint nonmembers of the board to serve on subcommittees as the need for additional expertise arises.

(2) (No change.)

(3) A subcommittee chairperson shall make regular reports to the [~~advisory~~] board at each board meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The Texas Board of Health, the department, and the board shall not be bound in any way by any statement or action on the part of any board member except when a statement or action is in pursuit of specific instructions from the Texas Board of Health, department, or board.

(2) The board and its members may not participate in legislative activity in the name of the Texas Board of Health or the department except with approval through the department's legislative process. Board members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to Texas Board of Health. The board shall file an annual written report with the Texas Board of Health.

(1) The report shall list the meeting dates of the board and any subcommittees, the attendance records of its members, a brief description of actions taken by the board, a description of how the board has accomplished the tasks given to the board by the Texas Board of Health, the status of any rules which were recommended by the board to the Texas Board of Health, and anticipated activities of the board for the next year[~~, and any amendments to this section requested by the board~~].

(2) The report shall identify the costs related to the board's existence, including the cost of department [~~agency~~] staff time spent in support of the board's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Texas Board of Health each September [~~August~~]. It shall be signed by the chairman and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], a board member may receive reimbursement for the member's expenses incurred for each day the member engages in official board business.

(1) No compensatory per diem shall be paid to board members unless required by law but members shall be reimbursed for travel, meals, lodging, and incidental expenses in accordance with the General Appropriations Act.

(2)-(5) (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 April 26, 1999.

TRD-9902443
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 295. Occupational Health

Subchapter A. Hazard Communication

25 TAC §295.10

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

The Texas Department of Health (department) proposes the repeal of §295.10, concerning the Hazard Communication Act Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) in the area of hazard communication and provided guidance on rules, program policies and out reach documents pertaining to the Texas Hazard Communication Act.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Hazard Communication Act Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should be abolished. Issues relating to the type of advice previously provided by the committee may be addressed through the establishment of ad hoc committees.

In addition the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 295.10 has been reviewed and the department has determined that the reasons for adopting the section no longer exist.

The department published a Notice of Intention to Review this section as required by Rider 167 in the *Texas Register* (23 Tex

Reg 9079) on September 4, 1998. No comments were received by the department on this section.

Claren Kotrla, Director, Toxic Substances Control Division, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section since the section will no longer exist.

Mr. Kotrla also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the section will be nonexistent since the section will no longer exist. There will be no effect on small businesses. There are no economic costs to persons as a result of this repeal. There will be no effect on local employment.

Comments may be submitted to Claren Kotrla, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 11; the Government Code, Chapter 2110; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§295.10. Hazard Communication Act Advisory Committee.

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

Filed with the Office of the Secretary of State, on April 19, 1999.

TRD-9902287

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: June 6, 1999

For further information, please call: (512) 458–7236

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Subchapter C. Texas Asbestos Health Protection

25 TAC §295.73

The Texas Department of Health (department) proposes an amendment to §295.73, concerning the Asbestos Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of asbestos licensing and compliance.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Asbestos Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Health and Safety Code, §11.016 and the Government Code; to continue the committee until September 1, 2003; to increase consumer members from three to four, therefore, reducing nonconsumers from nine to eight, to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in September rather than August; and to reference reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. Other minor language changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Claren Kotrla, Director, Toxic Substance Control Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Kotrla also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Todd F. Wingler, Toxic Substances Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600 ext. 2462 or 1-800-572-5548. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§295.73. Asbestos Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is [~~required to be~~] established under the Health and Safety Code, §11.016, which allows the Texas Board of Health (board) to establish advisory committees [~~by the Texas Board of Health (board) by Texas Civil Statutes, Article 4477-3a~~].

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c) (No change.)

(d) Tasks.

(1) (No change.)

(2) The committee shall advise the Texas Department of Health (department) concerning rules, fees, courses, and other topics necessary to administer the Texas Asbestos Health Protection Act.

(3) (No change.)

(e) Review and duration. By September 1, 2003 [~~1999~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 12 members appointed by the board. The composition of the committee shall include:

(1) four [~~three~~] consumer representatives; and

(2) eight [~~nine~~] nonconsumer representatives.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The chairman of the board [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

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

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [~~elected~~] to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board [~~at the next committee meeting~~].

(5)-(6) (No change.)

(7) The presiding officer and assistant presiding officer serving on August 1, 1999, will continue to serve until the chairman of the board appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply. [~~The meeting agenda, date, and place will be set for publication in the Texas Register.~~]

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

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[~~(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.~~]

(k)-(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year[~~, and any amendments to this section requested by the committee~~].

(2) The report shall identify the costs related to the committee's existence, including the cost of department [~~agency~~] staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each September [~~August~~]. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1)-(5) (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 April 19, 1999.

TRD-9902311
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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Chapter 337. Water Hygiene

Subchapter D. Registration of Professional Sanitarians

25 TAC §337.182

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

The Texas Department of Health (department) proposes the repeal of §337.182 concerning the Sanitarian/Code Enforcement Officers' Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of rules regarding registered professional sanitarians and code enforcement officers.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Sanitarian/Code Enforcement Officers' Advisory Committee. The rule states that the committee will automatically be abolished on September 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until September 1, 2003. However, §337.182 should be moved to Chapter 265 of this title relating to General Sanitation. Therefore §337.182 is proposed for repeal. New §265.131 is being proposed by the board and will include the provisions relating to the committee.

Elias Briseno, Director, General Sanitation Division, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Briseno also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the repeal. There will be no effect on local employment.

Comments may be submitted to Elias Briseno, General Sanitation Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6635. Comments on the proposed repeal will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The repeal affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§337.182. Sanitarian/Code Enforcement Officers' Advisory Committee.

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

Filed with the Office of the Secretary of State, on April 23, 1999.

TRD-9902391
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 458–7236

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter C. Crude Oil Production Tax

34 TAC §3.35

The Comptroller of Public Accounts proposes an amendment to §3.35, concerning reporting requirements for producers and purchasers. This section is being amended pursuant to prior legislation and to clarify reporting requirements. Subsection (h) is being amended to clarify reporting requirements for purchasers. Subsection (k) is being amended to change reporting requirements from county level reporting to lease level reporting. A new subsection (k)(1)(C) is being added to clarify reporting requirements for oil where the producer and purchaser are the same entity. Subsection (k)(3) and (k)(4) are being amended to correct references to information to be included on the Crude Oil Special Report and records to be maintained by operators or producers not required to file reports.

James LeBas, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated

as a result of adopting the amendment will be in providing more detailed reporting of the Oil Production Tax. This amendment is adopted under the 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 amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §202.201 and §202.202.

§3.35. Reporting Requirements for Producers and Purchasers.

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

(c) Any oil used, lost, stolen, or otherwise unaccounted for after it has been produced and measured must be reported, and the tax must be paid by the operator on the Crude Oil Special Tax Report [~~crude oil special tax report~~], unless the operator is required to file the Crude Oil Producer's Monthly Tax Report [~~crude oil producer's monthly tax report~~].

(d)-(g) (No change.)

(h) All first purchasers of crude oil must file the Crude Oil Purchaser's Monthly Tax Report[~~, if not filing a Crude Oil Producer's Monthly Tax Report~~].

(i) All operators or producers authorized to remit and responsible for remitting tax, other than the operators authorized [~~tax due~~] under subsection (c) of this section, must file the Crude Oil Producer's Monthly Tax Report.

(j) (No change.)

(k) Beginning with the January 1999 production period, crude oil production will be reported at the lease level on all crude oil reports. The following information must be reported on the crude oil reports:

(1) the Crude Oil Purchaser's Monthly Tax Report:

(A) the name and taxpayer number of each operator or producer from whom crude oil was purchased during the month; and

(B) the volume and value of oil purchased from each operator or producer on each lease [~~in each county~~]; except

(C) oil produced and purchased by the same taxpayer must be reported only on the Crude Oil Producer's Monthly Tax Report.

(2) the Crude Oil Producer's Monthly Tax Report:

(A) the name and taxpayer number of the purchaser of oil being sold at the lease; and

(B) the volume and value of oil used, lost, stolen, or removed from leases by the operator or producer on each lease [~~in each county~~]; and

(3) the Crude Oil Special Tax Report. The volume and value of all oil lost, used, stolen, or otherwise unaccounted for on each lease [~~in each county~~] (to be used by producers who are not required to file reports under subsection (i) [~~(f)~~] of this section). [~~;~~]

(l) [~~(4)~~] [~~crude oil operators or producers.~~] Crude oil operators or producers who are not required to file reports under [~~subsection (f) of~~] this section must keep the following records:

(1) [~~(A)~~] the name and taxpayer number of each purchaser taking delivery of oil at the lease from the operator or producer during the previous calendar year; and

(2) [~~(B)~~] the total volume and value of the oil delivered to each purchaser.

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 April 26, 1999.

TRD-9902444
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 463-4062

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Chapter 7. Prepaid Higher Education Tuition Program

Subchapter I. Refunds, Termination

34 TAC §7.81

The Comptroller of Public Accounts proposes an amendment to §7.81, concerning the administration of the prepaid higher education tuition program.

These changes are proposed to conform certain provisions requested by the Internal Revenue Service in connection with the Program's application for a private letter ruling on the Program's tax status.

James LeBas, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in refunds to purchasers in the event that a prepaid tuition contract is terminated after the beneficiary reaches age 18. This amendment is adopted under the 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 amendment.

Comments on the proposal may be submitted to Aaron Demerson, Manager, Texas Tomorrow Fund, P.O. Box 13407, Austin, Texas 78711-3407.

The amended rule is proposed under the Education Code, §54.618, which gives the Prepaid Higher Education Tuition Board the authority to adopt rules to implement Subchapter F, Chapter 54, Education Code.

The amendment implements Education Code, §54.632.

§7.81. Refunds.

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

(d) Examples of circumstances under these rules in which refunds may be made include, but are not limited to, the following.

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

(6) If a prepaid tuition contract is terminated under §7.82(c) of this title (relating to Termination of Prepaid Tuition Contract), such contract may be refunded in an amount equal to the present lump sum actuarial value, as of the date of termination, of the average amount of tuition or the estimated amount of private tuition and required fees of junior college plans, junior/senior college plans or the estimated amount of private tuition and required fees for the private college plan, less the required penalty under §7.3(g) of this title (relating to Tax Exempt Status Requirements); a cancellation fee; and any other applicable fee. [~~the lesser of:~~]

[~~(A) the lowest amount of tuition and required fees among all institutions under the plan selected, but if a private college plan, such tuition and required fee amount shall not be less than the amount of payments made under the plan for tuition and required fees, less a cancellation fee and any other applicable fee; or ~~]

[~~(B) the amount of payments made under the plan for tuition and required fees; plus the average annual earnings rate on the fund, less 3.0%, but not to exceed 5.0% times the accumulated payments made under the contract as of December 31, of each year; less a cancellation fee and any other applicable fee. Any such refund may be made in semiannual installments to the purchaser of the prepaid tuition contract; ~~]

[~~(C)~~] In [~~however, in~~] no case shall a refund be made in an amount less than the total amount paid by the purchaser under the contract less any applicable administrative fees or amounts previously distributed.

(7)-(8) (No change.)

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

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902447
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 463-4062

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Part IV. Employees Retirement System of Texas

Chapter 73. Benefits

34 TAC §73.15

The Employees Retirement System of Texas proposes an amendment to §73.15, concerning Proportionate Retirement Program-Benefits. The amendment is being proposed in order to delete subsection (a).

William S. Nail, Deputy Executive Director and General Counsel has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nail also 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 updated information. There will be no affect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule amendment may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Mr. Nail at wnail@ers.state.tx.us.

The amendment is proposed under Texas Government Code §803.401, which provides authorization for the board to adopt rules for the administration of the Proportionate Retirement Program.

No other statutes are affected by this amendment.

§73.15. Proportionate Retirement Program-Benefits.

[~~(a) When the length-of-service requirement for retirement is met by creditable service in more than one class or system, the member must complete retirement from each of the classes and systems in which the creditable service was established.~~]

(a) [~~(b)~~] Actuarial reductions for each class of service are those which would be used if all service from which the member has retired or is retiring was credited in that class.

(b) [~~(c)~~] A person retiring with less service than is required in the applicable formula to compute average salary shall have benefits based upon the average salary for the months for which credit was established.

(c) [~~(d)~~] The procedures to implement these principles are prescribed in the document entitled "Computation of Proportional Retirement Benefits." This document, which is to be considered a part of this section for all purposes, may be obtained from the executive director, Employees Retirement System; P.O. Box 13207; Austin, Texas 78711-3207. The formulas apply only to computation of benefits in programs or systems in which the member does not meet the length-of-service requirement for retirements.

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 April 21, 1999.

TRD-9902374
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 867–7125

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

Subchapter D. Provider Contracts

40 TAC §47.4902

The Texas Department of Human Services (DHS) proposes an amendment to §47.4902, concerning geographic boundaries, in its Primary Home Care chapter. The purpose of the amendment is to ensure that primary home care services are delivered under the most appropriate category of licensure. Primary home care provider agencies will be required to be licensed under the licensed home health category or the personal assistance services category. The amendment also requires a separate contract in each DHS region and that the counties included in the DHS contract be included in the service area of the provider agency's file at the Texas Department of Health. The amendment also clarifies that out-of-state corporations must be authorized to do business in Texas.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to promote consistency between licensure and contracting requirements for personal assistance services; ensure compliance with applicable state regulations and program requirements; and ensure that personal assistance services are delivered under the appropriate category of licensure. There will be no effect on small or large businesses. Current primary home care procedures or licensure or state regulations require provider agencies to meet all of the proposed requirements except for the category type of licensure. Primary home care provider agencies that are currently licensed only under the certified and licensed home health category can request, free of charge, that the Texas Department of Health add licensed and home health or personal assistance services category to their licensure. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Frances Barraza at (512) 438-3216 in DHS's Community Care Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-146, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§47.4902. Primary Home Care Provider Qualifications [~~Geographic Boundaries~~].

(a) To be qualified as a home and community support services (HCSS) provider to deliver primary home care services under contract with the Texas Department of Human Services (DHS), an HCSS agency must:

(1) have a separate contract to provide primary home care services in each DHS region in which services are to be delivered;

(2) deliver primary home care services through the personal assistance services (PAS) or the licensed home health services category of licensure;

(3) have the counties in the DHS contract for primary home care services included in the identified service area on file at the Texas Department of Health with personal assistance services or licensed home health services category of licensure; and

(4) be authorized by the secretary of state to do business in the State of Texas (if an out-of-state corporation). [~~Any provider agency that has a contract with the Texas Department of Human Services (DHS) must provide services in the county in which the parent or branch office is located.~~]

(b) A provider agency may request that DHS amend the agency's contract to add counties, if the following conditions exist:

[~~(1) Additional counties served by the provider agency are contiguous to a county already covered in the agency's contract with DHS; and~~]

(1) [~~(2)~~] The provider agency has a contract with DHS for each DHS region served; and

(2) The counties to be added to the contract are included in the identified service area on file at the Texas Department of Health with personal assistance services or licensed home health services category of licensure.

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

Filed with the Office of the Secretary of State, on April 23, 1999.

TRD-9902386
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: August 1, 1999
For further information, please call: (512) 438–3765

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Part II. Texas Rehabilitation Commission

Chapter 106. Contract Administration

Subchapter A. Acquisition of Client Goods and Services

40 TAC §106.35

The Texas Rehabilitation Commission (TRC) proposes an amendment to §106.35 concerning Acquisition of Client Goods and Services.

The section is being amended to include grants within the appeal rules for contracts.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government.

Mr. Harrison also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be to include grants within the appeal rules for contracts. There will be no

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

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§106.35. Appeals.

(a) Appeals based upon final decision letter.

(1) General. After the commission has issued a final decision letter to the contractor or grantee implementing an adverse action taken by the commission pursuant to §106.32 of this title (relating to Adverse Actions), the contractor or grantee, referred to herein as appellant, has the right to appeal. Except as provided in subsection (b) of this section, a copy of the final decision letter must be included with the appeal, and the appeal must be received by the commission within 60 days after issuance of the final decision letter. Appeals and requests for reconsideration under this section must be sent to the commission by certified mail–return receipt requested.

(2) Procedures. Appeals must be in writing and submitted to the appropriate deputy commissioner. Written materials that the [~~contractor~~] appellant wishes to have considered may be submitted with the appeal. The appeal should state whether the [~~contractor~~] appellant requests a personal meeting to discuss the appeal, and if the [~~contractor~~] appellant requests, a meeting will be scheduled with a representative of the commission. At the meeting, the [~~contractor~~] appellant may be represented by a person of his or her selection, the [~~contractor~~] appellant will be provided with an opportunity to present evidence and information to support his or her position, and the [~~contractor~~] appellant and the commission may agree to employ a mediator at the commission's expense. A written decision will be provided to the [~~contractor~~] appellant within 30 days after conclusion of the meeting, or if no meeting is held, within 45 days after the commission receives the appeal, unless the appropriate deputy commissioner extends the time.

(3) Record. The record of an appeal shall consist of a copy of the written appeal; a copy of the final decision letter described in paragraph (1) of this subsection, or if no final decision letter was issued, a copy of the [~~contractor's~~] appellant's request for final decision letter described in subsection (b) of this section; a copy of the written decision issued by the commission described in paragraph (2) of this subsection; and if applicable, a copy of any mediation agreement that was executed by the commission and the [~~contractor~~] appellant.

(4) Request for reconsideration. After the decision on an appeal is issued, the [~~contractor~~] appellant may submit in writing a request for reconsideration. Requests are to be directed to the Assistant Commissioner, Buyer Support Services, and must be received by the commission within 20 days after the decision on the appeal is issued. The request for reconsideration will be decided by or on behalf of the Commissioner. The decision will be based on the record of the appeal described in paragraph (3) of this subsection, a summary prepared by the commission representative of the information provided by the [~~contractor~~] appellant and the evidence accepted by the commission representative at the meeting described in paragraph (2) of this subsection, any written material submitted by the [~~contractor~~] appellant along with his or her request for reconsideration, and the commission representative's response to the request for reconsideration.

(A) The request for reconsideration shall:

(i) specifically point out any errors in the record,

(ii) specify all relief requested, and

(iii) state all reasons why the relief should be granted.

(B) The commission representative shall file his or her response to the request for reconsideration not later than 20 days after the commission's receipt of the request.

(C) The commission shall issue a decision on the request for reconsideration no later than 45 days after receipt of the request for reconsideration. The decision may affirm, reverse or modify the final decision letter. The decision on the request for reconsideration is the final decision of the commission. If the commission does not rule on the request for reconsideration within 45 days, the written decision on the appeal which is described in paragraph (2) of this subsection becomes the final decision of the commission. The Commission and/or his or her designee may extend any time period by ten days upon written request of the [~~contractor~~] appellant or commission representative.

(b) Obtaining a final decision letter. If the contractor or grantee believes that an adverse action has been taken against him before a final decision letter has been issued, the contractor or grantee may contact the appropriate deputy commissioner in writing, describe the adverse action which has been taken, and request a final decision letter. Requests for a final decision letter must be submitted to the commission by certified mail–return receipt requested. If the commission does not issue a final decision letter within 30 days after receipt of the request by the deputy commissioner, the contractor or grantee may, at his or her option, appeal within 60 days of receipt of the request by the deputy commissioner. A copy of the request for a final decision letter, along with a U.S. Postal Service or equivalent notice showing receipt of the request by the commission, must be included with the appeal.

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 April 26, 1999.

TRD-9902420
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 424–4050

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Part XX. Texas Workforce Commission

Chapter 827. Communities in Schools

Subchapter D. Funding of CIS Local Programs

40 TAC §§827.31, 827.33, 827.34

The Texas Workforce Commission (Commission) proposes amendments to §§827.31 and 827.33 and new §827.34 con-

cerning the funding of Communities In Schools (CIS) Local Programs.

The purpose of the amendments and new rule is to continue applying the method of allocation for the CIS program used in fiscal year 1999, to fiscal year 2000, and following. The purpose of the amendments and new rule is also to ensure that the CIS program operates on a statewide basis to fulfill the CIS program's mission. The CIS program's mission is to ensure that at-risk youth throughout the state have access to this much needed and worthwhile program that helps young Texans stay in school, successfully learn and prepare for life by coordinating the connection of needed community resources in the school setting. The specific allocation amounts will be determined during the budgetary process of the Commission based on the factors set forth in these rules and applicable appropriations to the program.

Section 827.31 sets forth the factors used for allocating Compensatory Education Funds for the CIS program.

Section 827.33 sets forth the factors used for allocating Temporary Assistance to Needy Families (TANF) funds for the CIS program.

New §827.34 is added to set forth the factors used for allocating any other funds that may become available for use in administering the CIS program.

The specific changes are as follows.

The references to fiscal year 1999 are removed to allow for use of the criteria applicable for fiscal year 1999 to be applicable to fiscal year 2000 and following.

The reference to the 1996 data from the Comptroller regarding property value is changed to allow for use of updated information.

The provision in §827.31(f) is added to clarify the factors to be used to allocate funds for programs started since 1997.

The references to "TANF carry-over funds" are removed because carry-over funds may not exist in the first year of a state biennium and other TANF funds may become available.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments and new rule will be in effect the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

there are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses are not regulated by or required to do anything by these rules.

Mark Hughes, Director of Labor Market Information, has determined that the proposed rules would have no impact upon public or private employment.

Jean Mitchell, Director of Workforce Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure a more effective use of funds on a statewide basis to assist at-risk youth throughout Texas with staying in school, successfully learning and preparing for life.

Comments on the proposals may be submitted to Sandra Boulden, Program Planning and Development, Texas Workforce Commission Building, 101 East 15th Street, Room 434-T, Austin, Texas 78778, phone (512) 463-2692. Comments may also be submitted to Ms. Boulden via e-mail to Sandra.Boulden@twc.state.tx.us or facsimile to (512) 463-7379.

The new rule and amendments are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

Texas Labor Code, Chapter 305 will be affected by the amendments and new rule.

§827.31. Compensatory Education Funds.

(a) The state will retain an amount, to be determined by the Commission, for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive Request for Proposal process using the following criteria:

(1) (No change.)

(2) the local financial resources in the local workforce development area, defined as the area's total taxable property value [~~in 1996~~] as determined by the Comptroller's Property Tax Division's most recent report reflecting such data [~~Division~~], divided by the total number of students in the area in the corresponding year [~~1996-1997~~].

(b) In the absence of responsive bids in the Request for Proposal process, funds not awarded may be allocated to contracted CIS programs for expansion based on the following criteria:

(1) (No change.)

(2) the weighted financial resources of individual communities and school districts, if less than the state average, as reflected in the statewide average of taxable property value per pupil in the state's independent school districts, as determined [~~in 1996~~] by the Comptroller's Property Tax Division's most recent report reflecting such data [~~Division~~].

(c) Funds not awarded for replication or expansion will be distributed to existing CIS programs, utilizing the criteria [~~the CIS programs existing as of August 31, 1995,~~] as outlined in subsection (d) of this section.

(d) The [~~For FY99, the~~] Commission will allocate an amount of Compensatory Education Funds, to be determined by the Commission, among CIS programs existing as of 1997 [~~August 31, 1995~~], based on the following criteria:

(1) no less than 50%, or more than 70%, shall be distributed to the individual CIS programs based on the relative proportion of the number of at-risk students attending school districts

served by the respective program compared to the number of at-risk students in all school districts served by CIS, and

(2) no less than 10%, or more than 25%, shall be distributed on the basis of the weighted financial resources of individual communities and school districts, if less than the state average, as reflected in the statewide average of taxable property value per pupil in the state's independent school districts, as determined [~~in 1996~~] by the Comptroller's Property Tax Division's most recent report reflecting such data [~~Division~~].

(e) The [~~For FY99, the~~] Commission may adjust Compensatory Education funding to existing CIS programs if a CIS program receives less than 90% or more than 125% of Compensatory Education funds initially distributed in the preceding fiscal year [~~FY98~~].

(f) The state will retain an amount, to be determined by the Commission, for programs started after 1997, based upon the following criteria:

(1) the relative number of at-risk students in the local workforce development area compared to the number of at-risk students in the local workforce development areas served by a CIS program started after 1997.

(2) the local financial resources in the local workforce development area, as the area's total taxable property value as determined by the Comptroller's Property Tax Division's most recent report reflecting such data, divided by the total number of students in the area in the corresponding year.

§827.33. Temporary Assistance for Needy Families (TANF) Funding.

(a) The Commission may designate an amount of TANF funds for the State to retain [~~For FY99, the State will retain the FY98 TANF carry-over funds~~] for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. TANF replication funds will be made available through a competitive Request for Proposal process.

(b) In the absence of responsive bids in the Request for Proposal process, designated TANF replication [~~FY98 TANF carry-over~~] funds not awarded will be allocated to contracted CIS programs for expansion based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(c) The Commission may designate an amount of TANF funds for CIS programs, [~~For FY99, the Commission will allocate $3 million TANF funds among CIS programs existing as of August 31, 1995,~~] based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

§827.34. Other Funding.

(a) The Commission may designate an amount of funding for the State to retain for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. Such replication funds will be made available through a competitive Request for Proposal process.

(b) In the absence of responsive bids in the Request for Proposal process, funds not awarded will be allocated to contracted CIS programs for expansion based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(c) The Commission may designate an amount of funding for the State to retain to allocate to CIS programs based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

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 April 26, 1999.

TRD-9902421
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: June 6, 1999
For further information, please call: (512) 463–8812

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Subchapter G. Lending Powers

7 TAC §§91.701–91.719

The Credit Union Department has withdrawn from consideration for permanent adoption the new §§91.701–91.719, which appeared in the February 5, 1999, issue of the *Texas Register* (24 TexReg 652).

Filed with the Office of the Secretary of State on April 23, 1999.

TRD-9902471
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: April 23, 1999
For further information, please call: (512) 837–9236

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Subchapter P. Licensing of Wholesale Distributors of Drugs Including Good Manufacturing Practice

25 TAC §§229.251–229.254

The Texas Department of Health has withdrawn from consideration for permanent adoption the amendments to §§229.251–229.254, which appeared in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12085).

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902281
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: April 19, 1999
For further information, please call: (512) 458–7236

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 1. Consumer Credit Commissioner

Subchapter A. Regulated Loan Licenses

Division 1. General Provisions

7 TAC §1.14, §1.15

The Finance Commission of Texas (the commission) adopts the repeal of §1.14 and §1.15. This repeal is necessary because the sections relate to authorized lender's duties prescribed under Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature (1997). Moreover these rules are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapter 3 through 5. This repeal is adopted without changes to the proposal as published in the March 12, 1999, issue of the *Texas Register*, (24 TexReg 1702).

The agency received no comments regarding the proposal.

The repeal is adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Article 5069, Chapter 3A, 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.

Filed with the Office of the Secretary of State on April 23, 1999.

TRD-9902404
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: May 13, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 936–7640

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Division 4. Insurance

7 TAC §§1.71-1.75, 1.77, 1.78, 1.80

The Finance Commission of Texas (the commission) adopts the repeal of §§1.71-1.75, 1.77, 1.78, and 1.80. The repeals are necessary because the sections that are proposed for repeal relate to insurance in connection with loans made under authority of Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature (1997). Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old chapters 3 through 5. The repeals are adopted without changes to the proposal as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1702).

The agency received no comments regarding this proposal.

The repeals are adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeals; Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter I.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

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Division 5. Refund

7 TAC §1.93, §1.96

The Finance Commission of Texas (the commission) adopts the repeal of §1.93 and §1.96. The repeals are necessary because the sections that are proposed for repeal relate to insurance in connection with loans made under authority of Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature (1997). Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old chapters 3 through 5. The repeals are adopted without changes to the proposal as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1703).

The agency received no comments regarding this proposal.

The repeals are adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeals; Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter I.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

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For further information, please call: (512) 936-7640

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Subchapter I. Insurance

7 TAC §§1.801-1.811

The Finance Commission of Texas (the commission) adopts new §§1.801-1.811 concerning insurance as provided in Subchapter I, Chapter 3A, Article 5069. The sections are adopted without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1703).

Pursuant to Subchapter I, a lender may request or require various insurance coverages in connection with a loan made under Texas Civil Statutes, Chapter 3A. The proposed rules will provide guidance concerning procedures involved in procuring, maintaining, and terminating these insurance coverages.

Section 1.801 defines terms that are used in connection with these transactions.

Section 1.802 explains the procedures for property insurance that may be written in connection with a loan made under Chapter 3A. The substance of this rule is currently embodied in 7 TAC §1.73 (which is being proposed for simultaneous repeal) and has been in effect since its initial adoption in 1972. The commissioner has a responsibility to determine if rates for property insurance that is obtained by the lender at rates that are not fixed or approved by the Texas Department of Insurance bear a reasonable relationship to the amount, term, and conditions of the loan, the value of the collateral, and the existing hazards or risk of loss, damage, or destruction. This rule provides the procedure for making that determination.

Section 1.803 provides the limits for property insurance relative to the amount of the note and the value of the collateral. The rule also provides a procedure for substantiating the amount of property insurance, especially when the credit insurance policy covers multiple items of collateral . This procedure is currently embodied in 7 TAC §1.74 (which is being proposed for simultaneous repeal) and has been in effect since its initial adoption in 1972. The procedure is necessary to determine an appropriate settlement amount when a claim is made for a partial personal property loss.

Section 1.804 details the manner of determining the appropriate value of insured items, in the event of a claim. Specifically, the rule lays out the "claims ratio" as an approved formula for allocating value to individual items of collateral in the event of a claim when the total amount of property insurance written is less than the total value of the collateral.

Section 1.805 describes the types of credit insurance authorized to be sold in connection with a Chapter 3A loan. The rule is necessary to prescribe these types of insurance and require compliance with the applicable sections of the insurance statutes.

Section 1.806 requires the lender to provide a borrower with a copy of a policy or certificate of insurance for coverage sold in connection with a Chapter 3A loan. This rule is necessary to prescribe the specific information required to be disclosed to the borrower and to provide for a reasonable time frame in which the information is to be disclosed to the borrower.

Section 1.807 refers the reader to other applicable requirements for placement of single-interest insurance on a loan written under the authority of Chapter 3A.

Section 1.808 provides the procedures for terminating insurance policies in the event that a loan has been discharged. This procedure is currently embodied in 7 TAC §1.77 (which is being proposed for simultaneous repeal) and has been in effect since its initial adoption in 1972. The procedure is necessary to provide lenders guidance for complying with the credit statutes and the insurance statutes in the event of the termination of a policy.

Section 1.809 explains refunding procedures when an account is paid in full due to the proceeds of an insured property loss. This procedure is currently embodied in 7 TAC §1.78 (which is being proposed for simultaneous repeal) and has been in effect since its initial adoption in 1972. The procedure is necessary to provide lenders guidance in crediting accounts or refunding the unearned portions of insurance premiums and interest charges when the account has been paid in full by the insurance proceeds.

Section 1.810 prescribes the procedure for cancellation of property insurance when a borrower provides a lender with evidence that the borrower has equivalent insurance. This rule is necessary to provide a procedure for the cancellation of equivalent insurance so that borrowers and lenders understand the steps required to accomplish the cancellation.

Section 1.811 provides the terms and conditions for writing a nonfiling insurance policy on a Chapter 3A loan. This insurance is insurance that is written in lieu of the fees that may be assessed for filing, recording, and releasing financing statements on the security for a loan. These rules are necessary to provide clarity to lenders regarding the instances when a charge for this insurance may be assessed.

The rule adoption is necessary due to the repeal of the former Article 5069, Chapters 3, 4, and 5 and the adoption of new Article 5069-3A.001 et seq. Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

The agency received no comments regarding the proposal.

The new sections are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter I is affected by these proposed new sections.

This agency 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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Subchapter J. Authorized Lender's Duties and Authority

7 TAC §§1.826-1.828

The Finance Commission of Texas (the commission) adopts new §§1.826-1.828 concerning an authorized lender's duties and authority under Subchapter J, Chapter 3A, Texas Civil Statutes, Article 5069. The sections are adopted without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1706).

Section 1.826 requires that a lender shall provide a borrower with a payoff quote. This provision is necessary to enable a borrower to prepay the loan at any time in accordance with Article 3A.803. The former provision requiring payoff quotes is found at 7 TAC §1.14.

Section 1.827 requires a lender to provide a borrower with a Spanish language disclosure when a majority of the negotiations have occurred in Spanish. The substance of this rule is currently embodied in 7 TAC §1.15 (which is being proposed for simultaneous repeal) and has been in effect since its initial adoption in 1972. This rule is necessary to ensure that consumers are adequately informed of the terms and conditions of a loan.

Section 1.828 provides the procedures for a lender to satisfy the requirements of Article 3A.804. This rule is necessary to provide lenders with guidance for complying with this section.

The rule adoption is necessary due to the repeal of the former Article 5069, Chapter 5 and the adoption of new Article 5069-3A.001 *et seq*. Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

The agency received no comments regarding the proposal.

The new sections are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter J is affected by these proposed new sections.

This agency 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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For further information, please call: (512) 936-7640

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Part IV. Texas Savings and Loan Department

Chapter 75. Applications

Subchapter A. Charter Applications

7 TAC §75.3, §75.10

The Finance Commission of Texas adopts amended 7 TAC §75.3 and §75.10 regarding charter application procedures for state savings banks to update and enhance flexibility in the charter application process. The sections are adopted without changes to the proposal as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 16).

The amendment to §75.3 removes the requirement for specific language to be published in notices of charter applications. The 74th Legislature authorized the Finance Commission to employ a hearings officer to provide services to the Texas Department of Banking, Savings and Loan Department and Office of Consumer Credit Commissioner. In 1995, the Finance Commission adopted 7 T.A.C., Chapter 9 establishing practices and procedures to be followed by the hearing officer in the conduct of hearings for the Department. At that time, Department rules regarding notice and hearing procedures were modified to provide consistency and give the Commissioner the flexibility to approve publication of a notice worded differently than the existing §75.3. This amendment to §75.3 clarifies that process.

The amendment to §75.10 gives discretion to the Commissioner to set a hearing to consider the facts or obtain additional information for a change of name application.

No comments were received regarding the amended sections.

The sections are amended under *Finance Code*, §11.302, which requires the commission to adopt rules regarding enforcement and implementation of Subtitle C of the *Finance 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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TRD-9902397
James L. Pledger
Commissioner
Texas Savings and Loan Department
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Proposal publication date: January 1, 1999

For further information, please call: (512) 475–1350

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Subchapter B. Expedited Applications

7 TAC §§75.25–75.27

The Finance Commission of Texas adopts new 7 TAC §§75.25 through 75.27 regarding expedited application procedures for certain state savings banks relating to branch offices, mobile facilities, change of office location, merger, consolidation, or purchase and assumption transactions. A reduction in related application fees in Chapter 79 is separately adopted for expedited applications. The sections are adopted without changes to the proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1887).

Adopted §75.25 establishes the criteria for a savings bank to be eligible to file an expedited application. This is a reduction of regulatory burden to those savings banks that are well rated, well managed, and not operating under any regulatory directive or agreement.

Adopted §75.26 describes the items necessary to be filed with an expedited application. It requires that the applicant supply the Commissioner all information necessary to make a fully informed decision regarding an expedited filing.

Adopted §75.27 permits discretion to the Commissioner to deny expedited filing treatment to an otherwise eligible applicant if he finds that the proposed transaction involves significant policy, supervisory, or legal issues.

No comments were received regarding the new sections.

The sections are adopted under *Finance Code*, §11.302, which requires the commission to adopt rules regarding enforcement and implementation of Subtitle C of the *Finance 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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James L. Pledger
Commissioner
Texas Savings and Loan Department
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For further information, please call: (512) 475–1350

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Subchapter C. Additional Offices

7 TAC §§75.31, 75.33, 75.35, 75.37, 75.38

The Finance Commission of Texas adopts amended 7 TAC §§75.31, 75.33, 75.35, 75.37, and 75.38 regarding additional offices and facilities for state savings banks. The amendment would reduce regulatory burden and update the application procedures for additional offices and facilities. The sections are adopted without changes to the proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1888).

The amendment to §75.31 updates the requirements for home and branch offices of state savings banks.

The amendment to §75.33 updates the information required in the application for a branch office and the findings required for approval. It also relocates and clarifies the requirement of existing §75.31(b) that submissions related to all facts be signed and sworn to by an officer of the savings bank.

The amendment to §75.35 updates the mobile facilities application requirements, reducing regulatory burden and making the application process for mobile facilities consistent with other office applications.

The amendment to §75.37 provides definitional consistency between a remote service unit under this section and the security provisions for automatic teller machines described in §77.115. The amendment also replaces the application requirement for remote service units with a requirement for approval by the institution's board and notice to the commissioner. This change will make state savings bank requirements consistent with other state and federally chartered financial institutions and will not affect the safety and soundness of the industry.

The amendment to §75.38 clarifies that the section only applies to relocation of home and branch offices. It also codifies and expands an existing Department policy that permits a home office to be relocated to an existing approved branch office and the home office to be retained as a branch office after advance notice is provided to the Commissioner.

No comments were received regarding the amended sections.

The sections are amended under *Finance Code*,§11.302, which requires the commission to adopt rules regarding enforcement and implementation of Subtitle C of the *Finance 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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James L. Pledger
Commissioner
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Chapter 79. Miscellaneous

Subchapter F. Fees and Charges

7 TAC §§79.92, 79.100, 79.102, 79.107

The Finance Commission of Texas adopts amended 7 TAC §§79.92, 79.100, 79.102, 79.107 regarding the reduction of fees and charges for applications by state savings banks to coincide with proposals submitted concurrently. The revised fees more accurately reflect the review and processing time involved with the respective applications and maintain a fee schedule competitive with federal regulatory agencies. The sections are adopted without changes to the proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1890).

Amended §79.92 will reduce the fee for a branch office application from $2,500 to $1,500. This fee applies to an application that does not qualify for expedited treatment.

Amended §79.100 removes the fee for remote service units since the Department's concurrent proposal would reduce remote service unit application to a notice filing in §75.37. In its place, fees for expedited applications will be authorized in new §75.26. The expedited application fee for a branch office will be $500, $250 for an office relocation, $2,500 for a reorganization, merger or consolidation, and $2,000 for a purchase and assumption transaction.

Amended §79.102 reduces from $2,500 to $1,500 the fee for an application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91 through 77.95.

Amended §79.107 will reduce the fee for holding company registration from $5,000 to $2,000. A holding company registration must be filed within 90 days of becoming a state savings bank holding company pursuant to §79.41.

No comments were received regarding the amended sections.

The sections are amended under *Finance Code*,§11.302, which requires the commission to adopt rules regarding enforcement and implementation of Subtitle C of the *Finance 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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James L. Pledger
Commissioner
Texas Savings and Loan Department
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Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Subchapter D. Powers of Credit Unions

7 TAC §91.403

The Texas Credit Union Commission adopts new §91.403, concerning federal parity with respect to offering Guaranteed Auto Protection (GAP) programs, without change to the proposed text published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 651).

The new rule will provide specific authorization for a state-chartered credit union to establish and operate a Guaranteed Auto Protection (GAP) program for its members. A GAP program protects institutions from losses resulting from inadequate or lost collateral. Also, under certain programs, borrowers may not be held responsible for deficiencies. Currently, state credit unions can offer this type of program provided they first obtain a license to offer debt cancellation contracts from the Texas Department of Insurance. Federal credit unions are not required to obtain such a license due to a determination that the Federal Credit Union Act preempts state insurance law with respect to debt cancellation contracts. This places state-chartered credit unions at a competitive disadvantage.

The Commission received comments from First Educators Credit Union, the Texas Credit Union League, FLS Services, Inc., and two individuals. The commentors supported the new section to clarify that a GAP program is permissible for state-chartered credit unions on the same basis as federal credit unions. One commentor recommended a clarification to make it clear that a credit union could offer GAP coverage on direct auto loans as well as on auto leases and balloon financing programs. The Commission disagrees that a revised definition is needed. This preamble makes it clear that it is the Commission's intention to allow credit unions to be able to offer GAP coverage on all types of auto financing and leasing transactions. The Commission has again reviewed the proposed language and has determined that it fulfills the Commission's intent.

The new section is adopted under the Texas Finance Code §15.402 and 123.003. The Commission interprets §15.402 to authorize the Commission to adopt reasonable rules, and the Commission interprets §123.003 to authorize the Commission to adopt rules that authorize a state credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

This agency 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-9902395
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837–9236

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Subchapter H. Investments

7 TAC §91.801

The Texas Credit Union Commission adopts amendments to §91.801, concerning investment in a credit union service organization (CUSO), with one technical correction to the proposed text published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 657-658). The reference to §97.113(c) in subsection (f) of this section should read §97.113(d).

The amendments were proposed for the purposes of clarifying existing requirements and adding new requirements to address potential safety and soundness concerns. One amendment to subsection (a) confirms the requirement under subsection (c)(2) that a CUSO must be a separate legal entity from the credit union and that the CUSO must be adequately capitalized to reduce loss risk exposure to the investing credit union(s). The second amendment to subsection (a) simplifies the notification requirement. An amendment to subsection (c) adds a registered limited liability partnership to the forms of organization of a CUSO that a credit union may invest in and loan money to. Another amendment requires a credit union that is considering investment in a CUSO to obtain a legal

determination that the CUSO's organizational structure will limit the credit union's potential loss exposure. The Commission has also added two new subsections to the rule. The first prohibits senior credit union staff from receiving directly or indirectly any salary, commission, investment income or other income from a CUSO affiliated with the credit union due to potential conflict of interest. The second new subsection authorizes the Commissioner to charge a CUSO a supplemental examination fee should it become necessary for Credit Union Department examiners to inspect the CUSO's books and records.

Comment letters were received from First Educators Credit Union, USE Credit Union, and the Texas Credit Union League. One commentor stated that the rule gives "clear guidance to credit unions on CUSO structure and formation", while allowing credit unions "sufficient flexibility to operate their CUSO as a business venture, without unnecessary constraints." Another commentor supported the amendments, but pointed out that the term "CUSO" is an acronym and that while the term is defined in 7 TAC §91.102, no where in the rules is what CUSO represents stated. The commentor is recommending that the Commission amend §91.102 to correct the omission. The Commission will take this comment in consideration during its review of this rule under the Department's published Rule Review Plan.

The last comment letter raised four issues concerning the proposed amendments. Beginning with the adequate capitalization requirement contained in subsection (a), the party stated that the language is obscure. The commentor also stated the belief that many new CUSO organizations may have marginal capitalization, and that given CUSOs are "taxable entities in some forms, minimal capitalization would be desirable. The letter concluded by stating the subsection should be reworded to reflect a requirement that the investing credit unions have adequate capitalization (exceeding 6%) to make the investment. In response the Commission would point out that one of the purposes of organizing a CUSO is to reduce a credit union's liability and limit its potential loss exposure to no more than the loss of funds invested in or lent to a CUSO. Given the fact that inadequate capitalization has led the courts to "pierce the corporate veil" and make the actual investors liable, the Commission believes a significant safety and soundness concern arises without the requirement that a CUSO be adequately capitalized. Accordingly, it is an appropriate prerequisite for any such investment or loan.

The other three issues raised by this commentor address the investment limit and the reference to the Texas Finance Code, both contained in subsection (b), and the list of permissive activities and services for CUSOs contained in subsection (d). The Commission, however, did not propose any substantive amendments to these subsections. The only change proposed pertains to correcting, in subsection (b), the statutory cite which no longer exists by virtue of the Texas Credit Union Act's codification into the new Texas Finance Code. The comments will be retained, however, and considered when the rule is scheduled for review under the Department's Rule Review Plan.

The amended rule is adopted under the Texas Finance Code, §15.402 and §124.351(a). The Commission interprets §15.402 as authorizing the Commission to adopt reasonable rules. The Commission interprets §124.351(a) to authorize the Credit Union Commission to adopt rules pertaining to authorized investments for state-chartered credit unions.

§91.801. Investments in CUSOs.

(a) A credit union by itself, or with other parties, may organize, invest in or make loans to a CUSO which shall be adequately capitalized and which shall be structured and operated as an entity separate and distinct from the credit union. A credit union shall provide written notice to the commissioner at least 15 days prior to making such investment or loans. The credit union shall provide any additional information reasonably requested by the commissioner.

(b) An investment in any one CUSO shall not exceed the lesser of 5.0% of the credit union's total assets or the total amount of its reserves and undivided earnings. Loans to any one CUSO shall not exceed the aggregate limit for loans to one member specified by the Texas Finance Code §124.003 or a rule adopted under that section. The total aggregate amount of all investments in all CUSOs by any one credit union shall not exceed 10% of the total assets of the credit union, unless the credit union receives the prior written approval of the commissioner.

(c) No credit union may invest in or make loans to a CUSO:

(1) if any officer, director, committee member, or employee of such credit union or any member of the immediate family of such persons owns or makes an investment in the CUSO;

(2) unless the organization is structured as a corporation, limited liability company, registered limited liability partnership, or limited partnership and the credit union has obtained a written legal opinion that the CUSO is established in a manner that will limit the credit union's potential exposure to not more than the loss of funds invested in or loaned to such CUSO;

(3) if the CUSO provides services or engages in activities not described in this rule or which have not been approved by the commissioner in writing; or

(4) unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO.

(d) (No change.)

(e) Senior management staff of a credit union may receive salary, commission, investment income, or other income or compensation from any CUSO affiliated with their credit union provided the individual provides fair and full disclosure initially and annually thereafter to the boards of participating credit unions.

(f) If a CUSO is requested by the commissioner to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(d) of this title (relating to Supplemental Examinations). The commissioner may waive the supplemental examination fee or reduce the fee as he deems appropriate.

(g) The requirements of this rule apply only to investments or loans made after the effective date of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9902393
Harold E. Feeney
Commissioner

Credit Union Department
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For further information, please call: (512) 837–9236

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Subchapter M. Electronic Operations

7 TAC §91.4001, §91.4002

The Texas Credit Union Commission adopts new Subchapter M, §91.4001 and §91.4002, concerning electronic operations by or involving a credit union, with nonsubstantive changes to the proposed text published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 658-659).

Under the new sections, a credit union may engage in prudent innovation through the use of emerging technology. The proposal permits credit unions to use, or to participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. The new sections also require a credit union to notify the Department 30 days before it establishes a transactional web site. Credit unions that present supervisory or compliance concerns may be subject to additional procedural requirements.

First Educators Credit Union, PIA of Texas Credit Union, and the Texas Credit Union League commented on §91.4001. Two of the comments received were very supportive of the rule. One commentor was supportive because credit unions will now be clearly authorized to offer electronic services and to market electronic capabilities and by-products. The other supporter stated the rule is clear and concise and that every credit union should consider its provisions before establishing electronic operations. The third comment, while not opposing the rule, expressed concern that the wording in subsection (c) requires a system that "prevents abuse" and therefore creates liability for the credit union. The commenting party went on to say that the best a rule can do is to require credit unions "to install a measure adequately designed to prevent abuse." The language's intent in subsection (c) is to require credit unions to take all necessary steps to implement security measures that are based on currently available technology designed specifically to guard against computer hacking and other forms of computer tampering and fraud. The Commission does not believe that the language proposed by the commenting party creates any less liability, nor the rule any more liability, for a credit union with respect to potential losses resulting from a computer crime. However, to clarify this belief the Commission has modified subsection (c), paragraph (2) by striking the text "must be adequate to" and inserting "should take into consideration." The first words of the proceeding subparagraphs were then modified so that they would be grammatically correct.

First Educators Credit Union and the Texas Credit Union League also commented on §91.4002. One comment was supportive of the Commission's purpose in proposing the rule. The other comment categorized the proposed rule as unnecessary and overly burdensome. The Commission disagrees with this latter comment. Transactional web sites pose a safety and soundness risk to credit unions because they create security, compliance, and privacy risks. Therefore, for future examination planning purposes, the Department should be informed when a transactional web site is established. The objecting comment also states that the notification requirement appears overly invasive, especially since the name of a contact person is requested. After considering these comments, the Commission concluded that safety and soundness and compliance considerations warranted the Department receiving advance notice of industry use of one developing technology - transactional web sites. These web sites allow credit union members to use the Internet to conduct a wide variety of financial transactions. They may, however, also pose safety and soundness risks as discussed above. The notice requirement, as well as the request for a contact person, applies only to the initial establishment of the transactional web site. The Commission views it as necessary to identify the person knowledgeable about the web site should the Department have any questions regarding the information requested in subsection (a)(1) and (a)(2) of this section.

The new rules are adopted under the Texas Finance Code, §15.402. The Commission interprets §15.402 to authorize the Commission to adopt reasonable rules for administering the Texas Credit Union Act.

§91.4001. Authority to Conduct Electronic Operations.

(a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

(b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.

(c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:

(1) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:

(A) the prevention of unauthorized access to credit union records and credit union members' records;

(B) the prevention of financial fraud through the use of electronic means or facilities; and

(C) compliance with applicable security device requirements of §91.401(b) of this title (pertaining to User Safety at Unmanned Teller Machines).

(d) All credit unions engaging in such electronic activities must comply with all applicable requirements, including addressing safety and soundness concerns and ensuring compliance with applicable state and federal laws and regulations.

§91.4002. Notice Requirement.

(a) A credit union must file a written notice with the commissioner at least 30 days before it establishes a transactional web site. The notice must:

(1) Include an address for and a description of the transactional features of the web site;

(2) Indicate the date the transactional web site will become operational; and

(3) List a contact person familiar with the deployment, operation, and security of the transactional web site.

(b) For the purposes of this chapter a transactional web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) If a credit union has established a transactional web site before the effective date of this rule, it must file a notice describing its activity by June 1, 1999.

This agency 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 April 23, 1999.

TRD-9902392
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: May 13, 1999
Proposal publication date: February 5, 1999
For further information, please call: (512) 837–9236

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Chapter 97. Commission Policies and Administrative Rules

Subchapter B. Fees

7 TAC §97.113

The Texas Credit Union Commission adopts amendments to existing rule §97.113, concerning operating fees, without change as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 659-660).

As a self-funding agency by legislative mandate, the Credit Union Department must collect annual operating fees from state-chartered credit unions to cover its appropriations and any indirect costs associated with operating the agency. The imposition of operating fees should relate to the cost of supervising and regulating credit unions and should not create an undue financial burden to those institutions. The amended rule will authorize the Commissioner to reduce or increase the operating fees schedule, the basis for calculating the amount of operating fees paid by credit unions each year, without prior Commission approval, provided good cause exists and the increases do not exceed 5% of the annual operating fees. An example of good cause includes the situation when the existing operating fee schedule would produce revenues significantly more or less than the amount the Department is authorized to spend. The amendment does not authorize any increase or decrease that would result in projected revenues that do not substantially match revenue with appropriations.

The amended rule will also authorize the Commissioner to waive operating fees for individual credit unions on a case-by-case basis, provided good cause exists. An example of good cause includes the situation when its payment of the operating fees would render a credit union financially insolvent.

The Texas Credit Union League commented in favor of the amendments, observing that the amendments are favorable to credit unions and allow flexibility to the Commissioner.

The amended rule is adopted under the authority of §15.402 of the Texas Finance Code. The Commission interprets this section as authorizing the Commission to set, by rule, reasonable supervision fees, charges, and revenues required to be paid by credit unions authorized to do business under the Texas Credit Union Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 23, 1999.

TRD-9902411
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: May 13, 1999
Proposal publication date: February 5, 1999
For further information, please call: (512) 837–9236

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings

16 TAC §§22.241, 22.242, 22.243, 22.244

The Public Utility Commission of Texas (commission) adopts amendments to §22.241 relating to Investigations and §22.244 relating to Review of Municipal Rate Actions with no changes to the proposed text as published in the January 15, 1999, issue of the *Texas Register* (24 TexReg 285). The commission adopts amendments to §22.242 relating to Complaints and §22.243 relating to Rate Change Proceedings with changes to the proposed text as published in the January 15, 1999, issue of the *Texas Register* (24 TexReg 285). These amendments are adopted under Project Number 17709.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the Section 167 requirement, as to whether the reason for adopting these rules continues to exist, in the comments on the proposed amendments. No interested persons commented on the Section 167 requirement. The commission finds that the reason for adopting these sections continues to exist.

The commission received comments on the proposed amendments from Central Power and Light Company (CPL), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU), the Texas electric utility operating

companies of the Central and South West Corporation (collectively CSW Companies); Southwestern Bell Telephone Company (SWBT); Texas Electric Cooperatives, Inc. (TEC); and Texas Utilities Electric Company (TUEC).

The amendments to §22.241 and §22.244 are necessary to update citations to the Public Utility Regulatory Act (PURA) as codified in the Texas Utilities Code and conform the sections to current commission practice and organization. The commission received no comments on the proposed amendments for these two sections.

Section 22.242 relating to Complaints

SWBT suggested that the language in §22.242(a) regarding the length of time the commission shall retain complaint records be more specifically stated. SWBT proposed changing "reasonable period" to "a period of two years from date of filing of complaint."

The commission agrees that the language "reasonable period" should be stated more specifically. However, the language proposed by SWBT does not meet the minimum requirements for state records. All state agencies are required to meet the minimum record keeping requirements as adopted by the Texas State Library and Archives Commission and the requirements of the agency's approved records retention schedule. The minimum state requirement for complaints is two years after final disposition of the complaint. The commission's approved retention schedule requires that paper copies be kept two years after final disposition of the complaint and that the electronic database for complaints be kept five years after final disposition of the complaint. The commission modifies §22.242(a) to state "The commission shall retain the information pursuant to the agency's records retention schedule as approved by the Texas State Library and Archives Commission."

SWBT noted that §22.242(d) proposes modifying the time the commission's Office of Customer Protection shall attempt to informally resolve all complaints from 45 days to 30 days, and that this timeline is directly related to the proposed 15 day response time for utilities in Project Number 19517, *Transfer of Existing Telephone Customer Service and Protection Rules to Chapter 26 and Associated Changes.* SWBT suggest that this amendment not be adopted until after the rules in Project Number 19517 are adopted, so that the language can be modified if necessary.

The commission agrees that this proposed change should be adopted along with the proposed changes under Project Number 19517 and also Project Number 19513, *Transfer of Existing Electric Customer Service and Protections Rules to Chapter 25 and Associated Changes.* The adoption of these amendments will coincide with the adoption of the commission's new customer service and protection rules. Under proposed §25.30(c)(2) of this title (relating to Complaints) and proposed §26.30(c)(2) of this title (relating to Complaints) an electric or telecommunications utility shall investigate all complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the electric utility. In adopting these sections, the 15 days was modified to 21 days. As a result of this increased time period, the 30 day period proposed in §22.242(d) has been increased to 35 days.

CSW Companies comments that the commission has recently been required to adjudicate through the preliminary order process an issue concerning the time required for an appeal of a municipal rate action, and suggests a change to §22.242 to incorporate the results of that adjudication in its rules to codify its decision. In its Preliminary Order in Docket Number 20011, *Complaint of Los Fresnos Consolidated Independent School District, et. al.* (February 5, 1999), the commission ruled that rate complaints involving billing issues rather than general rate cases are not governed by the Public Utility Regulatory Act (PURA), Chapter 33. However, the commission expressed during the February 4, 1999 Open Meeting that some time deadline should be established for handling such complaints, but that it need not be the 30 days required under PURA §33.053. CSW Companies suggested adding language to §22.242(e)(1)(A) to require that such complaints be filed no later than 60 days after the city issues a decision on the complaint; or the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.

The commission agrees that the commissioners' decision in Docket Number 20011 should be codified in its rules. However, the modification requested by CSW Companies is outside the scope of this proceeding, as it would place a new requirement on utility customers that has not been published for comment. The commission will initiate a project to further amend 22.242.

TUEC comments on the commission's proposed change to §22.242(e)(1)(B), which added language: "If the city does not act on the complaint within 30 days, the commission may send the city a letter requesting that the city act on the complaint. If the city does not respond or act within 15 days, the complaint shall be deemed denied by the city and the commission shall consider the complaint." TUEC states that this is beyond the authority of the commission to adopt because PURA §33.053(b) permits an appeal only of the "final decision by the governing body of the municipality". TUEC comments that a city's failure to act, even after a commission request to do so, does not constitute a "final decision". Without a final decision, there is no basis upon which the commission can hear the complaint as jurisdiction will not exist resulting in an order that is void ab initio.

TUEC further stated that even if the commission could transform the failure of a municipality to act into a final decision, (1) the city most likely would be unable to act within the 15-day period specified due to open meeting notice requirements; (2) the exact time when the time period starts should be clarified (i.e., 15 days from the date of the letter or receipt of the letter); and (3) the proposed provision that states the commission will automatically consider the complaint should be deleted.

The commission finds that this provision is necessary to protect the public interest and ensure that utility customers within the boundaries of a municipality having original jurisdiction have the opportunity to invoke the commission's appellate jurisdiction. Consideration of a complaint after giving the municipality a reasonable opportunity to act appropriately balances deference to the municipality's original jurisdiction and the right of customers to have their complaints considered and resolved.

The commission agrees with TUEC that a city would most likely be unable to act within the 15-day specified period and has increased this to 30 days from the date the commission dates the letter. The commission does not delete the phrase "and the commission shall consider the complaint". The commission considers all complaints that are filed, whether the decision is

to deny or to grant the relief requested. Section 22.243 relating to Rate Change Proceedings.

Section 22.243 relating to Rate Change Proceedings

TEC comments that the provision in §22.243(a) which requires electric utilities or public utilities to file a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change does not apply to electric cooperatives that have elected to be exempt from rate regulation under PURA, Chapter 36. TEC suggested adding the following language to subsection (a): "No electric utility or public utility, other than an electric cooperative that has elected to be exempt from rate regulation under chapter 36 of PURA, may make changes…."

The commission agrees and has made the appropriate change.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the 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.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.242. Complaints.

(a) Records of complaints. Any affected person may complain to the commission, either in writing or by telephone, setting forth any act or thing done or omitted to be done by any electric utility or telecommunications utility in violation or claimed violation of any law which the commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the commission. The Office of Customer Protection may request a complaint made by telephone be put in writing if necessary to complete investigation of the complaint. The commission shall keep information about each complaint filed with the commission. The commission shall retain the information pursuant to the agency's records retention schedule as approved by the Texas State Library and Archives Commission. The information shall include:

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

(b) (No change.)

(c) Informal resolution required in certain cases. A person who is aggrieved by the conduct of an electric utility or telecommunications utility or other person must present a complaint to the Office of Customer Protection for informal resolution before presenting the complaint to the commission.

(1) Exceptions. A complainant may present a formal complaint to the commission, without first referring the complaint for informal resolution, if:

(A) the complainant is the Office of Regulatory Affairs, the Office of Customer Protection, the Office of Public Utility Counsel, or any city;

(B) the complaint is filed by a qualifying facility and concerns rates paid by an electric utility for power provided by the qualifying facility, the terms and conditions for the purchase of such power, or any other matter that affects the relations between an electric utility and a qualifying facility;

(C) the complaint is filed by a person alleging that an electric utility or a telecommunications utility has engaged in anticompetitive practices; or

(D) the complaint has been the subject of a complaint proceeding conducted by a city.

(2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the Office of Customer Protection a written request for waiver of the requirement for attempted informal resolution. The complainant shall clearly state the reasons informal resolution is not appropriate. The Office of Customer Protection may grant the request for good cause.

(d) Termination of informal resolution. The Office of Customer Protection shall attempt to informally resolve all complaints within 35 days of the date of receipt of the complaint. The Office of Customer Protection shall notify, in writing, the complainant and the person against whom the complainant is seeking relief of the status of the dispute at the end of the 35-day period. If the dispute has not been resolved to the complainant's satisfaction within 35 days, the complainant may present the complaint to the commission. The Office of Customer Protection shall notify the complainant of the procedures for formally presenting a complaint to the commission.

(e) Formal Complaint. If an attempt at informal resolution fails, or is not required under subsection (c) of this section, the complainant may present a formal complaint to the commission.

(1) Requirement to present complaint concerning electric utility to a city. If a person receives electric utility service or has applied to receive electric utility service within the limits of a city that has original jurisdiction over the electric utility providing service or requested to provide service, the person must present any complaint concerning the electric utility to the city before presenting the complaint to the commission.

(A) The person may present the complaint to the commission after:

(i) the city issues a decision on the complaint; or

(ii) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.

(B) If the city does not act on the complaint within 30 days, the commission may send the city a letter requesting that the city act on the complaint. If the city does not respond or act within 30 days from the date of the letter, the complaint shall be deemed denied by the city and the commission shall consider the complaint.

(2) The Office of Policy Development may permit a complainant to cure any deficiencies under this subsection and may waive any of the requirements of this subsection for good cause, if the waiver will not materially affect the rights of any other party. A formal complaint shall include the following information:

(A) the name of the complainant or complainants;

(B) the name of the complainant's representative, if any;

(C) the address, telephone number, and facsimile transmission number, if available, of the complainant or the complainant's representative;

(D) the name of the electric utility or telecommunications utility or other person against whom the complainant is seeking relief;

(E) if the complainant is seeking relief against an electric utility, a statement of whether the complaint relates to service that the complainant is receiving within the limits of a city;

(F) if the complainant is seeking relief against an electric utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;

(G) a statement of whether the complainant has attempted informal resolution through the Office of Customer Protection and the date on which the informal resolution was completed or the time for attempting the informal resolution elapsed;

(H) a description of the facts that gave rise to the complaint; and

(I) a statement of the relief that the complainant is seeking.

(f) Copies to be provided. A complainant shall file eight copies of the formal complaint. A complainant shall provide a copy of the formal complaint to the person from whom relief is sought.

(g) Docketing of complaints. The Office of Policy Development shall docket any complaint that substantially complies with the requirements of this section.

(h) Continuation of service during processing of complaint. In any case in which a formal complaint has been filed and an allegation is made that an electric utility or a telecommunications utility or other person is threatening to discontinue a customer's service, the presiding officer may, after notice and opportunity for hearing, issue an order requiring the electric utility or telecommunications utility or other person to continue to provide service during the processing of the complaint. The presiding officer may issue such an order for good cause, on such terms as may be reasonable to preserve the rights of the parties during the processing of the complaint.

(i) List of cities without regulatory authority. The Office of Customer Protection shall maintain and make available to the public a list of the municipalities that do not have exclusive original jurisdiction over all electric rates, operations, and services provided by an electric utility within its city or town limits.

§22.243. Rate Change Proceedings.

(a) Statements of intent. No electric utility or public utility, other than an electric cooperative that has elected to be exempt from rate regulation under the Public Utility Regulatory Act, Chapter 36, may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the electric utility or public utility, the effective date of the proposed rate change, the classes and numbers of utility ratepayers affected, and a description of the service for which a change is requested. For major rate proceedings, the expected change in revenues must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues.

(b) Rate filing package. Any electric utility or public utility filing a statement of intent to change its rates in a major rate proceeding under the Public Utility Regulatory Act (PURA), Chapter 36, Subchapter C or Chapter 53, Subchapter C shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages are governed by §22.75 of this title (relating to Examination and Correction of Pleadings).

(c) (No change.)

This agency 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 April 21, 1999.

TRD-9902371
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 11, 1999
Proposal publication date: January 15, 1999
For further information, please call: (512) 936–7308

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16 TAC §22.245

The Public Utility Commission of Texas (commission) adopts the repeal of §22.245, relating to Notice of Intent Petitions with no changes to the proposed text as published in the January 15, 1999, issue of the *Texas Register* (24 TexReg 288). Project Number 17709 is assigned to this proceeding. The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. Section 22.245 applies only to utilities filing a notice of intent to file an application for a certificate of convenience and necessity for a new generating plant. These applications are now processed under Chapter 25, Subchapter H, Electrical Planning, and a notice of intent petition is no longer required. The commission finds that the reason for adopting this section no longer exist.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the 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.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

This agency 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 April 21, 1999.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 11, 1999
Proposal publication date: January 15, 1999
For further information, please call: (512) 936–7308

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TITLE 22. EXAMINING BOARDS

Part XXXVIII. Texas Midwifery Board

Chapter 831. Midwifery

With the approval of the Texas Board of Health, the Texas Midwifery Board (board) adopts new §§831.11, 831.31, 831.101, and 831.161 concerning the documentation and regulation of midwives. Specifically, the sections cover Annual Documentation; Education; Administration of Oxygen; and Complaint Review. Sections 831.11, 831.31, 831.101, and 831.161 are adopted with changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 36).

Effective December 1, 1998, the Midwifery Program and the Midwifery Board were administratively transferred from the Texas Department of Health (department), Women's Health Division, to the Professional Licensing and Certification Division of the department. The rules were located in 25 Texas Administrative Code (TAC), and the department adopted the repeal of 25 TAC §§37.175, 37.178, and 37.180 in order that the new sections may be adopted by the Texas Midwifery Board, which is listed as an independent board under 22 TAC. The repeal of 25 TAC §§37.175, 37.178, and 37.180 can be found in this same issue of the *Texas Register* in the Adopted Rules section.

The new sections implement the applicable provisions of the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), which authorizes the board to adopt rules concerning documentation and educational requirements for midwives; processing of complaints concerning midwives; and any additional rules necessary to implement any duty imposed by the Act, subject to the approval of the Texas Board of Health.

New §831.11 establishes procedures for documentation by reciprocity; prescribes conditions for denial, revocation, suspension or surrender of documentation; and establishes standards for documentation of persons with criminal convictions and for documentation after revocation, suspension, or surrender. New §831.31 establishes procedures for approving, denying, or revoking approval of midwifery basic education and continuing education courses; establishes an approved comprehensive midwifery exam and procedures for approval, denial, or revocation of approval for other comprehensive exams; and establishes procedures for the investigation and disposition of complaints concerning currently approved courses or exams. New §831.101 establishes procedures for the intrapartum and postpartum administration of oxygen by midwives. New §831.161 establishes procedures for complaint investigation and disposition; categories of complaints; and disciplinary sanctions, including revocation of documentation and administrative penalties.

Minor editorial changes were made to improve the accuracy of the sections.

The following comments were received concerning the proposed sections. Following each comment is the board's response and any resulting change(s).

Comment: Concerning §831.11(d)(2)(A), several commentors stated that reference to Athe American College of Nurse Midwifery (ACNM) exam" should be deleted. The commentors emphasized that the ACNM Core Competencies upon which this exam is based are inconsistent with the Midwives Alliance of North America (MANA) Core Competencies upon which approved basic midwifery education courses in Texas must be based, and that the type of practice for which the ACNM exam is designed to ensure competency is incompatible with the current standards of practice for documented midwives in Texas.

Response: The board agrees and has amended the section accordingly.

Comment: Concerning §831.11(d)(2)(A), one commentor stated that the reference to Athe American College of Nurse Midwifery (ACNM) exam@ should be deleted as unnecessary at this time, becasue no school located in Texas currently offers training leading to certified midwife (CM) status, and there are only seven ACNM CMs in the United States.

Response: The board agrees and has amended the section accordingly.

Comment: Concerning §831.11(d)(2)(A), several other commentors suggested that the reference to Athe American College of Nurse Midwifery (ACNM) exam@ should be deleted as unnecessary because a CM who wishes to practice in Texas may become a Certified Professional Midwife (CPM) by meeting the requirements of the North American Registry of Midwives (NARM). One commentor also pointed out that NARM has established a relatively inexpensive mechanism for certification of CMs as CPMs.

Response: The board agrees and has amended the section accordingly.

Comment: Concerning §831.11(d)(2)(A), one commentor supported inclusion of language to authorize approval of a CM course as a basic midwifery education course, and suggested that the section should also refer to the ACNM Core Competencies.

Response: The board disagrees and has deleted the reference to "the American College of Nurse Midwifery (ACNM) exam" as unnecessary.

Comment: Concerning §831.11(d)(2)(A), one commentor asked that the language be clarified to show who had Aapproved@ a basic midwifery education course.

Response: The board agrees and has amended the section by adding the phrase, Aapproved by the Midwifery Board@.

Comment: Concerning §831.11(d)(2)(A), several commentors stated that the AACNM exam@ should properly be called Athe ACNM Certification Council, Inc. (ACC) exam@, because it is administered by the ACNM Certification Council, Inc. (ACC).

Response: The board acknowledges the clarification, but the complete reference to the "ACNM exam" has been deleted as unnecessary. No change was made as a result of this comment.

Comment: Concerning §831.11(d)(2), several commentors requested that the board retain the power to waive compliance with this requirement for initial documentation based upon an applicant's petition showing good cause. The commenters added that reciprocity through NARM is becoming much more expensive, and stated that some states such as Florida utilize portions of the NARM process for licensing or credentialing midwives, but do not require the CPM.

Response: The board disagrees with the commentors. The board believes that national midwifery certification provides a high, consistent, and fair standard and should remain the only

alternate route to initial documentation in Texas for midwives trained out of state. No change was made as a result of this comment.

Comment: Concerning §831.11(d)(2)(A), one commentor suggested that midwives certified by the ACNM Certification Council should be allowed to practice in Texas by presenting evidence of that certification. The commentor suggested the section should be amended as follows: Acertification by NARM as a certified professional midwife (CPM) or by ACC as a certified midwife (CM) and completion of a continuing education course . . . .A.

Response: The board disagrees because the education and training of a CM is very different from the education and training appropriate to the scope of practice afforded a documented midwife in Texas. Any CM who wishes to practice in Texas should do so by becoming a CPM. No change was made as a result of this comment.

Comment: Concerning §831.11(d)(2), one commentor praised the rules for not including CM certification, describing the ACNM Core Competencies as neither adequate nor appropriate for home birth practice.

Response: The board acknowledges the comment and will require a CM seeking documentation in Texas to become a CPM.

Comment: Concerning §831.11(d)(6), one commentor suggested that the initial documentation fee should be payable in quarterly installments because midwives also must pay the cost of the CPM application process or a continuing education course, in addition to the fee for the NARM written exam.

Response: The board disagrees because the Texas Midwifery Act requires individuals to apply annually by submitting an application and annual documentation fee set by the Midwifery Board. The Act does not authorize quarterly installment payments. No change was made as a result of this comment.

Comment: Concerning §831.11(e), one commentor suggested that midwives should be allowed to document for a two-year period, rather than annually.

Response: The board disagrees because the Texas Midwifery Act, §13, mandates annual documentation. No change was made as a result of this comment.

Comment: Concerning §831.11(e), several commentors stated that the rules should authorize the board to temporarily exempt a midwife from one or more of the requirements for redocumentation, including continuing education, CPR certification, and neonatal resuscitation certification. The commentors described one midwife documented in Texas who is currently doing missionary work in a remote area in Africa where no CPR or neonatal resuscitation courses are available as an example of the need for this change.

Response: The board disagrees because the Midwifery Act, §10, does not authorize the board to exempt applicants for redocumentation from the requirements for CPR certification and, by extension, neonatal resuscitation. However, the board does not believe temporary exemption of applicants from redocumentation requirements is necessary, even if legally permissible, because the requirements apply only to midwives practicing in Texas. No change was made as a result of the comment.

Comment: Concerning §831.11(e)(2), a commentor stated that the rules should afford midwives the option of obtaining 30 hours of continuing midwifery education every three years in addition to obtaining 10 hours per year.

Response: The board disagrees. Based on past experience, the board believes that a significant number of midwives will wait until the third year and then rush to complete their continuing education. Tracking continuing education hours over a three-year period, particularly for those midwives who subsequently allow their documentation to lapse, would also constitute an unnecessary administrative burden. No change was made as a result of this comment.

Comment: Concerning §831.11(e)(2), one commentor stated that recertification as a CPM should be accepted for credit as continuing education hours.

Response: The board disagrees. Options otherwise available to midwives seeking NARM recertification include obtaining 30 hours of continuing education over a three-year period, which would contradict §831.11(e)(2). No change was made as a result of this comment.

Comment: Concerning §831.11(e)(5), commentor suggested that a sliding fee scale should be established for midwives who work in Texas for only a few weeks each year. The commenter added that some out-of-state midwives come to Texas annually to provide relief (e.g., in birthing centers), but do not regularly practice midwifery in the state.

Response: The board disagrees. The legal and administrative requirements for documentation are not affected by the amount of time a midwife practices in Texas or the number of clients attended per year. No change was made as a result of this comment.

Comment: Concerning §831.11(h)(1)(B), one commentor suggested adding Aor the current ACNM Core Competencies and Standards of Practice.@

Response: The board disagrees because the education and training of a CM is very different from the education and training appropriate to the scope of practice afforded a documented midwife in Texas, and would not constitute appropriate midwifery continuing education for the purposes of this section. No change was made as a result of this comment.

Comment: Concerning §831.11(i)(12), one commentor stated that the phrase Ademonstrated lack of personal or professional character@ is too vague and should be specifically defined.

Response: The board disagrees. "Demonstrated lack of personal or professional character" constitutes a legally valid basis for disciplinary action against a documented midwife without specifically listing each type of conduct. However, the board may not take disciplinary action in any case unless Texas Department of Health's Licensing and Certification Division has presented sufficient evidence to substantiate a violation. No change has been made as a result of this comment.

Comment: Concerning §831.31(e)(1), one commentor suggested deleting Ain Texas.@

Response: The board disagrees and will not accept applications for approval from basic midwifery education courses located outside the State of Texas. The appropriate route to documentation in Texas for midwives trained at out-of-state schools

is through completion of a national midwifery certification process. No change has been made as a result of this comment.

Comment: Concerning §831.31(e)(2)(C)(i), one commenter suggested that in order to facilitate the establishment of an ACNM-accredited (CM) training program for certified midwives in Texas at some future date, the section should be amended as follows: A. . . (MANA) or the ACNM Core Competencies and Standards of Practice and the current Texas Midwifery Basic Information Manual@.

Response: The board disagrees because the ACNM Core Competencies and Standards of Practice are very different from the MANA Core Competencies and Standards of Practice, and thus are not appropriate to the scope of practice afforded a documented midwife in Texas. The Midwifery Board should not regulate an ACNM-accredited training program for certified midwives due to these differences. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(C)(ii), one commenter suggested that in order to facilitate the establishment of an ACNM-accredited training program for certified midwives in Texas at some future date, the section should be amended as follows: A. . . (NARM) or the ACNM Certification Council, Inc. (ACC); and;A.

Response: The board disagrees because the ACNM Core Competencies and Standards of Practice are very different from the MANA Core Competencies and Standards of Practice, and thus are not appropriate to the scope of practice afforded a documented midwife in Texas. The board should not regulate an ACNM-accredited training program for certified midwives due to these differences. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(C)(ii), one commentor stated that the section does not describe how a school's ability to prepare a student to become certified by NARM will be assessed. The commentor suggested that a school's assessment should reflect student performance on the NARM written exam.

Response: The board agrees that a school's performance must be assessed as a part of the course approval process, but disagrees that this level of specificity is required in rule. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(D)(ii), one commentor suggested that the clause should be amended to enable nurse-midwives to serve as course supervisors for basic midwifery education courses.

Response: The board's use of the word Amidwifery@ was originally intended to include nurse-midwives. The board agrees that a certified nurse-midwife would be an appropriately trained person to supervise a basic midwifery education course, and has amended the section accordingly.

Comment: Concerning §831.31(e)(2)(F), one commenter suggested that in order to facilitate the establishment of an ACNM-accredited training program for certified midwives in Texas at some future date, the section should be amended as follows: A... certified by NARM or the ACNM Certification Council, Inc. (ACC), including successful completion . . . ".

Response: The board disagrees because the ACNM Core Competencies and Standards of Practice are very different from the MANA Core Competencies and Standards of Practice, and thus are not appropriate to the scope of practice afforded a documented midwife in Texas. The board should not regulate an ACNM-accredited training program for certified midwives due to these differences. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(F), one commentor stated that the proposed wording appears to make the school rather than the student responsible for securing a preceptor, and that some problematic students may be difficult to integrate into midwifery practice. The commentor suggested amending the section to require only that schools must Aoffer@ or Amake available@ rather than "provide" clinical experience/ preceptorship.

Response: The board acknowledges that some students will encounter difficulties entering midwifery practice but believes that the school should be responsible for providing the required clinical experience. Any difficulties presented by problematic students should be addressed through individual school policy. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(F), one commentor suggested that a minimum number of hours should be prescribed for the completion of clinical course work, in keeping with the NARM Position Statement on AEducational Requirements for the Certified Professional Midwife (CPM)@ which requires that the clinical component be at least one year in duration, the equivalent to at least 1360 clinical contact hours under the supervision of a preceptor(s).

Response: The board agrees and has amended the section accordingly.

Comment: Concerning §831.31(e)(2)(G), one commentor stated that certified nurse midwives or physicians should serve as preceptors only if there is no midwife with a home birth practice available.

Response: The board disagrees. Administrators of basic midwifery education courses should be able to select physicians, certified nurse midwives, certified professional midwives, or documented midwives to serve as preceptors. The commentor's concern about home birth is addressed by §831.31(e)(2)(F)(ii), which requires each student to complete at least 10 out-of-hospital births as the primary midwife under supervision. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(G), one commentor stated that Acertified midwives@ should be added.

Response: The board disagrees. Since Acertified midwives@ are not authorized to practice midwifery in Texas unless they are already Adocumented midwives@, the proposed amendment is unnecessary. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(2)(G)(i), one commentor stated that documented midwives serving as preceptors should meet the same standards as preceptors described in the NARM Position Statement on AEducational Requirements for the Certified Professional Midwife (CPM)@; i.e., practice as a primary attendant without supervision for a minimum of 50 out-of-hospital births, and a minimum of three years.

Response: The board disagrees. Adoption of the higher standard would impose an unnecessary hardship on some midwives in rural areas, who might not be able to find a preceptor locally with the requisite experience. Retaining the current language would not, however, preclude an education course from impos-

ing more stringent requirements upon preceptors approved by the course, such as those for CPM preceptors. No change was made as a result of this comment.

Comment: Concering §831.31(e)(4)(A)(ii), one commentor stated that a course curriculum should also be required to include content references to Athe NARM Written Test Specifications@ to assure that the course adequately prepares a student to become certified as a CPM. The commentor stated that this must have been an inadvertent omission, as the ANARM Skills Test Specifications@ are already included. The commentor also stated that perhaps the NARM AWritten Examination Primary Reference List@ and AWritten Examination Secondary Reference List@ should also be added to assure that all appropriate subjects were covered.

Response: The board agrees that specific content references to "the NARM Written Test Specifications" should be required and has amended the section accordingly. However, the board disagrees that initial applications for course approval should be required to include specific content references to the NARM References Lists. Since all the books on those lists are in English, such a requirement would also present a barrier to a person seeking approval for a course taught in Spanish.

Comment: Concerning §831.31(e)(4)(A)(ii)(I), one commenter suggested that in order to facilitate the establishment of an ACNM-accredited training program for certified midwives in Texas at some future date, the section should be amended as follows: "MANA Core Competencies or ACNM Core Competencies."

Response: The board disagrees because the ACNM Core Competencies and Standards of Practice are very different from the MANA Core Competencies and Standards of Practice, and thus are not appropriate to the scope of practice afforded a documented midwife in Texas. The board should not regulate an ACNM-accredited training program for certified midwives due to these differences. No change was made as a result of this comment.

Comment: Concerning §831.31(e)(6), a commentor stated that course approval by reciprocity should also be available for a course currently accredited by the ACNM's Division of Accreditation if the amendment would allow midwives who have met all other requirements to practice in Texas. The commentor stated that if certified midwives who have completed ACNM-accredited education programs outside of Texas would remain ineligible for documentation by the board, other sections of the rules should be amended to permit this change.

Response: The board intended to exempt courses, such as those certified by MEAC, which already meet or exceed the board's requirements for approval. The board disagrees with the proposed revision because the ACNM Core Competencies and Standards of Practice are very different from the MANA Core Competencies and Standards of Practice, and thus are not appropriate to the scope of practice afforded a documented midwife in Texas. The board therefore declines to approve ACNM-accredited CM training programs located in or out of state by reciprocity. No change was made as a result of this comment.

Comment: Concerning §831.31(f)(1)(A)(iv), one commentor asked why an applicant for comprehensive exam approval should be required to provide references to the MANA Core Competencies included in the exam.

Response: Requiring references to the MANA Core Competencies allows the board's Education Committee to better evaluate any exam submitted for approval. The content of the exam will be more clearly correlated to the content of approved basic midwifery education courses in Texas.

Comment: Concerning §831.31(f)(1)(A)(iv), one commentor suggested that approval of comprehensive examinations based on the ACNM Core Competencies should also be permitted.

Response: The board disagrees because the ACNM Core Competencies and Standards of Practice are very different from the MANA Core Competencies and Standards of Practice, and thus are not appropriate to the scope of practice afforded a documented midwife in Texas. The board therefore declines to approve exams based on the ACNM Core Competencies due to these differences. No change was made as a result of this comment.

Comment: Concerning §831.101 in general, one commentor stated that the section should be amended to permit administration of oxygen to the mother via nasal cannula at 3-4 liters/minute.

Response: The board disagrees because administration of oxygen to a mother or infant in distress is more efficient by mask than by nasal cannula. No change was made as a result of this comment.

Comment: Concerning §831.101 in general, one commentor stated that the section should be amended to permit administration of oxygen to the mother only when the mother is positioned on her left side.

Response: The board disagrees. The commentor provided no reason for the proposed amendment, and the board generally considers this degree of specificity unnecessary. No change was made as a result of this comment.

Comment: Concerning §831.101 in general, several commenters stated that in order to administer oxygen in accordance with the guidelines suggested in these rules, midwives must procure not only oxygen but also the supplies necessary to administer it. The commenters added that some suppliers have refused to sell supplies to midwives, citing a lack of specific authority.

Response: The board agrees that Subchapter D should be amended to clarify midwives' authority to purchase and possess supplies for the administration of oxygen. New §831.101(d) has been added which authorizes midwives to purchase the equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen.

Comment: Concerning §831.101(c)(1), several commentors stated that the section should be amended to permit administration of oxygen to the mother for "comfort", for a "tired mom", or "to calm the mother".

Response: The board disagrees. Midwives who choose to administer oxygen to a mother in labor should do so only while assessing for consultation, possible transfer, or transport. No change was made as a result of this comment.

Comment: Concerning §831.101(c)(2)(A), several commentors stated that the section is unclear, inconsistent with American Academy of Pediatrics certification in Neonatal Resuscitation

guidelines, and should be amended accordingly. Specific comments included the assertion that the flow should be 8 liters/minute for a full-term newborn; that the guidelines suggest administration of 5 liters/minute rather than 1-2 liters/minute when resuscitating a newborn; that oxygen should be available to "pink up" the baby; and that "while monitoring in accordance with the standards" should be added to this section. One commentor stated that the rules should exactly reflect the language used in the Neonatal Resuscitation course to be amended as follows: "to the newborn via free-flow oxygen by mask or oxygen tubing using a cupped hand over the baby's face at a rate of 5 liters, concurrent with American Academy of Pediatrics certification in Neonatal Resuscitation guidelines;...".

Response: The board agrees and has amended §831.101(c)(2) accordingly.

Comment: Concerning §831.101(c)(2)(A), one commentor stated that the section should be amended to specify administration of postpartum oxygen to the newborn via infant or newborn mask.

Response: The board acknowledges the clarification, but the broader scope of the amendment to §831.101(c)(2) makes this change unnecessary.

Comment: Concerning §831.161(c)(1)(B), one commentor expressed concerns about confidentiality if the Complaint Review Committee includes persons who are not members of the Midwifery Board. Two other commentors expressed concerns about liability issues, and another commentor questioned the necessity of paying travel expenses for so many committee members.

Response: The board agrees and has amended the section to address these concerns.

Comment: Concerning §831.161 in general, one commentor stated that a statute of limitations on complaints should be added to the subchapter.

Response: The board agrees and has added new §831.161(d)(2)(C).

Comment: Concerning §831.161 in general, one commentor stated that Subchapter E should be amended to include a time limit on maintenance of complaint files.

Response: The board disagrees. Complaint files are "state records" under Government Code, §441.180(11) and therefore may be destroyed by the department only in accordance with Government Code, §441.187. The board may not adopt rules which authorize a shorter retention period than that specified by the department's approved records retention schedule, and has chosen not to adopt rules specifying a longer retention period. No change was made as a result of this comment.

Comment: Concerning §831.161(f)(1)(C), one commentor stated that inclusion of "an alleged violation of the Act and/or rules involving a potential for deception, fraud, or injury to clients or the public" as a complaint category was too vague, because a midwife might be held liable without evidence of actual harm done.

Response: The board disagrees. The Midwifery Program must be able to investigate and act upon complaints alleging violation of the Act and/or rules even if no person has actually suffered harm as a result of the violation. No change was made as a result of this comment.

Comment: Concerning §831.161(g)(3), two commentors suggested that Afailure to receive informed consent@ should be added to the section as a specific example of failure to practice midwifery in a manner consistent with public health and safety. One commentor proposed the following specific language: Afailure to give signed informed consent as to conditions in a client's care which is (sic) defined as 'out of the range of normal' , or potentially 'high-risk', according to Texas Standards of Practice.@

Response: The board disagrees, because §831.51(b)(2), Midwifery Practice Standards and Principles, already guarantees the client's right to make an informed choice. No change was made as a result of this comment.

Comment: Concerning §831.161(g)(3)(B)(ii), several commentors stated that the term "abandonment" should be defined with more specificity. Some commentors asked how a midwife should discontinue providing midwifery care to a client "immediately before labor" so as to avoid disciplinary action under this section. Other commentors questioned how a midwife could avoid potential disciplinary sanctions for violation of either §831.51, concerning the Midwifery Practice Standards and Principles, or §831.161(g)(3)(B)(ii), concerning abandonment, when confronted with a client in labor who refuses the midwife's attempts to transfer care to another health care provider as required by the standards.

Response: Texas courts define abandonment in reference to a physician's professional responsibilities as the physician's unilateral severance of the professional relationship between the physician and patient without reasonable notice at a time when there still exists the necessity of medical attention. The board accepts this definition as appropriate for midwifery practice, but disagrees that specific examples or practice guidance concerning avoidance of client abandonment by midwives should be included in this rule. If more specific guidance concerning a midwife's responsibilities concerning a client in labor who refuses the midwife's attempts to transfer care to another health care provider are necessary, amendment of §831.51 rather than this section would be appropriate. No change was made as a result of this comment.

Comment: Concerning §831.161(i)(2)(A), one commentor stated that the third sentence, concerning holding a settlement conference whether or not the midwife is present, is confusing because a settlement conference would only be conducted with the midwife present.

Response: The board agrees and has deleted the sentence. The comments on the proposed rules received by the Midwifery Board during the comment period were submitted by individual midwives, by midwifery associations, by the Midwifery Board, by Midwives Alliance of North America (MANA), by the North American Registry of Midwives (NARM), by American College of Nurse-Midwives (ACNM) and by department staff. The commentors were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

Subchapter B. Documentation

22 TAC §831.11

The new section is adopted under the Texas Midwifery Act, Texas Civil Statutes, Article 4512i, §8A(b), which provides the board with the authority to adopt rules concerning the practice of midwifery, subject to the approval of the Texas Board of Health.

§831.11. Annual Documentation.

(a) Purpose. This section details requirements for the annual documentation and redocumentation after revocation, suspension, or the surrender of documentation of midwives in Texas.

(b) Provisions. This section establishes:

(1) requirements and procedures for initial documentation;

(2) requirements and procedures for annual redocumentation;

(3) conditions for denial, revocation, suspension, or surrender of documentation;

(4) guidelines for reissuance of documentation after revocation, suspension, or surrender of documentation;

(5) guidelines for documentation of persons with criminal convictions; and

(6) a state midwifery roster.

(c) Applicability. In order for an individual to legally practice midwifery in Texas, she/he must be currently documented with the Midwifery Program. Documentation shall be valid for a period of one year, except for initial documentation. A midwife's initial documentation shall be valid from the date issued until March 1 of the current or following year, whichever occurs first.

(d) Initial documentation. An individual may apply for documentation as a midwife at any time during the year by submitting the following to the Midwifery Program:

(1) a completed documentation application form;

(2) proof of:

(A) satisfactory completion of a mandatory basic midwifery education course approved by the Midwifery Board and the North American Registry of Midwives (NARM) exam or any other comprehensive exam approved by the Midwifery Board; or

(B) certified professional midwife (CPM) certification by NARM and satisfactory completion of a continuing education course covering the current Texas Midwifery Basic Information and Instructors Manual;

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association (formerly a C certificate) or equivalent certification for the professional rescuer from the Red Cross;

(4) proof of current certification for neonatal resuscitation, §§1-4, from the American Academy of Pediatrics, effective March 1, 1999;

(5) proof of satisfactory completion of training in the collection of newborn screening specimens or an established relationship with another qualified and appropriately credentialed health care provider who has agreed to collect newborn screening specimens on behalf of the applicant; and

(6) a nonrefundable $200 application fee (payable by cashiers check or money order only). The fee for any application for initial documentation received after September 1 shall be $100 plus $10 per month or part thereof remaining in the documentation period.

(e) Annual redocumentation. Documented midwives must apply for redocumentation in January each year. Documentation expires March 1. The Midwifery Program will send renewal applications to all documented midwives in December of each year. However, each midwife is solely responsible for compliance with the requirements for redocumentation, and nonreceipt of the renewal application mailed by the Midwifery Program shall not constitute an acceptable excuse for failure to comply. A midwife's application for redocumentation must include the following:

(1) a completed redocumentation application form;

(2) proof of completion of at least ten contact hours of approved continuing midwifery education since March 1 of the previous year;

(3) proof of current CPR certification for health care providers by the American Heart Association (formerly a C certificate) or equivalent certification for the professional rescuer from the Red Cross;

(4) proof of current certification for neonatal resuscitation, §§1-4, from the American Academy of Pediatrics, effective March 1, 1999; and

(5) a nonrefundable $200 application fee (payable by cashiers check or money order only).

(f) Late redocumentation. A midwife who fails to apply for redocumentation by March 1 of a year in which the midwife is currently documented, as evidenced by a valid U.S. Postal Service or recognized commercial carrier postmark, may apply for late redocumentation on or before March 31 of that year. Applications for late redocumentation must include the following:

(1) each of the items listed in subsection (e) of this section; and

(2) an additional nonrefundable $75 late filing fee (payable by cashiers check or money order only).

(g) Redocumentation after interim of less than four years. A midwife originally documented in Texas on or after January 1, 1995, who since that time has not been documented for a period of less than four years may redocument by:

(1) providing proof of having completed 20 contact hours of approved midwifery continuing education, including a continuing education course covering the current Texas Midwifery Basic Information and Instructor Manual, during the 12 months preceding the application for redocumentation;

(2) paying the annual documentation fee plus a processing fee of $100; and

(3) meeting the initial documentation requirements in subsections (d)(1) and (d)(3)-(5) of this section.

(h) Redocumentation after interim of more than four years. A midwife documented in Texas on or after January 1, 1995, who has not been documented for a period of more than four years may redocument by:

(1) providing proof of having completed at least 40 contact hours of approved continuing midwifery education within the year preceding the application, which shall be based upon a review of:

(A) the current Texas Midwifery Basic Information and Instructor Manual; and

(B) the current Midwives Alliance of North America (MANA) Core Competencies and Standards of Practice;

(2) paying the annual documentation fee plus a processing fee of $100; and

(3) meeting the initial documentation requirements in subsections (d)(1) and (d)(3)-(5) of this section.

(i) Grounds for denial of application for documentation or redocumentation and for disciplinary action. The Midwifery Board may deny an application for initial documentation or redocumentation and may take disciplinary action against any person based upon proof of the following:

(1) violation of the Act or rules adopted under the Act;

(2) submission of false or misleading information to the Midwifery Board, the board, or the department;

(3) conviction of a felony or a misdemeanor involving moral turpitude;

(4) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(5) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(6) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(7) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(8) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(9) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 TAC, Chapter 181 (relating to Vital Statistics);

(10) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(11) failure to practice midwifery in a manner consistent with the public health and safety; or

(12) demonstrated lack of personal or professional character in the practice of midwifery.

(j) Surrender of documentation.

(1) A midwife may surrender his or her documentation prior to its expiration for the current period by mailing the original documentation acknowledgment letter back to the Midwifery Program together with a signed statement of his or her intent to surrender same.

(2) Surrender of documentation by a midwife after receipt of notification from the Midwifery Program that a complaint against the midwife is being investigated shall not deprive the Midwifery Board of jurisdiction in any disciplinary action which may result from said investigation.

(3) The Midwifery Board may enter any disciplinary order authorized by the Act or this subchapter to resolve a complaint against a midwife who has surrendered his or her documentation after receipt of notification from the Midwifery Program that a complaint is being investigated.

(k) Redocumentation after disciplinary action or surrender.

(1) A person whose documentation to practice midwifery in this state has been revoked or suspended by the Midwifery Board or who has surrendered his or her documentation after having received notice that the Midwifery Program is investigating a complaint may not apply for reissuance of documentation until the applicant has complied with all requirements imposed by the Midwifery Board in connection with the revocation, suspension, or surrender. If the Midwifery Board denies the application for reissuance of documentation, an applicant may request a hearing under 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures). The decision of the hearing examiner shall be final.

(2) The Midwifery Board may reissue documentation to a midwife who surrendered his or her documentation while an investigation or disciplinary action was pending only if the Midwifery Board finds that:

(A) the applicant is competent to resume practice; and

(B) the Midwifery Program has no evidence of current or continuing violations by the applicant of the Act or this subchapter.

(l) Documentation of persons with criminal conviction.

(1) The Midwifery Board may refuse to issue documentation to any individual who has been initially convicted of a felony or a misdemeanor involving moral turpitude, or whose probation imposed pursuant to such conviction has been revoked by the court.

(2) The Midwifery Board shall consider the following factors:

(A) the nature and seriousness of the crime or the reason the applicant's probation was revoked;

(B) any relationship between the crime and the practice of midwifery;

(C) whether documentation might offer the applicant an opportunity to engage in the same or similar criminal activity as that for which the applicant was previously convicted; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of midwifery.

(3) the Midwifery Board, in determining the present fitness of a person who has been convicted of a felony or a misdemeanor involving moral turpitude, shall consider:

(A) the age of the applicant when the crime was committed;

(B) the amount of time that has elapsed since the applicant's conviction;

(C) the applicant's conduct and work history prior to and following the conviction;

(D) evidence of the applicant's progress toward rehabilitation while incarcerated, on probation, or following release; and

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

(i) prosecutorial, law enforcement, probation, and correctional officers;

(ii) the sheriff or chief of police in the community where the applicant resides; and

(iii) other persons.

(m) Midwifery roster. The Midwifery Program shall maintain a roster of all individuals currently documented to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The Midwifery Program shall provide information on new and/or late documentees

to individual county clerks and local registrars of births during the course of a year as needed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902439
Edna Dougherty
Chairperson
Texas Midwifery Board
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For further information, please call: (512) 458–7236

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Subchapter C. Education

22 TAC §831.31

The new section is adopted under the Texas Midwifery Act, Texas Civil Statutes, Article 4512i, §8A(b), which provides the board with the authority to adopt rules concerning the practice of midwifery, subject to the approval of the Texas Board of Health.

§831.31. Education.

(a) Purpose. This section defines requirements for mandatory basic midwifery education and continuing midwifery education.

(b) Provisions. This section establishes:

(1) an education committee;

(2) standards for mandatory basic midwifery education;

(3) standards for mandatory continuing midwifery education;

(4) procedures for midwifery education course approval, denial, and revocation of approval;

(5) procedures for midwifery comprehensive exam approval, denial, and revocation of approval;

(6) procedures for appeals of denials of course and comprehensive exam approval applications and revocations of approval; and

(7) procedures for investigation and disposition of complaints concerning education courses and comprehensive exams.

(c) Applicability. All persons subject to the Act must comply with §831.11 of this title (relating to Annual Documentation), including the educational requirements for both initial documentation and redocumentation.

(d) Education committee.

(1) The Chairperson of the Midwifery Board shall appoint an education committee for one year terms, with the approval of the Midwifery Board, to consider all issues related to mandatory basic and continuing midwifery education. The Education Committee shall review all applications submitted by the Midwifery Program staff for approval of mandatory basic midwifery education courses or comprehensive exams, as well as complaints concerning approved courses or exams. The Education Committee will consist of the following persons:

(A) members of the Midwifery Board:

(i) two midwives, one of whom shall serve as chairperson;

(ii) a physician or the certified nurse midwife; and

(iii) a public interest member; and

(B) a documented midwife who is not a member of the Midwifery Board.

(2) The Midwifery Board chairperson may convene ad hoc working groups consisting of committee members, documented midwives, and other interested individuals, as necessary.

(3) Except for informal settlement conferences, all other meetings and proceedings of the Education Committee shall be open to the public.

(e) Basic Education.

(1) The Midwifery Program staff shall consider for approval only courses which have a course supervisor/administrator and site in Texas.

(2) Mandatory basic midwifery education shall:

(A) be offered to ensure that only trained individuals practice midwifery in Texas;

(B) be offered by any individual or organization meeting the requirements for course approval established by this subsection;

(C) include a didactic component which shall:

(i) be based upon and completely cover the most current Core Competencies and Standards of Practice of the Midwives Alliance of North America (MANA) and the current Texas Midwifery Basic Information Manual;

(ii) prepare the student to apply for certification by North American Registry of Midwives (NARM); and

(iii) include a minimum of 250 hours course work.

(D) be supervised and conducted by a course supervisor/administrator who shall:

(i) be responsible for all aspects of the course; and

(ii) have two years of experience in the independent practice of midwifery, nurse-midwifery or obstetrics; and

(iii) have been primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and

(iv) have met initial documentation requirements; or

(v) be a Certified Professional Midwife (CPM); or

(vi) be American College of Nurse Midwives (ACNM) certified; or

(vii) be a licensed physician in Texas actively engaged in the practice of obstetrics.

(E) include didactic curriculum instructors who:

(i) have training and credentials for the course material they will teach; and

(ii) are approved by the course supervisor/administrator.

(F) provide clinical experience/preceptorship of at least one year in duration and equivalent to 1360 clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(i) serving as an active participant in attending 20 births;

(ii) serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births;

(iii) serving as the primary midwife, under supervision, in performing:

(I) 75 prenatal exams, including at least 20 initial history and physical exams;

(II) 20 newborn exams; and

(III) 40 postpartum exams.

(G) include preceptors who are approved by the course supervisor/administrator and shall be:

(i) documented midwives;

(ii) certified professional midwives;

(iii) certified nurse midwives; or

(iv) physicians licensed in Texas and actively engaged in the practice of obstetrics.

(3) Individuals enrolled as students in an approved midwifery course must possess:

(A) a high school diploma or the equivalent; and

(B) a current cardiopulmonary resuscitation (CPR) certificate for health care providers from the American Heart Association (formerly a C certificate) or an equivalent CPR certificate for the professional rescuer from the Red Cross.

(4) Course approval.

(A) The course supervisor/administrator shall submit an application form and a non-refundable initial application fee of $150 to the Midwifery Program with the following supporting documentation:

(i) course outline;

(ii) course curriculum with specific content references to:

(I) MANA Core Competencies;

(II) NARM Written Test Specifications;

(III) NARM Skills Assessment Test Specifications; and

(IV) Texas Midwifery Basic Information Manual.

(iii) identification of didactic and preceptorship teaching sites;

(iv) a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner and disclosure of any bankruptcy within the last five years; and

(v) written policies to include:

(I) tuition schedule, other charges, and cancellation and refund policy, including the right of any prospective student to cancel his/her enrollment agreement within 72 hours after signing the agreement and receive a full refund of any money which may have paid;

(II) student attendance, progress, and grievance policies;

(III) rules of operation and conduct of school personnel;

(IV) requirements for state documentation;

(V) disclosure of approval status of course;

(VI) maintenance of student files; and

(VII) reasonable access for non-English speakers and compliance with Federal and state laws on accessibility.

(B) Student files shall be maintained for a minimum of five years and shall include:

(i) evidence that the entrance requirements have been met;

(ii) documentation demonstrating completion of didactic and clinical course work; and

(iii) copies of any financial agreements between the student and the school.

(C) The Midwifery Program staff and Education Committee chairperson shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the Midwifery Program staff and a documented midwife within the provisional year. The midwife member of the evaluation team shall be appointed by the Chairperson of the Midwifery Board and shall not be the supervisor, didactic instructor, or preceptor of another basic midwifery education course in the same geographic area. The site visit will include the following:

(i) an inspection of the course's facilities;

(ii) a review of its teaching plan, protocols, and teaching materials;

(iii) a review of didactic and preceptorship instruction;

(iv) interviews with staff and students; and

(v) a review of student files.

(D) A non-refundable fee of $400 shall be assessed for each course approval site visit.

(E) The review team's written report shall conclude with a recommendation to the Education Committee for approval or denial of the course.

(F) The Education Committee shall evaluate the application and all other pertinent information, including any complaints received and the on-site review team's report and recommendation.

(G) The Midwifery Board shall consider the application and the recommendations of the Education Committee and shall render a final decision during the provisional year. The decisions of the Education Committee and Midwifery Board shall be based upon the criteria specified in this subsection.

(H) Each applicant shall be notified of the Midwifery Board's decision in writing within 10 working days. If an application is denied, the notification shall specify the reason(s) for denial.

(5) Appeal of course denial. An appeal of a notification of a denial must be submitted in writing to the Chairperson of the Midwifery Board through the Midwifery Program within 21 working days of the applicant's receipt of the notice. Upon receipt of the appeal, the appellant will be placed on the agenda of the next scheduled meeting of the Midwifery Board, at which time the appellant may appear and the Board shall render a decision on the appeal.

(6) Course reciprocity. A basic midwifery education course which is currently accredited by the Midwifery Education Accreditation Council (MEAC) shall be deemed approved under this subsection upon submission of evidence of such accreditation.

(7) Duration of course approval.

(A) The Midwifery Board shall approve courses for a three-year period.

(B) Course approvals granted prior to December 31, 1996, shall expire upon the adoption of these rules, and course supervisors/administrators shall apply for initial approval within 60 days.

(C) Course supervisors/administrators shall reapply for approval six months prior to expiration.

(8) Course changes. Any substantive change(s) in the course or its content shall be submitted to the Midwifery Program staff prior to the change(s) if known in advance or within 10 working days after change(s). The Midwifery Program staff shall notify the Education Committee Chairperson. The Midwifery Board may reconsider the status of any course which has undergone substantive changes should the course no longer meet the requirements in subsections (e)(1)-(2) of this section.

(9) Revocation of course approval. The Midwifery Board may revoke the approval of a course after notifying the course supervisor/administrator of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(A) the course no longer meets the standards established by this subsection;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the qualifications required by this subsection;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor has falsified course registration, attendance, and/or completion records; or

(E) continued approval of the course is not in the public interest as defined by the Midwifery Board.

(10) Fair hearing procedures. Notice and hearings required under this subsection will be conducted according to and will be governed by 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures), except that final decisions on hearings shall be made by the Midwifery Board rather than the commissioner.

(f) Comprehensive exams.

(1) Comprehensive exam approval.

(A) Any approved education course or midwifery association may submit an application form and a non-refundable initial application fee of $150 to the Midwifery Program with the following supporting documentation:

(i) copy of exam;

(ii) copy of all exam information and preparation materials, including sample test booklet(s);

(iii) evidence that the written portion of the examination has been validated by an independent professional, as required by the Act, §11(b);

(iv) references to the MANA Core Competencies included in the exam;

(v) identification of proposed test sites;

(vi) a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner or midwifery association and disclosure of any bankruptcy within the last five years; and

(vii) written policies to include:

(I) charge for exam administration, other charges, and cancellation and refund policy;

(II) confidentiality of individual exam scores;

(III) administration and grading of exam;

(IV) requirements for test sites and proctors;

(V) disclosure of approval status of exam;

(VI) complaint procedures;

(VII) maintenance of exam files; and

(VIII) reasonable access for non-English speakers and compliance with Federal and state laws on accessibility.

(B) Separate exam files for each administration of the exam shall be maintained for a minimum of five years and shall include:

(i) evidence of identity of all test takers, and of all proctors;

(ii) documentation concerning exam administration procedures;

(iii) copies of any financial agreements related to the administration of the exam;

(iv) copies of any complaints received;

(v) copies of exam(s) administered; and

(vi) originals of all scored exams.

(C) The Midwifery Program staff and Education Committee chairperson shall review each exam application submitted for approval. If an application for approval meets all of the requirements specified in this paragraph, it will be forwarded to the Education Committee within 60 days.

(D) The Education Committee shall evaluate the application and recommend either approval or denial of the application to the Midwifery Board.

(E) The Midwifery Board shall consider the application and the recommendations of the Education Committee and shall render a final decision.

(F) Each applicant shall be notified of the Midwifery Board's decision in writing within 10 working days. If an application is denied, the notification shall specify the reason(s) for denial.

(2) Appeal of exam denial. An appeal of a notification of a denial must be submitted in writing to the Chairperson of the Midwifery Board within 21 working days of the applicant's receipt of the notice. The appellant may appear at the next scheduled meeting of the Midwifery Board, at which the Board shall render a decision on the appeal.

(3) Duration of exam approval.

(A) The Midwifery Board shall approve exams for a three-year period;

(B) Any revisions to the exam must be approved according to the requirements of this subsection; and

(C) Course supervisors/administrators or associations of midwifery shall reapply for approval six months prior to expiration.

(4) Exam changes/revisions. Any substantive change(s) in, or revisions to, the exam, its administration, or any of the policies associated with it, shall be submitted to the Midwifery Program staff prior implementation of the change(s), along with a explanation for the proposed change(s). The Midwifery Program staff shall notify the Education Committee Chairperson. The Midwifery Board may reconsider the status of any exam in which substantive changes have been made.

(A) The Education Committee may request and consider any relevant information, including exam files, when reconsidering course approval.

(B) The Education Committee shall forward its recommendations to the Midwifery Board.

(5) Revocation of exam approval.

(A) The Midwifery Board may revoke the approval of a exam after notifying the course supervisor/administrator or course owner or midwifery association of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(i) the exam or the course/association who submitted it for approval no longer meets the standards established by this subsection; or

(ii) exam approval was obtained by fraud or deceit; or

(iii) records required by this subsection have been falsified or are incomplete; or

(iv) exam files or other relevant information have been withheld from the Midwifery Board or Education Committee despite a written request; or

(v) continued approval of the exam is not in the public interest as defined by the Midwifery Board.

(B) Each course supervisor/administrator or midwifery association shall be notified of the Midwifery Board's decision in writing within ten working days. If an application is denied, the notification shall specify the reason(s) for denial.

(C) Notice and hearings required under this subsection will be conducted according to and will be governed by 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures), except that final hearing decisions will be made by the Midwifery Board rather than the commissioner.

(6) Complaints. If a complaint cannot be resolved by the complaint process associated with the exam, the complainant may file a complaint against the exam or the course supervisor/administrator or course owner or midwifery association with the Education Committee in accordance with the procedures in subsection (h) of this section.

(g) Continuing education.

(1) Mandatory continuing midwifery education courses support the need for midwives practicing in Texas to maintain current knowledge and skills.

(2) Courses may be offered by any individual or organization that meets the requirements for course approval established by this subsection.

(3) Course curriculum must provide an educational experience which:

(A) covers new developments in the fields of midwifery or related disciplines; or

(B) reviews established knowledge in the fields of midwifery or related disciplines; and

(C) shall be presented in standard contact hour increments for continuing health education; and

(D) shall provide reasonable access for non-English speakers and comply with Federal and state laws on accessibility.

(4) Course coordinators and instructors.

(A) Course coordinators shall obtain course approval, register and certify participant attendance, and provide attendance certificates to participants following the course.

(B) Course instructors shall have training and credentials appropriate for the course material they will teach.

(5) Course approval. Continuing education courses attended to fulfill annual documentation requirements shall be accepted when the courses:

(A) satisfy the requirements of subsection (g)(3)(A)-(C) of this section; and

(B) are accredited by one of the following accrediting bodies:

(i) a professional midwifery association, nursing, social work, or medicine;

(ii) a college or university;

(iii) a nursing, medical, or health care organization;

(iv) a state board of nursing or medicine;

(v) a department of health; or

(vi) a hospital.

(h) Complaint procedure, investigation, and disposition.

(1) Purpose. This subsection defines the procedures for filing complaints against approved courses or exams. It further defines valid causes for discipline and procedures to be utilized by the Midwifery Program, the Education Committee, and the Midwifery Board in processing, investigating, and resolving complaints against approved courses or exams.

(2) Provisions. This subsection establishes:

(A) procedures for reporting violations and/or complaints;

(B) procedures for investigating alleged violations and/or complaints;

(C) procedures for informal hearings;

(D) procedures for sanctions; and

(E) procedures for complaint disposition and appeals.

(3) Education Committee. The Education Committee shall consider all complaints filed against approved courses or exams and shall make recommendations to the Midwifery Board.

(A) The Midwifery Board Chairperson may convene ad hoc working groups consisting of committee members, documented midwives, and other interested individuals as necessary.

(B) All meetings of the Education Committee in which a complaint is being discussed shall be closed to the public. The Education Committee shall schedule an informal conference to discuss the investigation and any proposed recommendation. At no time shall the Education Committee or Midwifery Board disclose the identity of the complainant, or the course or exam that is the subject of the complaint.

(4) Report of a complaint. Complaints may be accepted by the Midwifery Program by telephone, in person, or in writing from any person or agency alleging violations of this section.

(A) The Midwifery Program staff shall mail a letter and complaint form to the complainant within 10 working days of being notified of the complaint. The complaint form shall request at least the following information:

(i) the name, address, and telephone number of complainant (optional);

(ii) the name, address, and telephone number of course supervisor/administrator or course owner or midwifery association that is the subject of the complaint;

(iii) a complete statement of the complaint, including date(s), time(s), and location(s) of event(s);

(iv) the name, address, and telephone number of any witnesses; and

(v) a description of any other reporting, filing, or attempted resolution of the complaint.

(B) The complaint review process begins when the completed complaint form is received by the Midwifery Program and assigned a case number, and the subject of the complaint is determined to be a course or exam approved under this section.

(C) If the complaint form includes the complainant's name and address, the complainant shall be notified in writing of the Midwifery Program's receipt of the complaint form within 10 working days.

(5) Records of complaints. The Midwifery Program shall maintain an information file about each complaint. The information file shall be kept current and shall contain, if applicable:

(A) the written complaint;

(B) a record of all persons contacted in relation to the complaint;

(C) client records;

(D) other requested records;

(E) a summary of findings;

(F) an explanation of the legal basis and the Midwifery Board's reason for dismissing a complaint;

(G) sanctions imposed; and

(H) other relevant information.

(6) Complaint investigation. The Midwifery Program Director shall:

(A) notify the course supervisor/administrator or course owner or midwifery association of the Midwifery Program's receipt of the complaint by certified mail;

(B) request all relevant records necessary to conduct an investigation of the complaint;

(C) interview the complainant, the respondent, and any witnesses;

(D) review and evaluate all information received;

(E) forward the complaint to any other agencies or organizations which may also have jurisdiction and/or refer the complainant to said agencies or organizations;

(F) present each complaint to the Education Committee; and

(G) notify the course supervisor/administrator or course owner or midwifery association by certified mail of the date and time of the Education Committee at which the complaint will be presented, at least 30 days in advance.

(7) Settlement conference. The Education Committee chairperson or, in his/her absence, the vice-chairperson, will preside over and conduct the conference.

(A) On the day and time designated for the conference, the chairperson/vice-chairperson shall:

(i) state the purpose of and the legal authority for the conference; and

(ii) outline the procedure and order of presentation to be followed.

(B) Order of presentation. After making the necessary introductory and explanatory remarks, the chairperson/vice-chairperson shall state the case number and the nature of the complaint.

(i) The Education Committee shall review all available evidence from the investigation, including any statements from the complainant and the course supervisor/administrator or course owner or midwifery association. The Education Committee may question any person present regarding relevant information. Whether or not the complainant or course supervisor/administrator or course owner or midwifery association is present, the settlement conference shall proceed with the information on hand.

(ii) Evidence and statements shall be reviewed by the Education Committee and one of the following recommendations made to the Midwifery Board:

(I) close the complaint file due to insufficient evidence; or

(II) enter an agreed order.

(iii) Complaints not resolved by settlement conference shall be referred for a hearing.

(8) Hearings.

(A) All administrative hearings under this section shall be conducted according to 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures).

(B) All proposals for decision shall be referred to the Midwifery Board for final decision.

(9) Guidelines for sanctions. The Midwifery Board/ Education Committee shall consider the following factors in imposing sanctions:

(A) the severity of the offense;

(B) the damage to the public or to the profession of midwifery;

(C) the number of repetitions of the offense;

(D) the length of time since date of offense;

(E) the number of sanctions imposed upon the course supervisor/administrator or course owner or midwifery association;

(F) the length of time the course or exam has been offered;

(G) the actual injury, financial or otherwise, suffered by the student(s) or person(s) taking the exam;

(H) any efforts at rehabilitation or remediation by the course supervisor/administrator or course owner or midwifery association; and

(I) any other mitigating or aggravating circumstances.

(10) Penalties and Sanctions. If the Midwifery Board finds that a course supervisor/administrator or course owner or midwifery association has violated this subsection, it shall enter an order imposing one or more of the following:

(A) a written warning;

(B) limitation or restriction of course or exam approval for a specified time;

(C) suspension of course or exam approval for a specified time;

(D) revocation of course or exam approval;

(E) probation of any sanction imposed on the course supervisor/administrator or course owner or midwifery association;

(F) acceptance by the Midwifery Board of the voluntary surrender of approval and without the opportunity for reinstatement unless the Midwifery Board determines the course supervisor/ administrator or course owner or midwifery association is competent to resume offering the course or exam; or

(G) imposition of conditions for approval that the course supervisor/administrator or course owner or midwifery association must satisfy before the Midwifery Board issues an unrestricted approval.

(11) Failure to cooperate. Failure to provide records requested by the Midwifery Program, without good cause shown, shall be grounds for additional disciplinary action.

(12) Disposition.

(A) Agreed disposition.

(i) The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order.

(ii) An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice and education of documented midwives. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Texas Rules of Civil Evidence, Rule 408, and Texas Rules of Criminal Evidence, Rule 408.

(B) Closed file. The Midwifery Board may close the complaint file due to insufficient evidence.

This agency 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 April 26, 1999.

TRD-9902440
Edna Dougherty
Chairperson
Texas Midwifery Board
Effective date: May 16, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 458–7236

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Subchapter D. Practice of Midwifery

22 TAC §831.101

The new section is adopted under the Texas Midwifery Act, Texas Civil Statutes, Article 4512i, §8A(b), which provides the board with the authority to adopt rules concerning the practice of midwifery, subject to the approval of the Texas Board of Health.

§831.101. Administration of Oxygen.

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; consultation; referral; and/or recommending transfer or transport of the mother and newborn in compliance with §831.51 of this title (relating to Midwifery Practice Standards and Principles).

(b) Under this section a midwife is not required to use oxygen.

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother via mask at 8-10 liters/minute for the following:

(A) fetal heart rate irregularities while assessing for consultation and/or possible transfer;

(B) cord prolapse prior to transport;

(C) signs or symptoms of maternal shock or hemorrhage prior to transport; or

(D) as indicated by American Heart Association Cardiopulmonary Resuscitation guidelines;

(2) postpartum oxygen may be administered while monitoring according to the Midwifery Practice Standards and Principles:

(A) to the newborn during the initial neonatal period at a rate of 5 liters/minute concurrent with American Academy of Pediatrics Neonatal Resuscitation guidelines; or

(B) to the mother and/or newborn in other situations not listed above and deemed necessary according to generally accepted standards of midwifery practice to protect the health and well-being of the mother and/or newborn;

(3) indications for administration of oxygen shall be clearly documented in the client's chart.

(d) Midwives are authorized to purchase equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen.

This agency 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. Complaint Review

22 TAC §831.161

The new section is adopted under the Texas Midwifery Act, Texas Civil Statutes, Article 4512i, §8A(b), which provides the board with the authority to adopt rules concerning the practice of midwifery, subject to the approval of the Texas Board of Health.

§831.161. Complaint Review.

(a) Purpose. This section defines the procedures for reporting alleged violations of the Act and this subchapter. It further defines grounds for disciplinary action and procedures to be utilized by the Midwifery Program and the Midwifery Board in processing, investigating, and resolving complaints against midwives practicing in Texas.

(b) Provisions. This section establishes:

(1) a Complaint Review Committee;

(2) procedures for reporting violations and/or complaints;

(3) categories of violations;

(4) procedures for investigating alleged violations and/or complaints;

(5) procedures for release of relevant records and/or medical records;

(6) procedures for participation by the complainant;

(7) procedures for informal settlement conferences;

(8) procedures for hearings;

(9) procedures for disciplinary action; and

(10) procedures for complaint disposition and appeals.

(c) Complaint Review Committee. With the approval of the Midwifery Board, the chairperson of the Midwifery Board shall appoint a Complaint Review Committee for one-year terms to consider all complaints filed against documented midwives and to make recommendations to the Midwifery Board.

(1) The Complaint Review Committee shall consist of:

(A) the following Midwifery Board members:

(i) one midwife, who shall serve as the chairperson;

(ii) a physician or certified nurse midwife; and

(iii) a public interest member; and

(B) two documented midwives in active practice who are not members of the Midwifery Board to serve as professional consultants on midwifery practice issues.

(2) The Midwifery Board chairperson may appoint ad hoc working groups consisting of committee members, documented midwives, and other persons as necessary.

(3) During the investigation and consideration of a complaint, the Complaint Review Committee shall schedule an informal conference to discuss the investigation and to consider any recommendations for disposition of the complaint. At no time shall the Complaint Review Committee or Midwifery Board disclose the identity of the midwife's client or the complainant.

(d) Report of a complaint. Any person or agency may contact the Midwifery Program by telephone, in person, or in writing, alleging that a documented midwife has violated the Act, any provisions of this subchapter, or any other law or rule relating to the practice of midwifery in Texas.

(1) Midwifery Program staff shall provide a complaint form to the complainant by mail within ten working days of being contacted by the complaint.

(2) The complaint review process begins when:

(A) the complaint form is received by the Midwifery Program;

(B) the Midwifery Program confirms that the subject of the complaint is a midwife documented in Texas and/or practicing midwifery in Texas;

(C) the Midwifery Program confirms that the complaint alleges acts which took place not more than five years before the receipt of the complaint; and

(D) the Midwifery Program assigns a case number.

(3) If the complainant has provided his or her name and address, the Midwifery Program shall confirm receipt of the complaint form in writing within ten working days.

(e) Records of complaints. The Midwifery Program shall maintain the following information concerning each complaint filed, if applicable:

(1) a copy of the complaint;

(2) record of all persons contacted in relation to the complaint;

(3) client records;

(4) other records requested during the investigation;

(5) a summary of findings;

(6) basis for recommending dismissal of the complaint;

(7) disciplinary action taken; and

(8) other relevant information.

(f) Complaint categories.

(1) The Midwifery Program Director shall assign one of the following categories for each complaint for the initial allocation of investigative resources:

(A) an alleged violation of the Act and/or rules involving actual deception, fraud, or injury to clients or the public;

(B) an alleged violation of the Act and/or rules involving a high probability of deception, fraud, or injury to clients or the public;

(C) an alleged violation of the Act and/or rules involving a potential for deception, fraud, or injury to clients or the public; or

(D) all other complaints.

(2) The final complaint category shall be assigned by the Complaint Review Committee after completion of the investigation.

(g) Disciplinary action and guidelines.

(1) The Midwifery Board and the Complaint Review Committee shall consider the following factors when taking or recommending disciplinary action:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since date of violation;

(E) any other disciplinary actions taken against the midwife;

(F) the length of time the midwife has practiced;

(G) the extent of the client's injuries, physical or otherwise;

(H) any efforts at rehabilitation or remediation by the midwife;

(I) prior determinations by the Midwifery Board that a midwife has violated the Act and/or rules; and

(J) any other mitigating or aggravating circumstances.

(2) In addition to or in lieu of the penalties and sanctions under subsection (k), the following administrative penalties shall be used in recommending disposition of complaints involving the following violations:

(A) for intentional alteration or falsification of birth or death certificates; revocation of documentation and an administrative penalty not to exceed $1000;

(B) for intentional alteration or falsification of client records or reports, other than birth or death certificates, or misrepresentation of facts:

(i) for the first offense, an administrative penalty not to exceed $100;

(ii) for a second offense, an administrative penalty not to exceed $200; and

(iii) for subsequent offenses, an administrative penalty not to exceed $500 per offense, with each day of a continuing violation constituting a separate violation.

(C) for failure to submit, upon request, to the Midwifery Program any records or reports relating to the practice of midwifery required under the Act:

(i) for the first offense, an administrative penalty not to exceed $100;

(ii) for a second offense, an administrative penalty not to exceed $200; and

(iii) for subsequent offenses, an administrative penalty not to exceed $500 per offense, with each day of a continuing violation constituting a separate violation;

(D) for violations of §831.51 of this title (related to Midwifery Practice Standards and Principles):

(i) for the first offense, an administrative penalty not to exceed $200;

(ii) for a second offense, an administrative penalty not to exceed $400; and

(iii) for a subsequent offense:

(I) an administrative penalty not to exceed $1,000 per offense, with each day of a continuing violation constituting a separate violation; and

(II) revocation of documentation;

(E) for practicing midwifery without documentation, with lapsed documentation, or while documentation has been suspended or revoked, the Midwifery Board may request that the attorney general or a district, county, or city attorney institute a civil action in district court to collect a civil penalty not to exceed $250 per offense, with each day of a continuing violation constituting a separate violation;

(F) for procuring or renewing documentation through fraud:

(i) denial of documentation; and

(ii) an administrative penalty not to exceed $1000 per offense, with each day of a continuing violation constituting a separate violation;

(G) for failure to practice midwifery in a manner consistent with public health and safety:

(i) denial of documentation;

(ii) suspension of documentation; or

(iii) revocation of documentation;

(H) for all other violations of the Act and/or rules not covered by this subsection: disciplinary sanctions determined on a case by case basis.

(3) Failure by a midwife to practice midwifery in a manner consistent with public health and safety shall include, but shall not be limited to:

(A) making deceptive or fraudulent representations in the practice of midwifery, including, but not limited to false claims of proficiency in any field;

(B) mistreating a client, including, but not limited to:

(i) verbal or physical abuse of client;

(ii) abandonment immediately before or during labor; or

(iii) repeated failure to appear at scheduled appointments without canceling, except in an emergency situation;

(C) exploiting the client and/or her family by engaging in a sexual relationship or misconduct during the provision of midwifery care;

(D) using or maintaining a work area, equipment, or clothing that is unsanitary, except in an emergency situation;

(E) failing to supervise midwifery students or apprentices in his/her charge effectively;

(F) using fraud in the practice of midwifery, practicing midwifery with gross incompetence, with gross negligence on a particular occasion, or with a pattern of fraud, negligence, or incompetence;

(G) willfully failing to inform or misleading a client who requests the name, mailing address, or telephone number of the Midwifery Program for the purpose of filing a complaint; or

(H) failing to provide a written explanation of charges previously made on a bill or statement in response to the client's written request.

(h) Complaint investigation. The Midwifery Program Director or director's designee shall:

(1) notify the midwife of the complaint by certified mail within ten working days of reading the complaint;

(2) obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint without the necessity of consent of the midwife's client;

(3) interview the complainant, the respondent, and any witnesses;

(4) obtain any available peer review reports;

(5) review and evaluate all information received;

(6) forward complaint(s) not within the Midwifery Board's jurisdiction to other agencies and/or refer complainants to appropriate agencies;

(7) present each complaint to the Complaint Review Committee; and

(8) notify the midwife by certified mail of the category initially assigned to the complaint and the date and time of the Complaint Review Committee meeting at which the complaint will be considered, at least 30 days in advance. The midwife shall be afforded an opportunity to present relevant evidence and to show compliance with all requirements of law for the retention of documentation.

(i) Settlement conference. The Complaint Review Committee chairperson shall conduct the conference. If the chairperson is absent, the vice-chairperson shall preside.

(1) The chairperson/vice-chairperson shall:

(A) state the legal authority for and the purpose of the conference; and

(B) outline the procedure to be followed.

(2) Order of presentation. After explaining the purpose of the conference and other related matters, the chairperson/vice-chairperson shall state the case number and the nature of the complaint.

(A) The Complaint Review Committee shall review all information obtained during the investigation and any statements from the complainant and/or the midwife. The Complaint Review Committee may question any person present regarding relevant information.

(B) The midwife shall be afforded an opportunity to present relevant evidence and to show compliance with all requirements of law for the retention of documentation.

(C) Following review of all evidence and statements, the Complaint Review Committee shall make one of the following recommendations to the Midwifery Board:

(i) closure of the complaint due to insufficient evidence; or

(ii) entry of an agreed order.

(D) Matters not resolved by settlement conference shall be referred for a hearing.

(j) Hearings.

(1) All administrative hearings under this subchapter shall be conducted according to 25 TAC §§1.51-1.55 (relating to Fair Hearing Procedures) unless the midwifery board seeks to assess an administrative penalty under the Act, §18E.

(2) If the midwifery board seeks to assess an administrative penalty, as either the sole sanction or in combination with other penalties and sanctions authorized by this subchapter, said administrative hearing shall be conducted according to 25 TAC §§1.21-1.32 (relating to Formal Hearing Procedures).

(3) All proposals for decision will be referred to the Midwifery Board for final decision.

(k) Penalties and Sanctions. If the Midwifery Board finds a person has violated the Act and/or rules adopted under the Act or any other law or rule relating to the practice of midwifery in Texas, it shall enter an order imposing one or more of the following:

(1) denial of the person's application for documentation;

(2) issuance of a written warning;

(3) limitation or restriction of the midwife's practice for a specified time;

(4) suspension of the midwife's documentation for a specified time;

(5) revocation of the midwife's documentation;

(6) required participation by the midwife in counseling and treatment for psychological impairment, or intemperate use of alcohol or drugs;

(7) required participation by the midwife in one or more education programs;

(8) required practice by the midwife under the direction of a preceptor for a specified period;

(9) probation of any penalty imposed;

(10) acceptance of the voluntary surrender of a midwife's documentation, but without reissuance of documentation unless the Midwifery Board determines the midwife is competent to resume practice;

(11) imposition of conditions for reinstatement that the midwife must satisfy before the Midwifery Board reissues documentation following suspension, revocation, or voluntary surrender; or

(12) assessment of an administrative penalty against not to exceed $1,000 for each violation, with each day of a continuing violation constituting a separate violation.

(l) Failure to cooperate. Failure to provide records requested by the Midwifery Program in the course of a complaint investigation, without good cause shown, shall constitute grounds for additional disciplinary action.

(m) Disposition.

(1) The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order.

(2) An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of documented midwives. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Texas Rules of Civil Evidence, Rule 408, and Texas Rules of Criminal Evidence, Rule 408.

(3) The Midwifery Board may close the complaint due to insufficient evidence.

This agency 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 April 26, 1999.

TRD-9902442
Edna Dougherty
Chairperson
Texas Midwifery Board
Effective date: May 16, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 458–7236

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Subchapter H. Midwives

25 TAC §§37.175, 37.178, 37.180

The Texas Department of Health (department) adopts the repeal of §§37.175, 37.178, and 37.180, concerning documentation and regulation of midwives without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 48), and therefore the repeal will not be republished.

The department adopts the repeal of the sections in 25 Texas Administrative Code (TAC) in order that new sections may be adopted by the Texas Midwifery Board at 22 TAC, Examining Boards, Chapter 831, Midwives. The Texas Midwifery Board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules concerning documentation of midwives; standards for approval of midwifery education courses, instructors, and facilities; standards for midwifery practice; basic and continuing midwifery education requirements; reporting and processing of complaints concerning midwives; disciplinary procedures; procedures for granting initial documentation by reciprocity; and any additional rules necessary to implement any duty imposed on the board by the Act, subject to the approval of the Texas Board of Health. Effective December 1, 1998, the Midwifery Program and the Midwifery Board were administratively transferred from the department's Women's Health Division to the department's Professional Licensing and Certification Division. The new rules adopted by the Midwifery Board at 22 TAC, Chapter 831, can be found in this issue of the *Texas Register* in the Adopted Rule section.

No comments were received on the proposal during the comment period.

The repeals are adopted under Health and Safety Code, §12.001(b), which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9902438
Susan K. Steeg
General Counsel
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Subchapter R. School Health Advisory Committee

25 TAC §37.350

The Texas Department of Health (department) adopts new §37.350, concerning the School Health Advisory Committee (committee), with changes to the proposed text as published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 491). The committee provides assistance to the Texas Board of Health (board) and the department to establish a leadership role for the department in the support for and delivery of school health services.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules to establish advisory committees. The rules must state the purpose of each committee, state the composition of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

The new section establishes the committee and provides procedures for its operation. Specifically, the section includes language to describe the purpose and tasks of the committee; to establish a review date of June 1, 2003, for the committee; to define the composition; and to establish requirements and procedures relating to terms of members, officers, meetings,

attendance, staff support, parliamentary procedures, subcommittees, statements by members, reports to the board and reimbursement for expenses.

The department is making the following minor change.

Change: Concerning §37.350(i), the language is revised to require the committee to meet at least twice each year. This change is made because of the committee's and the board's need to consider relevant and emerging issues relating to school health on a timely basis.

Twenty two comments were received during the comment period. All of these comments concerned subsection (f)(2). (One of these commenters spoke on behalf of 156 members of the Texas Association of School Nurses.) The following comments were received concerning the proposed section.

Comment: All commenters objected to §37.350(f)(2), which allows inclusion of physician assistants instead of registered nurses on the committee to represent school staff providing direct health care services to children. All commenters concurred that registered school nurses make up the majority of health professionals providing health care services in schools. Commenters also felt that registered school nurses have significantly more experience in providing health services in the school setting than physician assistants. Many commenters stated that although physician assistants are a valuable asset to the health care system in general, they generally lack training in many nursing procedures that are typically performed by registered nurses in the school setting. A number of commenters stated that they are unaware of any physician assistant currently employed in a school setting. The commenters asked that subsection (f)(2) be amended to include only registered nurses and to exclude physician assistants.

Response: The department disagrees that the possible inclusion of a physician assistant on the committee in lieu of a registered nurse will jeopardize adequate representation of registered school nurses on the committee. The department feels that physician assistants can and do offer valuable skills and services in school clinic settings. The board, in appointing members of the committee, may select registered nurses or physicians assistants or a combination of both. That decision will be made at the time of appointments. The rule gives flexibility to the board to make appointments of persons which it feels are appropriate. In addition, appointments under paragraph (5)may include registered nurses. No change was made due to these comments.

The following organizations commented on the new section: Alief Independent School District (ISD), Arlington ISD, Berry Elementary School, Burkburnette ISD, Garland ISD, Glenrose ISD, Grapevine/Colleyville ISD, Gregory Portland ISD, H.E.B. ISD, North East ISD, Skidmore-Tynan ISD, and Texas Association of School Nurses (Regions 2 & 11).

The new section is adopted under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§37.350. School Health Advisory Committee.

(a) The committee. The School Health Advisory Committee (committee) shall be appointed under and governed by this section. The committee is established under the Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide assistance to the board to establish a leadership role for the Texas Department of Health (department) in the support for and delivery of school health services.

(d) Tasks.

(1) The committee shall advise the board concerning:

(A) the development of a data collection model to compile basic information about school health services in the state; and

(B) relevant issues based on the data collected to coordinate and improve school health services including health promotion.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By June 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 16 members appointed by the board as follows:

(1) two physicians providing health services to school aged children;

(2) two registered nurses or physician assistants providing school health services;

(3) six consumer members including parents of school aged children and at least one parent of a special needs child;

(4) two school administrators; and

(5) four members representing organizations and/or agencies involved with the health of school children.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on June 1 of each odd-numbered year beginning in 2001.

(2) If a vacancy occurs, an individual shall be appointed to serve the unexpired portion of that term.

(h) Officers. The chairman of the board shall appoint a presiding officer and an assistant presiding officer to begin serving on June 1 of each odd-numbered year.

(1) Each officer shall serve until May 31 of each odd-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in

accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. If the office of the presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet at least twice each year.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Department staff shall make meeting arrangements and shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) Nine members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent for more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Department staff shall provide administrative support for the committee.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any committee action must be approved with a quorum present and by a majority vote of the members present.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee 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.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each of its meetings or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each June. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9902388
Susan K. Steeg
General Counsel
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For further information, please call: (512) 458–7236

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Chapter 97. Communicable Diseases

Subchapter B. Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education

25 TAC §§97.63, 97.65, 97.67, 97.74

The Texas Department of Health (department) adopts amendments to §§97.63, 97.65, 97.67, and 97.74, concerning immunization requirements in Texas child-care facilities, elementary and secondary schools and institutions of higher education. Sections 97.63 and 97.67 are adopted with changes to the proposed text as published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 494). Sections 97.65 and 97.74 are adopted without changes and therefore will not be republished.

These amendments implement departmental initiatives to enhance childhood protection against hepatitis A, hepatitis B, and varicella (chickenpox) and incorporate recent recommendations of the Advisory Committee on Immunization Practices (ACIP) for the vaccination of health care workers by requiring varicella vaccination for higher education students in the health professions whose work involves direct patient contact. Hepatitis A vaccination will be required in 32 border counties for children and students 2 years old and older who were born on or after September 2, 1992. The existing requirement for hepatitis B vaccination throughout the state will be expanded to include a cohort of adolescents. A new requirement for varicella vaccine for children entering kindergarten in Fall, 2000, and all younger children attending child-care; for 12 year-olds without a reliable history of varicella disease; and for higher education students without a reliable history of varicella disease, who are pursuing health professions degrees.

The following comments were received concerning the proposed rules. A total of 419 written communications were received. Following each comment is the department's response and any resulting changes.

Comment: Concerning the proposal in its entirety, 138 commenters concurred with the proposed changes and remarked that requirement of the proposed vaccines is in the best interest of Texas' children.

Response: The department appreciates the time these reviewers spent considering the proposed changes. No change was made as a result of the comments.

Comment: Concerning the proposal in its entirety, 5 commenters wrote the department to express their opposition to the proposed requirements, without making specific objection.

Response: The department appreciates the time these reviewers spent considering the proposed changes. Lack of a specific objection makes it impossible to address their concerns, but the department assumes they share the concerns as follows.

Comment: Concerning the proposal in its entirety, 3 commenters asked the department to reconsider the proposed additional requirements for varicella and hepatitis B vaccine, as they are an undue hardship for schools and school nurses.

Response: The department understands the concerns of these commenters, but feels the potential benefit to children necessitates the proposed additional requirements. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, 1 commenter noted that this proposal would require significant amounts of funding and expressed concern that the department would not be able to implement the hepatitis B and varicella requirements statewide.

Response: The department agrees. New language has been added to §97.63(c) so that the implementation of hepatitis A, hepatitis B and varicella be dependent on funding. By July 1, 1999, the department will publish a statement on whether the rules change for hepatitis A, hepatitis B and varicella will be implemented.

Comment: Concerning the proposal in its entirety, 22 commenters stated that as parents, they rely on their physicians and the department for guidance as to appropriate preventive measures. They urged the Texas Board of Health (board) to support these required immunizations.

Response: The department appreciates the time these reviewers spent considering the proposed changes. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, one commenter wrote that divorce is a consequence of a child becoming disabled or handicapped due to vaccination.

Response: The department neither agrees nor disagrees with this observation. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, 9 commenters objected that these proposals represent an excess of state power and authority.

Response: The department disagrees with these comments. The legislature has granted the board of health statutory authority for the proposed changes. Some of the proposed changes are being made as the result of legislative intent. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, one commenter accused the department of not advertising this proposal and concluded that the department was trying to "slip these mandates past the public."

Response: The department disagrees with this commenter. This proposal was published in the July 19, 1999, issue of the Texas Register, as required by law. The department solicited by mail comments of approximately 450 health agencies, school officials, public citizens, and interest groups, who were urged to share the information with other interested parties. This letter and its attachments were posted in the department's world-wide-web site, and announcements about the information posted on the web sites of other organizations, including the Texas Education Agency, the Texas Medical Association, and the Texas Osteopathic Medical Association. The large number of comments (over 400) on this proposal demonstrates that these efforts were successful. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, 5 commenters likened these proposals to the discredited policies of various dictatorships.

Response: The department disagrees with these comments. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, 3 commenters believe that school immunization requirements have broken the public trust and that the phenomenon will grow.

Response: The department disagrees and believes that school immunization requirements are supported by a majority of the public. No change was made as a result of these comments.

Comment: Concerning §97.63, 170 commenters who were opposed to the proposal noted that the vaccines in question (hepatitis A, hepatitis B, and varicella) are already available to any child in Texas whose parent wants them administered.

Response: The department agrees that these vaccines are available. Historically, however, availability of vaccines has not fully accomplished the department's goal of vaccine-preventable disease reduction. There is a direct correlation between vaccine mandates and both increased immunization levels and decreased disease incidence. Measles vaccine was licensed in 1963. There were 19,761 cases of measles reported in Texas that year, a relatively mild year. In 1964 there were 71,629 cases reported. Texas first required measles vaccine in 1971, when there were 8,495 cases reported. By 1974, there were only 212 cases reported. Incidence has never since approached the 1971 levels. In the national measles epidemic which occurred in 1989 and 1990, Texas reported 3,313 cases in 1989 and 4,409 in 1990. In 1991, Texas adopted the revised national recommendation for a second dose of measles vaccine at age 12. Texas celebrated its first measles-free year in 1998, and measles incidence is at an all-time low nationally. The department believes that immunization requirements have played an important role in achieving the historically low levels of vaccine-preventable disease experienced today. No change was made as a result of these comments.

Comment: Concerning §97.63, 10 commenters expressed the belief that these requirements were needed because some parents will not get their children immunized unless there is a requirement to do so.

Response: The department appreciates these commenters sharing their experience. No change was made as a result of these comments.

Comment: Concerning the proposal in its entirety, 2 commenters encouraged the department to consider scientific evidence, not anecdote, in its consideration of this proposal.

Response: The department agrees and assures the commenters that this is our policy. No change was made in response to these comments.

Comment: Concerning the proposal in its entirety, 156 commenters who were opposed to the proposal noted that it would make it illegal for a parent to delay or not give any of the vaccines in question (hepatitis A, hepatitis B, and varicella).

Response: The department disagrees that these changes alter the conditions under which a parent may delay or not give a vaccination. Exemption from the requirement for any of the vaccines in question can be obtained through the same means as are available for the vaccines which are currently required. These provisions are contained in 25 Texas Administrative Code §97.62, which is unchanged by this proposal. No change was made as a result of these comments.

Comment: Concerning §97.63, one commenter requested that the department include rotavirus vaccine in the requirements for children attending day-care facilities.

Response: The department appreciates the commenter's concern for children in day-care facilities. Rotavirus vaccine is not routinely available and is recommended only for the very youngest children (those 6 months of age or younger). The department may reconsider this issue in the future. No changes were made as a result of this comment.

Comment: Concerning §97.63, one commenter expressed concern that the new requirements would pose a hardship for parents relocating to Texas from other states which do not require the same immunizations.

Response: The department disagrees. While vaccine requirements are not uniform from state to state, they are similar. Current rules provide for children transferring to Texas schools from another state to attend school while continuing to receive required immunizations. No change was made in response to this comment.

Comment: Concerning §97.63, 45 commenters felt the proposed implementation date of August 1, 1999, did not allow time to assure compliance. Many noted that they would be unable to notify students of the new requirements, particularly incoming kindergarten students, who pre- register in the spring. The need to reprogram school computer systems was also cited as an obstacle to implementation on this date.

Response: The department agrees and has changed the implementation date for the new varicella and hepatitis B requirements to "no later than August 1, 2000." The department has also changed the birth dates in §97.63(c)(2)(F) (ii), §97.63(c)(2)(G)(i) and §97.63(c)(2)(G)(ii). These dates define the cohorts affected by the hepatitis B and varicella requirement, and must be changed as a result of the new implementation date. The department hopes this change accommodates many of the needs expressed by the commenters. However, because of the incidence of hepatitis A disease along the Texas-Mexico border, the requirement for that vaccine is still set to take effect on August 1, 1999. Many commenters from the affected area noted that this would not be difficult.

Comment: Concerning §97.63, one commenter from the Texas-Mexico border area felt that the proposed implementation date of August 1, 1999, did not allow time to assure compliance.

Response: The department agrees and has changed the implementation date to August 1, 2000. The department has contacted this commenter and offered its assistance in implementing the hepatitis A requirement. No further changes were made as a result of these comments.

Comment: Concerning §97.63, 42 commenters felt the proposed implementation date of August 1, 1999 did not allow time to assure compliance and requested that these changes not be implemented until August 1, 2000.

Response: The department agrees and has changed the implementation date to August 1, 2000. No further changes were made as a result of these comments.

Comment: Concerning §97.63, 15 commenters felt the proposed implementation date of August 1, 1999 did not allow time to assure compliance. Additionally, they requested that the department not make these changes effective during the school-year because once students are enrolled, it is difficult to enforce the requirements.

Response: The department agrees and has changed the implementation date to August 1, 2000. No further changes were made as a result of these comments.

Comment: Concerning §97.63, 25 commenters felt the proposed implementation date of August 1, 1999 did not allow time to assure compliance suggested that implementing hepatitis B and varicella at different times in the year 2000 to alleviate the burden.

Response: The department agrees in part and disagrees in part. The implementation date has been changed to August 1, 2000. The department hopes that this change will make simultaneous implementation of the new hepatitis B and varicella requirements less burdensome. The department's experience is that rule changes should be as infrequent as possible to minimize provider and school confusion and to maximize parental convenience. No further changes were made as a result of these comments.

Comment: Concerning §97.63, 39 commenters who were opposed to the proposal cited questions about the safety of vaccines as a cause of their concern. As evidence, some cited their own or others' experience with illness that they felt was caused by vaccination. Others stated that the vaccines in question are not covered by the National Vaccine Injury Compensation Program (VICP).

Response: The department agrees in part and disagrees in part. All medical procedures, including vaccination, carry with them a degree of risk. The department feels that the benefits of vaccination far exceed the potential risk. Vaccines have been shown to be very safe, as evidenced by the millions of people who have been vaccinated without incident. However, the department recognizes that rare adverse events can and do occur. The VICP covers all routinely recommended vaccines, including hepatitis B and varicella vaccines. These vaccines were included in 1997, with retroactive coverage extending eight years. In addition, an amendment to include any new vaccine recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children has been added. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), 29 commenters who were opposed to the proposal compared figures from the CDC on the incidence of hepatitis B illness among children who had not received hepatitis B vaccine to numbers (source unknown) of serious injuries and deaths occurring to children who had received hepatitis B vaccine.

Response: The department disagrees that the comparison is valid. The CDC estimates that only 10 percent of acute hepatitis B infections among children are clinically recognized and are likely to be reported. The department believes that the numbers of deaths and adverse events were derived from Vaccine Adverse Events Reporting System (VAERS) data. A VAERS report does not demonstrate causation and cannot be used to quantify the number of possible adverse events. A single incident may be reported by several persons. When the incident occurs following the administration of multiple vaccines, the incident is counted multiple times to account for the possibility that the incident cannot be temporally associated with any one of the vaccines administered. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(F)(vi) and §97.63(c)(2)(H), 28 commenters who were opposed to the proposal stated that hepatitis A is often mild in young children. Some stated that giving the hepatitis A vaccine could be more harmful (than the disease).

Response: The department agrees in part and disagrees in part. Although childhood infection is often very mild in young children, many school-aged children do experience symptoms. Children can play a significant role in the transmission of hepatitis A virus (HAV) to adults. Hepatitis A is more severe among adults and has a longer convalescent period. The department feels that the vaccine's safety and benefit to the community outweigh any small potential for risk. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(F)(vi) and §97.63(c)(2)(H), 27 commenters who were opposed to the proposal stated that hepatitis A can be prevented by clean water supplies.

Response: The department disagrees. Other means through which HAV can be spread include person-to-person contact

and ingestion of contaminated food. A series of serosurveys were conducted in 1989 through 1998 among children living in U.S.-Mexico border counties. These surveys showed that the percent of children positive for HAV antibodies increases with age. This is not the pattern that would be expected if water were the sole source of infection. If that were the case, children would all become infected at a young age, at the time they first ingested contaminated water. The department believes that this epidemiology demonstrates that water is not the primary source of infection with HAV. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(F)(vi) and §97.63(c)(2)(H), 1 commenter stated that it was not "ethical or moral" to implement a hepatitis A requirement along the Texas-Mexico Border. She provided the department with a statement signed by 96 people who noted that they were unaware of any outbreak of hepatitis A in these counties. They concluded that the department was unfairly requiring minority children on the border to receive hepatitis A vaccine.

Response: The department disagrees. The selected counties were chosen because they report a highly disproportionate number of hepatitis A cases relative to their population size. Within these counties the requirement is imposed without regard to race or ethnicity. The incidence rates in this area meet federal standards for routine vaccination against hepatitis A. The department has been strongly encouraged by Hispanic political leaders to require hepatitis A vaccine in these border counties. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(1)(F)(vi) and §97.63(c)(2)(H), 2 commenters (from Harris County) expressed hope that the proposed hepatitis A requirement for 32 border-counties would decrease the rate of hepatitis A in Harris County.

Response: The department shares their hope. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(F)(vi) and §97.63(c)(2)(H), 4 commenters requested that the hepatitis A requirement be extended to include their community/county or the entire state.

Response: The department appreciates their concern but disagrees that a statewide requirement for hepatitis A vaccine is needed at this time. Hepatitis A vaccine is available to county health departments through the Vaccines for Children Program when the rate of disease exceeds a certain level for an extended period of time. The department will continue to work with the jurisdictions that requested inclusion to assess their eligibility for the vaccine. No change was made as a result of this comment.

Comment: Concerning ˘97.63(c)(2)(F)(ii), one commenter raised the possibility that surface protein of the hepatitis B virus (HBV) has developed the ability to produce autoimmune diseases in some individuals and that this could also occur with the vaccine.

Response: The department acknowledges that vaccine safety is a concern. Expert panels which have reviewed the most current epidemiologic scientific evidence have not found support for this hypothesis and do not recommend any changes to current policy. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), one commenter asked if hepatitis B vaccine could be modified to prevent these adverse events (referenced in the previous comment).

Response: The department cannot comment on this question. Although vaccines have an excellent safety record, the department recognizes that rare adverse events can and do occur and welcomes any modifications that would decrease their frequency. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), one commenter asked if control of HBV should be accomplished by early treatment or other methods.

Response: The department notes that prenatal screening and subsequent treatment with immune globulin and vaccine protect infants born to the majority of hepatitis B infected women. However, no curative treatments currently exist for acute HBV infection and supportive and symptomatic care are the mainstays of therapy. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), one commenter asked if there was adequate justification for use of hepatitis B vaccine in newborn infants, citing research in animal models.

Response: The department cannot comment on the applicability of animal model-based research to human subjects, but feels that justification exists for routine infant immunization against hepatitis B. Hepatitis B vaccination of newborns has been shown to be safe and effective for full-term infants born to hepatitis B surface antigen (HBsAg) negative mothers. It has also been found to be safe and effective for newborns of HBsAg positive mothers. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), one commenter asked if sufficient documentation exists to justify routine vaccination of 12 year olds. The commenter requested that the department address: the duration of the vaccine's effectiveness; the percent of vaccine non- responders and how they would be accommodated by the requirement for serologic confirmation of immunity; and the risk of life-long disability among different population groups.

Response: The department feels that data exist which justify routine immunization of 12 year olds against hepatitis B, a recommendation which is supported by the Advisory Committee on Immunization Practices and the American Academy of Pediatrics. Even when post-vaccination antibody titers have fallen below detectable levels, no studies have reported acute symptomatic infection among initial responders. Studies to date show that the vaccine provides excellent long- term protection when administered as recommended. The department believes the commenter misunderstood the context in which serologic confirmation of immunity is required. Serologic confirmation may be required as an alternative to vaccination, but evidence of seroconversion following vaccination is not required. A review by the Food and Drug Administration of case reports from the Vaccine Adverse Events Reporting System for the years 1991 to 1994 concluded there were no unexpected adverse events in neonates and infants given hepatitis B vaccine, despite the use of at least 12 million doses of vaccine in these age groups. The department acknowledges the commenter's hypothesis that risks for adverse events vary among population groups but is not aware that such differences have been proven. No change was made as a result of this comment.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 1 commenter noted that hepatitis A had not been added to the

list of diseases for which vaccination was required if serologic proof of immunity was not available. Likewise, hepatitis A was not enumerated among the disease for which evidence of immunity was defined as consisting of a laboratory report.

Response: The department agrees and has amended the rules as suggested.

Comment: Concerning §97.63(c)(2)(F)(ii), 41 commenters who were opposed to the proposal noted that hepatitis B is spread through "irresponsible" behavior. Many objected to the department "placing a moral judgement" on their children by proposing to require hepatitis B vaccine for children and students in school and day-care.

Response: The department disagrees and responds that the legislature's desire that the department require hepatitis B vaccine is expressed in Chapter 386, Acts of the 74th Legislature. The department also disagrees that risk factors for hepatitis B involve only behaviors under the control of the individual. Hepatitis B is spread through contact with infected blood and body fluids. Intravenous drug use and unprotected sex account for a majority of cases, but these activities do not account for all cases, especially those which occur in young children. Hepatitis B vaccine protects any and all children from possible future exposures, no matter the cause or parental expectations. These facts and the legislative intent warranted no change as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), which expands the requirement for hepatitis B vaccine to a cohort of 12 year olds, 2 commenters praised the department for utilizing the recently-increased resources to protect this group of students.

Response: The department appreciates the time these reviewers spent considering the proposed changes. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii), 1 commenter stated that teenage pregnancy was a greater problem than hepatitis B and asked if the department plans to provide birth control for young girls.

Response: The department notes that this topic is outside the subject of these rules. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(2)(F)(ii), which expands the requirement for hepatitis B vaccine to a cohort of 12 year olds, 1 commenter expressed concern that the department had underestimated the immediate cost to schools of the new requirement. Costs mentioned include nurse time to achieve compliance and increased absence due to exclusion for noncompliance. She does agree however, that the proposed requirement is justified, and in the future will prove cost effective.

Response: The department appreciates the commenter's acknowledgment that the long-term benefits of this change outweigh its immediate costs and hopes that the changed implementation date as described above will minimize the burden to school nurses. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(1)(E)(v), §97.63(c)(2)(G), §97.63(c)(2)(G)(i)(I), and §97.63(c)(2)(G)(ii)(I), 40 commenters who were opposed to the proposal noted that varicella is a benign childhood illness that usually gives lifelong immunity. Some noted concern that vaccine-induced immunity would be temporary, putting children at risk of the disease in adulthood, when it is more severe.

Response: The department agrees in part and disagrees in part. Although varicella is usually a mild disease in healthy children, varicella is a contributory cause of death for several Texans each year. A review of 1997 Texas death certificates revealed 8 deaths (4 children and 4 adults) in which varicella was an immediate or contributing cause of death. Varicella deaths are often related to secondary infection and may not be captured by review of death certificate data. For example, the death of 1 child caused by group A streptococcus (GAS) septicemia and pneumonia following varicella infection was recorded by the department during a 1997 GAS outbreak investigation. In addition to reducing disease among children, other age groups would benefit by decreased exposure to varicella.

It is not possible to state with certainty the duration of protection provided by any new vaccine. However, longer experience with other live viral vaccines (e.g. measles, rubella) has shown no evidence of waning immunity in a population. In the past, when recommendations for additional doses of live-virus vaccines have been made, it has been to protect the small percent of people who fail to respond to the first dose (primary vaccine failure), rather than because immunity has waned. Follow-up data from pre-licensure clinical trials in Japan indicate that protection from varicella vaccine lasts for at least 20 years. American clinical trials (begun later) demonstrate lasting immunity for 11 years to-date. These studies are ongoing. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(E)(v), §97.63(c)(2)(G), §97.63(c)(2)(G)(i)(I), and §97.63(c)(2)(G)(ii)(I), 51 commenters shared their experience or professional observations of varicella disease. Many were parents who noted that this experience had changed their belief that varicella was "no big deal."

Response: The department appreciates these commenters sharing their experience. No change was made as a result of these comments.

Comment: Concerning the proposed preamble, 35 commenters who were opposed to the proposal objected to the department's statement that work disruptions were a significant consideration in estimating the societal cost of varicella illness. The stated objection was that it was not the function of a health agency to determine how much work parents are allowed to miss to care for sick children. Many noted that this would not be a hardship for their family because one parent was not in the work-force or because their children were home-schooled.

Response: The department disagrees and notes that the intended effect of the proposed change is to prevent vaccine-preventable diseases, their complications and consequences. In considering the consequence of lost work-time for parents, the department recognizes that some parents suffer financial consequences when they must care for sick children. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(E)(v), §97.63(c)(2)(G), §97.63(c)(2)(G)(i)(I), and §97.63(c)(2)(G)(ii)(I), 2 commenters noted that the cell-line from which varicella vaccine is manufactured was developed using fetal tissue. They stated that they found this link to the "abortion industry," to be morally objectionable.

Response: The department notes that the cell lines from which the vaccine is cultured have been growing under laboratory conditions 30 years or longer. Neither cell line requires additional fetal tissue for the manufacture of vaccine. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(G)(i)(I) and §97.63(c)(2)(G)(ii)(I), program staff noted that 2 doses of varicella vaccine are recommended for susceptible persons 13 years old and older. Students who do not show proof of having received 1 dose of varicella vaccine by their 13th birthday (such as transfer students from other states) must have 2 doses of vaccine to insure adequate immunity. As proposed, the rules do not require 2 doses for such people.

Response: The department agrees and has amended the rules as suggested.

Comment: Concerning §97.63(c)(2)(G), 4 commenters requested that all children be included in the varicella vaccine requirement and not just children in the age groups proposed. The point was made that anyone at risk of the disease is subject to its consequences, and should be protected.

Response: The department shares this concern, but funding does not permit expansion of the requirement at this time. It is also noted that as proposed, the requirement minimizes the administrative burden to school nurses by establishing new requirements at the same ages as other existing ones. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(2)(G)(i)(I) and §97.63(c)(2)(G)(ii)(I), 14 commenters thought that the storage and handling requirements of varicella vaccine would make it difficult to administer at mobile clinics and that this would be an obstacle to compliance. A question was also raised about the ability of local health departments and physicians to stock the vaccine in sufficient quantity, since the procedures for ordering this vaccine are different from other vaccines covered by the Vaccines for Children Program.

Response: The department agrees in part and disagrees in part. The department believes that initial problems with ordering and shipping the vaccine to local health departments and physicians has been resolved, but the department's pharmacy and the Immunization Division Vaccine Accounting section will continue to address any issues that are brought to their attention. These divisions will continue to publicize ways that the vaccine may be safely transported to mobile clinics and will offer assistance in supplying dry ice in parts of the state which do not have a ready resource. No change was made in response to these comments.

Comment: Concerning §97.63(c)(1)(E)(v), §97.63(c)(2)(G), §97.63(c)(2)(G)(i)(I), and §97.63(c)(2)(G)(ii)(I), 2 commenters expressed doubt about the effectiveness of varicella vaccine. One cited incidence of varicella illness in previously vaccinated children as evidence.

Response: The department feels that the efficacy of the vaccine was convincingly demonstrated in clinical trials, where 97 percent of children vaccinated between 12 months and 12 years of age developed detectable varicella antibodies within 4 to 6 weeks of vaccination. Clinical trials also demonstrated a 77 percent reduction among vaccinees in the number of expected cases of chickenpox following household exposure. Even when breakthrough illness occurs, the varicella illness is milder than among unvaccinated children. This means that such children are at lower risk of complications from the disease than are unvaccinated children. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(1)(E)(v), §97.63(c)(2)(G), §97.63(c)(2)(G)(i)(I), and §97.63(c)(2)(G)(ii)(I), 2 commenters noted that the proposed varicella vaccine requirement would protect school employees who were not infected as children. As adults, this occupational exposure poses risk of severe morbidity.

Response: The department agrees with this observation. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(G)(i)(I) and §97.63(c)(2)(G)(ii)(I), 1 commenter requested that the department require varicella vaccine (or a parent letter or doctor's note) only of the children in pre-kindergarten and kindergarten. She felt that it would be difficult to achieve compliance among her total school population.

Response: Vaccine (or parent letter or doctor's note) is not proposed to be required of the entire school enrollment, only those students affected by the rule. The department has clarified this with the commenter. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(1)(E)(iv), 1 commenter requested that a definition of "primary series and a booster" for *Haemophilus influenzae* type b (Hib) vaccine be provided for the benefit of school nurses and child-care facility employees. The definition supplied was: "at least 3 doses with 1 dose on or after the first birthday and at least 2 months following the previous dose, OR 2 doses after the first birthday and at least 2 months apart."

Response: The Hib vaccine schedule varies among manufacturers and depends on the age at which vaccination is initiated. When interpretation is required, the department advises school nurses and child-care facility employees to define it as the commenter has suggested, because that is the minimum required by the least restrictive combination of manufacturer and age at vaccination. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(2)(C)(ii), §97.63(c)(2)(C)(iii)(I)(-a-), §97.63(c)(2)(C)(iii)(II)(-a-), and §97.63(c)(3)(E)(i)(I), 4 commenters noted that the requirement that doses of measles vaccine be received at least 30 days apart was inconsistent with a recent statement of the Advisory Committee on Immunization Practices. That statement says that the doses should be "separated by at least one month (i.e. a minimum of 28 days)."

Response: The department agrees and has implemented the suggestion. It is the department's intent that children who are vaccinated as recommended be in compliance with the requirements. In each place where the interval between doses is referenced, "28 days" has been substituted for "30 days."

Comment: Concerning §97.63(c)(2)(F)(ii) and §97.63(c)(2)(G)(ii), which require that proof of hepatitis B vaccine and varicella vaccine be shown at the 12th birthday, 1 commenter noted that another (existing) requirement calls for students to show proof of measles vaccination by 30 days after the 12th birthday. She suggested that the new requirement would be easier to administer if the requirements were synchronized.

Response: The department agrees and has amended the proposed rules to require proof of hepatitis B and varicella vaccines at 30 days after the 12th birthday, instead of at the time of their 12th birthday.

Comment: Concerning §97.63(c)(2)(F)(ii) and §97.63(c)(2)(G)(ii), one commenter asked the department to reconsider requiring varicella and hepatitis B vaccine for all students under age 13, because of the resources required to vaccinate the large number of students affected.

Response: The department sympathizes with the concerns of the commenter, but notes that all students under 13 would not be affected simultaneously. The department has clarified this in its reply to the commenter. Student records are presently reviewed at the time the student turns 12. Hepatitis B and varicella vaccines would be added to the list of immunizations reviewed at that time. No change was made as a result of these comments.

Comment: Concerning §97.63(c)(2)(F)(ii) and §97.63(c)(2)(G)(ii), one commenter questioned the number of vaccines to be given at age 12 and requested information from the Centers for Disease Control and Prevention or the Advisory Committee on Immunization Practice stating why this was chosen as the target age.

Response: The department has provided information from this organization which recommends that children be vaccinated at age 12 against measles-mumps-rubella (MMR), hepatitis B, and varicella only if the vaccines have not been previously received as recommended. No change was made as a result of this comment.

Comment: Concerning §97.63(c)(2)(F)(ii) and §97.63(c)(2)(G)(ii), one commenter requested that hepatitis B vaccine and varicella vaccine be required upon entry to 6th grade, rather than by 30 days after the 12th birthday.

Response: The department disagrees. The vaccine recommendations on which the requirements are based are based on chronologic age. The department feels that if the requirements were made dependent on an administrative category, such as grade, that children of many different ages would be affected. For some vaccinations, this would change the number of doses medically required to assure immunity. No change was made as a result of these comments.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 10 commenters expressed concern about the validity of parental histories of prior varicella illness. Some noted that it would be confusing to parents to be allowed to provide history of this disease, but not for other diseases. Others felt the ease of writing this statement would encourage parents to falsify a disease history.

Response: The department understands that some parental histories of prior varicella illness will be incorrect. However, the Advisory Committee on Immunization Practices (ACIP) has determined that most parents are able to identify varicella because of its distinctive characteristics. This seems preferable to requiring large numbers of students who have already had chickenpox to go to the inconvenience and expense of serologic testing. The department anticipates requiring serologic evidence of infection in the future, as varicella becomes a less common (and less easily recognized) illness. No change was made as a result of these comments.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 2 commenters noted that the requirement for 12 year-olds to be vaccinated against varicella would result in few children being vaccinated, since so many would already have had the disease. One commenter stated that nurses could use their limited time in ways that would be of greater benefit to student health.

Response: The department disagrees. Studies estimate that 10 percent of students remain susceptible to varicella at age 12. While sympathetic to the many demands on school nurses' time, the department feels that identifying and vaccinating these students is a high priority because of the greater severity of varicella disease when it is contracted by older children and adults. No change was made as a result of these comments.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 3 commenters requested that records kept by school nurses also be accepted as documentation of varicella illness. These records would be based on observations made by the nurse or a report from the registrar that chickenpox was the reason for a child's absence.

Response: The department agrees that this is reasonable and has added language to §97.67 to allow school nurses to document parental reports of contemporaneous illness or to identify contemporaneous varicella illness they observe.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 2 commenters suggested that the department develop a uniform statement for the parents to complete.

Response: The department agrees that this will be a useful tool for school nurses and will develop such a statement or form. No change was made in response to these comments.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 11 commenters were concerned about the paperwork involved in documenting previous varicella illness. Some questioned the need to maintain a copy of the parent or physician statement of prior varicella illness, once it is entered into their computer system. Some were under the impression that the statement would have to be physically attached to the immunization record.

Response: The department has made changes to this section to clarify that schools are not required to physically attach these statements to the health card, but only to keep the information on file. It remains the responsibility of the school district to assure the accuracy of this information.

Comment: Concerning §97.67 (Verification of Immunity of Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella), 1 commenter requested that clinics/physicians/primary care providers be made responsible for maintaining documentation of previous varicella illness. She felt this was properly their responsibility, not that of school nurses.

Response: The department agrees in part and disagrees in part. Physicians document varicella illness as part of the medical record. For this reason, they are listed as a source of this information for school nurses. To assist them in locating that information, the department is including a place to record previous varicella illness on revisions of the immunization cards it supplies for use in providers' offices. However, the requirement that

school nurses also record this information is consistent with their maintaining a copy of students' immunization histories. Such a history of necessity includes reasons for which a child may not require vaccination, such as a history of previous illness. No change was made in response to this comment.

Comment: Concerning §97.74, a commenter expressed concern that physician statements and laboratory reports would no longer be acceptable evidence of prior measles infection. He stated that this was the only evidence he was comfortable accepting and that he was not comfortable accepting a parent's statement as an alternative.

Response: The department believes this commenter misunderstood the context in which this change was proposed. This change does not make parental statements acceptable evidence of prior measles illness. In March 1997, laboratory confirmation was made the only acceptable evidence of prior measles or mumps illness. At this time, the reference to physician statements should have been deleted, but was not. No change was made in response to this comment.

The commenters were: Loren Adair; Richard Adams, MD for Dallas Public Schools; Kelly Adams; Delores Adler, RN; Sharron Albertson; Linda Alcarta, RN; Kate Anderson; Maryanne Anderson, RN; Brewster Andrews; Isla Andrews; Cindy Arnold; Sherry Arrick, John Asbury, MD; Tracy Avallone; Candy Bahr; Gladys Baker, MSN, RN; Rosanna Baldwin, RN; Terry Bankhead; Sheryl Barnes; Kristina Barnhart; Bill Batchelor; Kathy Bateman; Connie Bearfield; Keith Bechly; Stephen Benold, MD for Texas Academy of Family Physicians; Bridgette Berkes and Mark Ballard; Denise Bernd; Steven Bernd; Lisa Besserer; Maggie Bickley, RN; Judie Boothe; Tanya Boyd, RN; Latene Brackett; Shannon Brame; Becky Brawley, RN, BSN; Sandra Bridges, RN, PhD; Avalon Bruce, MPH; Frances A. Brunworth; Robert W. Bueker, CPA; Cene Burrow; Vince Butler; Penny Davis Cambere, MD; Christine Casales; Faith Casperson, RN for Conroe ISD; Beverly Cheatham, RN; Terry Clampett; Lewis M. Clark; Lisa Clark; Peggy Clark; Rhonda Clark; Sherri Clark; Joy Cobb, RN, MSN; Julie Coker and Michael Kisselburgh; Cheryl Coldwater, MD; Daniel Coleman; Lynda Contrucci, RN; Austin Cooney, PhD; Terry Copeland; Nancy Couch; Lynda Coursey; Judy Covey, RN; Clifford Craven, MD; Chris Crosby; Cheri Crow; Emily Croy; Diane Cunningham; Kellie Curtis; Terry Dailey; Ruth Dandalides; Juanita Dangel; Norma Daniel, RN; Joyce Dare; Glenn and Karen Davidenko; Katrina Davis; Lynne Davis; Maurice Davis; Robert Davis; Pamela Daviscourt; Donna Dawson, RN; Denise DeLisle; Richard DeLong; Cindy Diaz, RN; Margaret Dismukes; Gwen Dods, RN; Heather Dolan; Perry and Michele Doles; Karen Doran; Rod Douglas; Gabrielle Doyle; Susie Duggins; Vincy Dunn, RN, MSN; Lisa Duty; Lupita Gladis Perez Elizondo; Rose Emerson; Tammy K. Enzor; Terri Erwin; Albert Esparsen II, MPA; Judy Evans, RN; Donna L. Evans, MPH; William Fausett, DC; Kathy Fechtman; Alan H. Feldman, DD, DA Hom; Jaime E. Fergie, MD, FAAP; Jill Field, RN; Thomas and Grace Fisher; Victor and Elza Fisher; Stephanie Ford, MS, RN, CPNP; Cheryl Fostel; D.M. Foulds, MD; Patrice Fuqua, RN; Catherine Ganiron, RN; Danny Lee Garcia; Lisa Ann Garcia; Vickey Gay; Belinda Gelhausen; Sherry George; Kathryn E. Gin; Patrick K. Gin; Angela Girlinghouse; Mattye Glass; Janet Green; Judith Greilich; D. Greisinger; Gary Guiffre; Amy Guinn; Martin Hajovsky and Theresa Gregory; Genita Hall; Rose Hammer; I. Celine Hanson, MD; Alesha Harcourt, RN; Leslie Hardin; Brad Harrelson; Lorie Harrelson; Kristi Harvey, MD; Martha Haynes, RN; Charles Headley, RN; Angela Hendricks; Judy Gay Herman; Anne Higgins, RN; Harold Higgins; Joyce Hill; Todd Himmel; Marguerite Hirsch, RN; Brenda Hock, MS, RN, CPNP; Selena Hodgdon, RN; Robert Hoffman; Jon D. Holzheimer; JoAnn Hooper, RN; Carol S. Horan, RN, MSN; Dr. Robert Howell; Roxanne Huffman; Ruth Huffman; Nancy Hughes; Connie Hunt, RN; Judith Hunter, RN, MSN; B. Jane Hursey, MD; Barbara Jeffries, RN; Ayanna Jones; D.A. Jones; Julie A. Jones, MD, MPH; Michelle Jones; Peggy Jennings, RN; Hal. B. Jenson, MD; Suzanne Johnson; Carl and Kathy Kastner; Karen C. Kemper, MD; Joe Kilpatrick; James and Tina King; Ruth Kline; Art and Bridget Kline; Beth Knapp, MS, RN, CPNP; Karl Knight; Patsy Knight; Drue Kohler; Felix Koo, MD, PhD; Mary Jo Koss, RN; Kris Kriofske; Walter Kuhl, MD; Danny Kumamoto; Edalani Lacar, MD; Sharon LaMontagne, RN; Richard M. Lampe, MD; Kathy Langas; Marc Langas; Frances Langston, RN; Linda Langston, RN; Karen Lanier; Stephana Laws; Daniel Lee; Leah Leissner; Pam Lerette, RN; Mark C. Lesko, DC; Freda Levinson, RN.C, MBA, CNA, CSN; Lisa Lewis; Katherine Lin; Nathan Lindell; Debra Lochtrog-Swindle, RN; Marion London, RN; Mauri Long; Lori Looka, CPNP; Sherri Loose; Sarah Lowe; Angela Lubs; Ken Luce; Nancy Luce; Glenda Luedecker, RN; Laura Lyon; Angela Mager, RN; Jody Mansee, RN; Stephanie Marchbanks; Marilyn Marcontel, RN, CNA for Dallas Public Schools; Peg Marquart, RN; Mindy Mashburn, RN, MSN, CPNP and Bonnae Nawara, RN, MSN, CPNP, representing the Texas Chapter of National Association of Pediatric Nurse Associates and Practitioners; Paula Mashek, RN, MAL, CSN; C. Richard Massey, MD; Deborah Masterson; Kathleen Mauldin; Camellia May; Becky Mayod; Marsha McBride; David McClellan, Kathy McConnell, RN; Laura McWilliams; Kimberly Merenda; Julie Metzger; Alice Miller; Pamella Miller, RN; Joan Millican, RN; MaryClare Milner; Nancy and Michael Misner; Linn Monherud, RN; Ira Montgomery; Claudia Moore; Douglas Moore; Pat Moore, RN; Shirley Moreland, RN, CSN; Bernia Morris; Becky Mouser, MD; Nagla Moussa and Alvin Crofts; Alison Mullins; Gregory Mullins; Leslie Murphy RN; Marcy Murphy; Harriet Murray, RN; Wanda Myers; Linda Nayfa; Roger and Shirley Neal; Janet Neath; Donald K. Nelms, MD, FAAP; Annette Nelson; Keila Nichols, DC; Linda Niehues, RNC; Paul Ochoa; Mr. and Mrs. R. David Oltrogge; Joyce Olvera, RN; Christine Orbin; Mike and Kristina Ormond; Linda Owens; Susan Owens; Candy Parrott, RN, CPNP; Mary Peliter; Desiree Pendergrass; Janice Penson; Rosie Perez, RN; William Perez; D. Perry; David E. Phipps, DC; Jeffrey D. Pick, R.Ph, DC; Teresa Pick; Martha Poole, RN; Tonya Porter; Lesley Potof, BS, RN; D. Potts, Jr; Nicole Potts; Kristin Powers; Kerwin Price; Sharon Proctor; Pat Pruett, RN; Tracy Pulaski for Dallas County Medical Society and Dallas Area Infant Immunization Coalition; Katie Pulliam; Jason Pulliam; Liz Ramos; Mary Rampley, RN, BSN; Kristin Ray; David Reece; Nancy Reeve; Karen Remick; Laura Reude, MLS; Rebecca Rex; Dawn Richardson; Douglas and Kevin Sue Riddle; Jane Rider, MD; Autumn Rinewalt; Janice Rinewalt; Vicky Rister, RN; Sheryl Ritchie, BS, RN; Debbie Roberson, BS, MSN; Kristin Robertson; Leah Robertson; Mary Robertson; Darla Robinson, RN; Jerry Robinson, MPA for City of Laredo Health Department; R. Rohlin; D. Rosenberger, RN, BSN; Debra Roundy; Kip Ruhl, RN; Stephanie Ruiz; Tiffany Rumbo; Julia Russell; Daniel and Terri Ryan; Ana Salinas, RN; Yvette Salinas for Cameron County Health Department; Valerie A. Sauser, DC; Doreen Schaefer; Suzanne Scheller, RN, MSN, CNS; Joseph H. Schneider, MD; Sue Schrowang; Anatar and Aleena Schubert; Lynn Scoggins; Christopher Scott; Alice Seaton, MD; L. Seim; Anh Selissem; Patrick Shaffer; Diana Shultz; Sheri Skinner; Barbara Sommer, RN; Rene Sorenson;

Susan Spana, RN; Michael Speer, MD; Judi J. Spencer; Stacy Spitzmuller, RN; D. Smith; Charlotte Stackburger, RN; Tana L. Stampes; Gwen Stone, RN, BSN, CSN; Beth Stribling; Kelly Stribling Sutherland; Pat Starodub, RN; Connie Stringer; Libby Stripling, RN; Cynthia Stuart; Milton W. Talbot, Jr, MD; James Taylor (1); James Taylor (2); Olla Theimer; Michele Thomas; Jackie Thompson; Joan Thompson; Karen Thompson; Laura Thompson, RN; Linda Thompson, FNP; SusanThompson, RN; Claire Timberlake-Bacani; Leanne Timura; Gayle Y. Treadwell; Carolyn Trochesset, RN; Debbi True; Sharon Turley, RN; Mary Jane Turner; Tx School Alliance; L. Vanaman, RN; Michelle Vanek; Velia Vasquez, RN; Nancy Vasut, RN; Patsy Vaughan, RN; Linda May Vierra; G. Wacker, RN; Karen Walters; Dharla Wall; Russell and Mireya Warren; Lisa Watkins; Judy Watson, RN; Beverly J. Weaver for Dallas Department of Environmental and Health Services; Janice Weikel; Michael K. Weir, MD; Leonard E. Weisman, MD; Diana Welborn; Carrol H. Wells; Galena Wertz; Alan White, MD; Sherry White, RN; Jeanne Wilcox; P. Wile, RN; Jan Wilkerson, RN; Barbara Williams; Rogers Williams; Toni Williams; Barbara Willingham; Pam Willman; Elizabeth Wills; Angie Wilson; Jim Wilson; Debra Wilsterman, RN; George Ann Windham RN, CPNP; Jean Woodman, MD; Lisa Wright; Jennifer F. Zea; Mae Zook.

The comments received were of three types. One group, composed primarily of parents, chiropracters and other private citizens, opposed the rules entirely. A second group, composed primarily of school nurses and other education officials supported the proposed requirements, but felt that the implementation date was unrealistic. A third group, composed primarily of parents, public health officials, physicians, and physician-organizations, supported the rules as proposed.

These amendments are adopted under Health and Safety Code §81.023 and §161.004, which require the Board of Health (board) to develop immunization requirements for children; Education Code §38.001, which allows the board to develop immunization requirements for admission to any elementary or secodary school; Education Code §51.933, which allows the board to develop immunization requirements for students at any institution of higher education who are pursuing a course of study in a health profession; Human Resources Code §42.043, which requires the department to make rules regarding the immunization of children admitted to day-care facilities; and Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

§97.63. Required Immunizations.

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

(c) The following immunizations are required in the respective age groupings. A child or student must meet all the immunization requirements specific to an age group upon first entering the age group. Implementation of requirements for hepatitis B vaccine for adolescents and varicella vaccine and hepatitis A for all ages is contingent upon the appropriation of funds to the department for these purposes. By July 1 of each odd-numbered year, the department will publish a statement on whether or not these vaccines have been funded and are required as specified.

(1) Children less than five years of age: polio vaccine; diphtheria-tetanus-pertussis (DTP) or diphtheria-tetanus-acellular pertussis (DTaP) vaccine; measles, mumps, and rubella vaccine (MMR); *Haemophilus influenzae* type b conjugate vaccine (HibCV), hepatitis A, and varicella vaccine.

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

(E) Children 12 months of age, but not yet 15 months of age (12 months through 14 months of age):

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

(iii) one dose of MMR vaccine is required. Only doses received on or after the first birthday will meet this requirement. Serologic confirmation of measles, mumps, or rubella immunity or serologic evidence of infection is acceptable in lieu of vaccination for that disease only. For further information see §97.67 of this title (relating to Verification of Immunity to Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella; and

(iv) (No change.)

(v) no later then August 1, 2000, one dose of varicella vaccine is required. This vaccine must have been received on or after the first birthday. A parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity is acceptable in lieu of vaccine. For further information, see §97.67 of this title.

(F) Children 15 months of age, but not yet 5 years of age (15 months through four years of age):

(i)-(iv) (No change.)

(v) no later then August 1, 2000, one dose of varicella vaccine is required. This vaccine must have been received on or after the first birthday. A parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity is acceptable in lieu of vaccine. For further information, see §97.67 of this title; and

(vi) no later then August 1, 2000, children subject to these requirements as described in §97.61 (relating to Children and Students Included in Requirements) must comply with the following requirement for hepatitis A vaccine if the facility, school or institution attended is located in any of the following counties: Brewster, Brooks, Cameron, Crockett, Culberson, Dimmitt, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. For further information, see §97.67 of this title. Doses of hepatitis A vaccine are required as follows:

(I) children 2 years of age but not yet 3 years of age are required to show proof by 30 days past their second birthday of one dose of hepatitis A vaccine administered on or after their second birthday; and

(II) children 3 years of age but not yet 5 years of age are required to have received two doses of hepatitis A vaccine administered on or after their second birthday.

(2) Children and students five years of age or older.

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

(C) Measles.

(i) (No change.)

(ii) Beginning January 1, 1991, children and students born on or after September 1, 1978 will be required to show

serologic proof of measles immunity, serologic evidence of infection, or receipt of two doses of measles vaccine administered on or after the first birthday. This proof is not required until the child's 12th birthday. The two doses of measles vaccine must have been administered at least 28 days apart. Children and students may have 30 days past their 12th birthday to be in compliance with this clause. For further information see §97.65 of this title and §97.67 of this title.

(iii) Effective August 1, 1997:

(I) children born on or after September 2, 1991, will be required to show proof of either:

(-a-) two doses of measles vaccine administered on or after the first birthday and at least 28 days apart; or

(-b-) (No change.)

(II) children born prior to September 2, 1991 will be required to show proof by 30 days past their 12th birthday of either:

(-a-) two doses of measles vaccine administered on or after the first birthday and at least 28 days apart; or

(-b-) (No change.)

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

(F) Hepatitis B

(i) Effective August 1, 1998, children born on or after September 2, 1992, will be required to show proof of either:

(I) three doses of hepatitis B vaccine; or

(II) serologic confirmation of immunity to hepatitis B or serologic evidence of infection. For further information see §97.67 of this title.

(ii) No later then August 1, 2000, children born on or after September 2, 1988, but before September 2, 1992 will be required to show proof by 30 days past their 12th birthday of either:

(I) three doses of hepatitis B vaccine; or

(II) serologic confirmation of immunity to hepatitis B or serologic evidence of infection. For further information see §97.67 of this title.

(G) Varicella.

(i) No later then August 1, 2000, children born on or after September 2, 1994, will be required to show proof of either:

(I) one dose of varicella vaccine received on or after the first birthday (two doses are required if the child is 13 years old or older at the time the first dose of varicella vaccine is received); or

(II) a parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity. For further information, see §97.67 of this title.

(ii) No later than August 1, 2000, children born on or after September 2, 1988, but before September 2, 1994, will be required to show proof by 30 days past their 12th birthday of either:

(I) one dose of varicella vaccine received on or after the first birthday (two doses are required if the child is 13 years old or older at the time the first dose of varicella vaccine is received); or

(II) a parent- or physician-validated history of varicella illness (chickenpox) or serologic confirmation of varicella immunity. For further information, see §97.67 of this title.

(H) Hepatitis A. Effective August 1, 1999, children subject to these requirements as described in §97.61 of this title (relating to Children and Students Included in Requirements) must comply with the following requirement for hepatitis A vaccine if the facility, school or institution attended is located in any of the following counties: Brewster, Brooks, Cameron, Crockett, Culberson, Dimmitt, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala. Serologic confirmation of immunity to hepatitis A or serologic evidence of infection is acceptable in lieu of vaccine. For further information, see §97.67 of this title. Children and students born on or after September 2, 1992, will be required to have received two doses of hepatitis A vaccine administered on or after their second birthday.

(3) Students in institutions of higher education (colleges, universities, and other teaching facilities above the high school level).

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

(E) Measles. Beginning January 1, 1992:

(i) all students defined previously in subparagraph (A) of this paragraph who were born on or after January 1, 1957, must show proof of either:

(I) two doses of measles vaccine administered since January 1, 1968, and on or after their first birthday and at least 28 days apart; or

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

(ii) (No change.)

(F)-(I) (No change.)

(J) Varicella. Beginning August 1, 1999, varicella vaccine is required of medical interns, residents, fellows, and students enrolled in health-related courses as defined in subparagraph (A) of this paragraph. One dose of vaccine is required for students who received this vaccine prior to 13 years of age; two doses are required for students who were not vaccinated before their thirteenth birthday. All doses of this vaccine must have been received on or after the first birthday. A history of varicella illness (chickenpox) validated by the student, the student's parent or the student's physician or serologic confirmation of varicella immunity is acceptable in lieu of vaccine. For further information, see §97.67 of this title.

§97.67. Verification of Immunity to Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella.

Section 97.63 of this title (relating to Required Immunizations) states that serologic confirmation of immunity to measles, rubella, mumps, hepatitis A, or hepatitis B are acceptable in lieu of vaccine against the serologically confirmed disease. If a child or student is unable to submit serological proof of immunity or serologic evidence of infection, then measles, rubella, mumps, hepatitis A, or hepatitis B vaccine is required. Evidence of measles, rubella, mumps, hepatitis A, or hepatitis B illnesses must consist of a laboratory report indicating confirmation of immunity or confirmation of infection. The school shall accurately record the results of any serologic tests supplied as proof of immunity. The original should be returned to the child/student or the child's/student's parent or guardian. All histories of varicella illness must be supported by a written statement from a physician or the child's/student's parent or guardian containing wording such as: "This is to verify that (name of student) had varicella disease (chickenpox) on or about (date) and does not need varicella vaccine." or by serologic confirmation of varicella immunity. School nurses may also write this statement to document cases of chickenpox

that they observe. The school shall accurately record the existence of any statements attesting to previous varicella illness or the results of any serologic tests supplied as proof of immunity. The original should be returned to the child/student or the child's/student's parent or guardian. If a child or student is unable to submit such a statement or serologic evidence, varicella vaccine is required.

This agency 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 April 26, 1999.

TRD-9902446
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: May 16, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 458–7236

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Chapter 101. Tobacco

25 TAC §101.3, §101.7

The Texas Department of Health (department) adopts an amendment to §101.3 and new §101.7, concerning general requirements for annual reports by manufacturers of tobacco products, and the security of report information, with changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11042), as a result of comments received during the 30-day comment period.

The department was required to adopt rules concerning the reporting of ingredients and nicotine content of cigarette and tobacco products by Chapter 1216, 75th Legislature, 1997, Health and Safety Code, Chapter 161, Subchapter N. The amendments to §101.3 clarifies the date the first report is due to the department, which is on or before December 1, 1999. Thereafter, subsequent reports are due on or before December 1 of each year.

In earlier rule making, in response to a comment on the proposed rules, the department committed to adopt a rule establishing the security and confidentiality of information submitted to the department. Section 101.7 fulfills that commitment.

New §101.7 increases the security of information submitted to the department by specifying physical and electronic methods to prevent access by unauthorized persons. The tobacco industry believes the information submitted to the department is extremely valuable, and has suggested methods to safeguard it. Many of these suggestions have been incorporated in the final rule, and the likelihood of unauthorized access has been greatly reduced.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting changes.

Comment: Concerning §§101.1-101.5, one commenter stated that the department incorrectly reasoned, that the monetary expense of complying with the rules would be reduced since the provisions are similar to existing rules in Massachusetts. In addition, the commenter stated that proposed changes may occur in the Massachusetts rule that will increase the costs of complying with the Texas rule as well as provide variant data from two states that would raise constitutional issues under the commerce clause of the United States Constitution.

Response: The department appreciates the concerns of the commenter. While the department may initiate further rule-making on this topic, it is outside the scope of the issues raised by the proposed and final rules. No change was made as a result of this comment.

Comment: Concerning §101.1-101.5, one commenter stated that "reporting should not be required in the absence of an adequate economic impact analysis" for large and small manufacturers.

Response: The department appreciates the concerns of the commenter. These issues were addressed at the time Chapter 101 was proposed and adopted and are outside the scope of the issues raised by the proposed and final rules. No change was made as a result of this comment.

Comment: Concerning §101.2, one commenter stated that the revised definition of the term "ingredient" moves away from the statutory language and makes "the reporting process substantially more confusing, burdensome and complicated . . . without significant benefit to consumers."

Response: The department appreciates the concerns of the commenter. While the department may initiate further rule-making on this topic, it is outside the scope of the issues raised by the proposed and final rules here. No change was made as a result of this comment.

Comment: Concerning §101.3, two commenters stated that the reporting date should be extended in order to allow time for notice and comment on more detailed security procedures from the department.

Response: The department agrees in part and disagrees in part with the commenter. The reporting date specified in §101.3 has been changed to December 1, 1999. However the comment period for the proposed rule is fixed by law at 6 months.

Comment: Concerning §101.3, one commenter stated that "the Attorney General should be asked to opine on whether the ingredient information . . . constitutes a trade secret and will be excepted from public disclosure." Furthermore, the commenter also stated that "the Attorney General should be asked to opine on whether ingredient information . . . is excluded from public disclosure as a trade secret because it is treated as a trade secret under the federal Smokeless Tobacco Act."

Response: The department appreciates the concerns of the commenter. While the department has requested an opinion similar to this, the topic is outside the scope of the issues raised by the proposed and final rules. No change was made as a result of this comment.

Comment: Concerning §101.5, one commenter stated that requiring a report of the total nicotine content, percent filter tip ventilation, pH of cigarette smoke and amount of nicotine delivery for tobacco products exceeds "the rule-making authority expressly granted by the statute".

Response: The department appreciates the concerns of the commenter. While the department may initiate further rule-making on this topic, it is outside the scope of the issues raised by the proposed and final rules. No change was made as a result of this comment.

Comment: Concerning §101.3 and §101.7, one commenter noted that the Bureau of Chronic Disease Prevention and Control, is now the Bureau of Disease and Injury Prevention.

Response: The department agrees with the commenter. The new name of the bureau is used in §101.3 and §101.7.

Comment: Concerning §101.7, one commenter stated that the department should have an ability to compare ingredients from different years and brands for research purposes, regardless of what format is used in the submission of information.

Response: The department agrees with the commenter. A requirement that information submitted electronically must be in a searchable data base format is in §101.7(f)(3).

Comment: Concerning §101.7, two commenters stated that there is no guidance in the rule concerning the permissibility or procedure for physical or electronic copying and duplication.

Response: The department agrees with the concerns. New language was added and §101.7(d) states that most copying is prohibited, though pen and paper may be permitted.

Comment: Concerning §101.7, one commenter stated that there are no provisions present in the rule regarding the storage of information in computers or other alternate formats in order to maintain security.

Response: The department agrees with the concerns. New language was added and §101.7(f) states detailed computer security procedures.

Comment: Concerning §101.7, two commenters stated their concerns about the physical construction of the room in which the information would be stored and the security measures that would be in place to prevent unauthorized access to the information during and after business hours.

Response: The department agrees with the concerns. New language was added and §101.7(e) elaborates the physical security that will be provided, and §101.7(c) establishes detailed access procedures. This system will ensure adequate security of the information at all times from unauthorized access.

Comment: Concerning §101.7, two commenters stated that the rule does not address the circumstances under which information can be reviewed by the necessary personnel. One commenter stated that there were no restrictions in place to limit access to a room when the information is being reviewed. Another commenter suggested that access should be allowed only when more than one individual is present.

Response: The department agrees with the concerns. New language was added and §101.7(c) provides details on access, and §101.7(c)(3) provides that individuals shall not be alone when accessing the material.

Comment: Concerning §101.7, two commenters stated that the rule does not specifically state which department employees are deemed "necessary" to have access to the information.

Response: The department agrees in part and disagrees in part with the concerns. The proposed language was deleted and new language was added to §101.7. The term "necessary" is no longer stated in §101.7. Instead, §101.7(c) uses the phrase "individuals with demonstrated need" and "authorized individuals". But ultimately the access will be at the discretion of the department as needed to implement current and future legislative purposes.

Comment: Concerning §101.7, two commenters stated that a custodian should be appointed that would be responsible for controlling access to ingredient information as well as to "maintain supervisory responsibility for the storage and protection of the information."

Response: The department agrees with the commenter, and has added new language in §101.7 in response to the comment. The Bureau Chief of the Bureau of Disease and Injury Prevention, or his designee will be known as the "information control officer". The information control officer will be responsible for supervising the storage of the information and for the protection of the information from unauthorized access.

Comment: Concerning §101.7, one commenter stated that the rule does not provide specifics on who will maintain "a log for those accessing the information" or what details will be included in the log. Furthermore, one commenter stated that the proposed rule does not outline any means of tracking documents as they are handled by employees nor is there a system to ensure that the information is returned to its secure location.

Response: The department agrees with the commenter, and has added new language in §101.7 in response to the comment. The Bureau Chief of the Bureau of Disease and Injury Prevention, or his designee is named as information control officer, will be responsible for maintaining a log of each authorized employee seeking access to the information and of the date, time and documents accessed. The department feels that naming an information control officer responsible for the protection of the information and establishing a detailed access log will provide adequate tracking of documents as well as ensure the information is returned to its secure location.

Comment: Concerning §101.7, three commenters stated that the proposed rule, in addition to not providing the specific terms of the confidentiality statement, does not indicate any penalties for unauthorized breech of confidentiality by a department employee. Furthermore, the commenters stated that the department has not presented the actual confidentiality statement for comment.

Response: The department agrees in part and disagrees in part with the commenters. Section 107(c)(1) describes the confidentiality agreement, but the department feels the complete text of such a document and the range of penalties for violations is not appropriate for inclusion in the rule because of length and because personnel sanctions are more properly part of the department's personnel policies. No change was made as a result of this comment.

Comment: Concerning §101.7, one commenter believes that "encoding or encryption" of data is needed once the information is received by the department in order to adequately protect the information.

Response: The department agrees with the commenter. New language was added and §101.7(f) provides for such encryption.

Comment: Concerning §101.10, one commenter stated that the rules "fail to provide an adequate mechanism for resolving disputes about what constitutes an ingredient trade secret in order to protect valuable confidential information from disclosure under the Texas Open Records Act.

Response: The department appreciates the concerns of the commenter. While the department may initiate further rule making on this topic, it is outside the scope of the proposed rule. No change was made as a result of this comment.

Comment: Concerning §101.10, one commenter stated that "risks to public health" must be defined so as to "allow public disclosure of ingredient information . . . only where it has made a specific finding, supported by evidence, that the ingredients whose identities are to be disclosed in fact pose a risk to human health in the manner such ingredients are used in cigarettes . . ."

Response: The department appreciates the concerns with the commenter. While the department may initiate further rule making on this topic, it is outside the scope of the proposed rule. No change was made as a result of this comment.

The commenters were a group of smokeless tobacco manufacturers who submitted joint comments (Brown & Williamson Tobacco Corp., Conwood Company, L.P., National Tobacco Co., L.P., Swedish Match North America, Swisher International, Inc., and United States Tobacco Company) through their attorneys, Patton Boggs LLP; a group of manufacturers who submitted joint comments (Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, and R.J. Reynolds Tobacco Company) through their attorneys, Covington & Burling, and the department's own staff. In addition to the written comments, department staff met with representatives of the manufacturers. All commenters favored the adoption of a rule to accord security to the information submitted to the department. The commenters generally favored a higher level of security than that proposed by the department.

The amendment and new section are adopted under the Texas Health and Safety Code Chapter 161, Subchapter N which requires the Texas Board of Health to adopt rules on the disclosure of ingredients in cigarettes and tobacco products, and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§101.3. General Requirements for Annual Reports by Manufacturers.

(a) On or before December 1, 1999, the manufacturer of any cigarettes or tobacco product, excluding cigars, distributed in the State of Texas shall report to the department, in accordance with these regulations, the ingredients and nicotine yield rating of any such cigarette or tobacco product, excluding cigars. Subsequent reports shall be due on or before December 1, 2000, and every December 1 thereafter. Manufacturers of cigars shall report on the above dates in accordance with §101.4 of this title (relating to Ingredient Reporting Requirements). The report should be sent to: Bureau Chief, Bureau of Disease and Injury Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756.

(b) (No change.)

§101.7. Security of Report Information.

(a) The department shall designate in writing an individual having the responsibility for control of ingredient information as the Information Control Officer. The Information Control Officer shall be the department's Bureau Chief, Bureau of Disease and Injury Prevention, or his/her designee. The Information Control Officer shall be responsible for maintaining and verifying the operation of an effective information control system and assuring adherence to the information protection requirements contained in this section. The department shall also designate in writing an individual to assume the responsibilities for control of ingredient information in case of the absence of unavailability of the Information Control Officer.

(b) Each manufacturer providing ingredient information pursuant to Health and Safety Code, Chapter 161, Subchapter N, relating to Disclosure of Ingredients in Cigarettes and Tobacco Products (hereinafter "ingredient information"), shall have the option of providing such information in electronic form. Electronic form shall include, without limitation, providing access to the ingredient information on a computer system established and maintained by the manufacturer and accessible by the department as provided in these rules.

(c) The Information Control Officer shall cause to be prepared, and shall personally approve, a list of individuals with demonstrated need to have access to the room where the ingredient information contained in reports submitted pursuant to Health and Safety Code, Chapter 161, Subchapter N, who have satisfied the requirements of this subsection (hereinafter "authorized individuals"). The Information Control Officer is responsible for keeping the list current, adding individuals, and immediately deleting any individual who no longer has a need to have access to the information, or who no longer satisfies the criteria for access.

(1) No individual is authorized to have access to reported ingredient information unless that individual has executed and provided to the Information Control Officer a Confidentiality Agreement emphasizing the law and the individual's obligations to keep sensitive information confidential.

(2) Individuals authorized to have access to reported ingredient information who are not full-time employees or contractors of the department must have satisfactorily undergone a thorough background check (including credit, criminal record, and civil litigation) by a qualified organization selected by the Information Control Officer, the results of which have been provided to and approved by the Information Control Officer.

(3) No authorized individual shall have access to reported ingredient information at any time or in any manner unless another authorized individual is present during the entire period of access.

(4) The Information Control Officer shall personally approve, in advance, all entries into any area in which report ingredient information is accessible or potentially accessible for purposes of cleaning, maintenance, computer maintenance, refurbishing, repair of such area, or similar activities, and shall maintain a list of all such entries, including time of entry and exit and identification of any individual present in such area who is not an authorized individual including the signature of each such person. An authorized individual shall be present during the entire period of any such entry, and shall be responsible for ensuring that no reported ingredient information is visible, and that any such unauthorized individual is properly identified and legitimately performing such activities.

(d) No copies of any brand-specific reported ingredient information shall be made by any means, including, without limitation, by photocopier, by camera, or electronically, typing on a typewriter, word processor or computer, scanning, or using a dictaphone or a telephone except by pen and paper, nor shall any reported ingredient information be otherwise or further transmitted or communicated by any means. With the exception of a computer terminal for the receipt or review of reported ingredient information supplied electronically, no such device, other than pen and paper, shall be permitted in any area in which reported ingredient information is accessible or potentially accessible, nor shall packages and briefcases be brought into

any such area, and the Information Control Officer shall take all steps necessary to ensure that these requirements have been met and that no reported brand-specific ingredient information has been removed from such area, or transmitted or communicated. Authorized individuals shall take all precautions necessary to ensure that no unauthorized person overhears or otherwise intentionally or inadvertently receives such information.

(e) Storage Room.

(1) Information identified by the manufacturer as confidential ingredient information in a report pursuant to Health and Safety Code, Chapter 161, Subchapter N, that is submitted in hard paper copy or in electronic form shall be secured and maintained in a secure storage room.

(2) Computer workstation(s) to be used to access information in reports submitted electronically in accordance with the procedures provided in these rules shall also be kept in a secure storage room.

(3) The storage room shall be located in an interior space that does not share a perimeter wall with an adjacent space occupied by a person or organization other than the department.

(4) The storage room walls shall be of substantial construction, and the walls shall not contain any windows or any mechanical openings larger than 90 square inches.

(5) There shall be only one door in the storage room, with a double cylinder deadbolt lock. The door shall be kept locked at all times when the room is not in use.

(A) There shall be no more than two keys to the door lock, which shall be kept in a locked key container under the direct control of the Information Control Officer and shall not be removed from the premises.

(B) The Information Control Officer shall insure that all keys issued shall be logged out and logged in and the log shall indicate the date, time and the person whom the key was issued and the date and time the key was returned.

(C) The keys shall be issued to only those persons who are authorized to be in the storage room, as determined by the Information Control Officer in accordance with subsection (c) of this section.

(f) Computer Security.

(1) The computer used for purposes of accessing ingredient information reported electronically pursuant to Health and Safety Code, Chapter 161, Subchapter N, not be used for any other purpose. The computer screen shall be aligned in such a manner that it is not viewable from the outside of the secure storage room when the door is open. The computer shall be turned off when not in use.

(2) The computer shall have a CD-ROM drive, and shall be connected to the internet and to a dedicated telephone line, which connections the department shall be responsible for maintaining. The computer shall not have a printer or other peripherals (other than a fingerprint reader), including removable magnetic or optical storage devices attached to it.

(3) An entity that reports ingredient information electronically under Chapter 161, Subchapter N of the Health and Safety Code shall provide the department with a CD-ROM containing electronic encryption software to enable an authorized user at the department to obtain access to the reported information on the department's computer. This information must be in the form of a searchable data base, with fields for brand name, ingredient, and year. The Information Control Officer shall be responsible for maintaining the CD-ROM in a locked container under the direct control of the Information Control Officer, and shall ensure that it shall not be provided to any person who is not an authorized individual pursuant to subsection (c) of this section.

(4) Access to ingredient information shall be initiated by an authorized individual at the department during business hours by inserting the CD-ROM provided by the reporting entity into the department's designated computer and establishing a connection to a computer system linked to the reporting entity. The reporting entity shall be responsible for:

(A) determining a means of connection to the department, whether by private network, Internet connection or otherwise; and

(B) providing on the CD-ROM given to the department the protocol for making the connection.

(5) After the connection has been made, the identity of the authorized users at the department who will be present when the information is displayed shall be authenticated by means of a fingerprint reader attached to the computer. The Information Control Officer shall ensure that each authorized individual completes the necessary procedures to obtain access.

(6) After the identity of the users at the department has been properly authenticated, access to the data files of the reporting entity containing the ingredient information reported pursuant to Health and Safety Code, Chapter 161, Subchapter N, will be provided.

(7) A session of reviewing data files shall terminate when either an authorized individual logs off in accordance with the protocol on the CD-ROM, or following a predetermined time period with no user activity.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458–7236

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter B. Contracting Requirements

25 TAC §406.53

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §406.53, concerning provider application requirements specific to ICF/MR, of Chapter 406, Subchapter B, concerning contracting requirements, without changes to the text as proposed in the February 12, 1999, issue of the *Texas Register* (24 TexReg 904).

The amendments allow the department to manage the capacity of individual state schools and state centers by transferring beds between facilities while ensuring that the capacity of all state schools and state centers does not exceed the number authorized in The Long Term Care Plan for People with Mental Retardation and Related Conditions required by Texas Health and Safety Code, §533.062. Additionally, the amendments permit a residential facility seeking initial certification in the ICF/MR program to have a capacity of more than six beds if that facility has been funded solely with state funds previously, and is approved by the department to apply to participate in the ICF/MR program as part of the refinancing initiative authorized by the General Appropriations Act, 75th Legislature, Article II, Page 68, Paragraph 9 (1997).

The amendments also delete an extraneous "shall" in subsection (a); replace commas with semicolons in subsection (a)(1)(A) and (B); delete an extraneous "the" before "TDMHMR" in subsection (b); substitute "person" for "individual" in subsection (b)(1)(B) to be consistent with terminology used elsewhere in the section; and replace "catchment area" with "local service area" consistent with current department usage. In addition, a reference in subsection (e) to the statutorily required long term care plan is updated with the plan's present title, which is "The Long Term Care Plan for People with Mental Retardation and Related Conditions." In that same subsection, the term "current" is added before the title of the plan to clarify that new ICF/MR applications may not exceed the total ICF/MR program capacity established by the plan in effective at the time of the application. Also in subsection (e), the statutory reference requiring the development of the plan has been added for the convenience of persons complying with the rule and the term "service capacity" is replaced with "authorized bed capacity" to be consistent with terminology used in the plan.

A hearing to accept oral and written testimony from members of the public was held on February 19, 1999, in Austin. No testimony was offered. Written comments were received from the parent/guardian of a state school resident, Garland; Parent Association for the Retarded of Texas; and Beaumont State Center.

A commenter questioned the department's justification for permitting a residential facility previously funded with state funds that is seeking initial certification in the ICF/MR program to have a certified capacity of more than six beds. The department responds the facilities that will be certified in the ICF/MR program with more than six beds under this provision are, at the time they seek certification, providing residential services to more than six individuals. The department will not require a facility to force some of their residents to move. These facilities are seeking initial certification in the ICF/MR program in compliance with the legislature's refinancing initiative authorized by the General Appropriations Act, 75th Legislature, Article II, Page 68, Paragraph 9 (1997).

Two commenters questioned why the preamble to the proposed amendment states that the department will transfer beds from one state school or center to another while the text of the amendment does not address transfers. The commenters suggested that the department could use this provision to justify reducing the census at one or more state schools, eventually resulting in closure of those facilities. The department responds that the explanation of the transfer of beds in the preamble was used to describe the mechanism by which certified bed capacities are adjusted. The department does not believe it necessary to include the transfer language in the text of the rule. Further the department responds that the provision may be used to reduce the certified capacity at one state school or center so that the certified capacity at another state school or center may be increased to address changing needs for campus-based residential services across the state. The provision is intended as an exception to the stated six-bed capacity limit to permit a state school or center to increase its capacity.

The amendments are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR 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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Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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Subchapter C. Vendor Payments

25 TAC §406.101

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §406.101 concerning vendor payments, of Chapter 406, Subchapter C, concerning vendor payments, without changes to the text as proposed in the February 12, 1999, issue of the *Texas Register* (24 TexReg 906).

The amendments stipulate that when an individual's Medicaid eligibility is established after the provision of services in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program in Texas, a claim for those services must be received by National Heritage Insurance Company (NHIC) no later than 180 calendar days from the date Medicaid eligibility is established. The current rule allows these claims to be received 30 days after the provider is notified of Medicaid eligibility or 180 calendar days after the end of the service month, whichever is later. The amendment will make the ICF/MR claims submission requirements consistent with those of other Texas human services programs.

No comments were received concerning the proposal.

The amendments are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR 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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For further information, please call: (512) 206-4516

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Chapter 409. Medicaid Programs

Subchapter D. Home and Community-based Services (HCS)

25 TAC §409.103, §409.109

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §409.103, concerning payment category assignment and provider claims payment, and §409.109, concerning corrective action and provider sanctions, of Chapter 409, Subchapter D, concerning home and community-based services (HCS), with changes to the text as proposed in the February 12, 1999, issue of the *Texas Register* (24 TexReg 906).

The amendments to §409.103 clarify the criteria for increasing the level-of-need of a consumer who exhibits dangerous behavior and for assigning the "pervasive plus" level-of-need (LON 9) to a consumer who exhibits extremely dangerous behavior. The amendments also replace all references to the Level-of-Care Assessment Form (TDHS Form 3650) with references to the department's new MR/RC Assessment Form, which has replaced Form 3650 for purposes of reporting a consumer's level-of-care and level-of-need. In addition, a reference in §409.103(c)(1) is corrected. The amendments clarify the criteria for increasing a consumer's LON when the consumer exhibits dangerous behavior and for assigning a "pervasive plus" LON to a consumer. In addition, use of the new assessment form in the HCS program will ensure consistency with its use in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program.

The amendments to §409.109 modify Principles 18 and 62 of the HCS Consumer Principles for Evidentiary Certification (Figure 1: 25 TAC § 409.109). Principle 18 is amended to clarify that no more than three consumers receiving HCS program or similar services for which the provider is reimbursed may live in a foster/companion care residence at any one time, and that no more than three consumers, whether or not receiving HCS program services, may live in a residential support residence at any one time regardless of their relationship to each other or to the care provider. Principle 62 is amended to allow for the provision of out-of-home respite services for up to six consumers at a time in a respite facility that is not the residence of any person. The amendment allows providers the option of offering out-of-home respite services in a respite facility that is not the residence of any consumer receiving HCS program services.

The proposed amendments §409.103(c)(1)(B)(iii) are revised upon adoption to clarify the criteria for increasing a LON assignment by specifying that the provider must have more staff available than would be necessary if the consumer did not exhibit the dangerous behavior and that staff must be constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs. In §409.109, the proposed language of Principle 62 is revised upon adoption to ensure that consumers' needs and welfare are addressed in the selection of respite sites. Principle 62.01 is revised to specify that when HCS respite services are provided in a residence, including that of a consumer receiving HCS program services, no more than three persons receiving HCS program services or similar services for which the provider is reimbursed may receive services in the residence at any one time. As proposed, the principle could have been interpreted to allow HCS services to be provided to five consumers in the residence of a sixth consumer or to allow an unlimited number of consumers to receive services in the residence of someone other than a consumer.

A hearing to accept oral and written testimony from members of the public was held on March 9, 1999, in Austin. No testimony was offered. Written comments were received from: two private providers of HCS services, Golden Rule Services of Friendswood and New Avenues of Hope of El Paso; Private Providers Association of Texas, Austin; Advocacy, Inc., Austin; and Amarillo State Center.

A commenter suggested that the proposed amendments to §409.103 be withdrawn because of ongoing problems with the department's utilization review process including the interpretation of utilization review rules by Medicaid staff. The department declines to withdraw the proposed revisions because they respond to providers' requests for clarification of the criteria for assigning increases in LON and are consistent with the recommendations of the Utilization Review Advisory Committee. Also, the revised rule will bring the HCS program criteria more closely into alignment with ICF/MR program criteria for increasing the LON and assigning the pervasive plus LON recently approved by the Texas Mental Health and Mental Retardation Board.

The same commenter recommended that the Utilization Review Advisory Committee be reconvened to consider rule revisions concerning increases in the LON and assignment of the pervasive plus LON, as well as potential revisions to the interpretive guidelines and other products developed by the committee during the spring of 1998. The commenter further stated that providers must be reimbursed adequately in order to provide

appropriate supervision for consumers and meet all other HCS program requirements. The Medicaid Steering Committee may request that a workgroup be organized to address utilization review issues. The department agrees that providers must receive adequate reimbursement and believes the revised rule will ensure this happens for those consumers who require additional supervision.

A commenter stated that the utilization review process is burdensome, confusing, overly prescriptive, and time-consuming and requested that the department offer additional training to providers. The department responds that a session on LON assignment, utilization review, and related topics has been scheduled during the ICF/MR and HCS providers conference to be held August 3-6, 1999, in Austin, and that it will work with the provider community to develop other opportunities for additional training.

Two commenters requested that the term "additional staff" in § 409.103(c)(1)(B)(iii) be defined in the rule. One of the two commenters stated that an increase to the next LON barely pays for a quarter-time equivalent and suggested that "additional staff" be defined as "staffing patterns that exceed the minimum staffing patterns identified in federal regulations." The department responds that federal regulations concerning community-based waiver programs do not set minimum staffing requirements. The department has clarified the criteria for increasing a LON assignment by specifying that the provider must have more staff available than would be necessary if the consumer did not exhibit the dangerous behavior and that staff must be constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs.

One commenter requested that the term "very challenging behavior" used in the current rule be retained, noting that some consumers exhibit behaviors that require additional staff to prevent or control yet the behaviors do not meet the criteria of "dangerous behavior" in the proposed amendments or in the existing guidelines. The department declines to make the suggested changes and responds that the amendments do not change the range of behaviors covered under the current rule. Both the current rule and the amendments address behaviors that are dangerous to the consumer or to others. The proposed revisions clarify that behavior is dangerous if it could result in serious physical injury, consistent with the recommendations of the Utilization Review Advisory Committee.

Two commenters requested that the description of "extremely dangerous behavior" in §409.103(c)(1)(C) be broadened and clarified. The commenters stated that behaviors other than those that might be life threatening also require constant one-to-one supervision if the consumer is to live in the community. One commenter cited consumers with a background of criminal conduct as an example, and stated that the behavior of these consumers may not be life threatening but does require constant supervision. The department will not expand the criteria for assignment of the pervasive plus LON to include other behaviors which are not life threatening. The pervasive plus LON and its reimbursement were specifically designed to address the increased levels of service and support which must be provided for that small number of consumers who display behavior that is life-threatening to that consumer or to others.

One commenter expressed support for Principle 18, which specifies that the residence of a consumer receiving foster/companion care or residential support must be designed for family-style living. The department acknowledges the support.

Another commenter questioned whether Principle 18 would restrict family members from providing foster/companion care services in the consumer's home. The department responds that it does not. The principle was amended to clarify that no more than three consumers receiving HCS program services or similar services for which the provider is reimbursed may be served in a foster/companion care home regardless of their relationship to one another or to the care provider. Under the waiver program, a family member who lives with an adult consumer may be paid to provide foster/companion care in the home when such an arrangement is considered to be in the consumer's best interests.

One commenter asked if two sites located on the grounds of a state facility would qualify as "non-institutional" sites in which respite services could be provided to up to six people. The department responds that a respite facility located at a state facility that is not ICF/MR certified would qualify as an acceptable respite facility under the revised principle. The state facility could use both of its sites to provide HCS respite services as long as no more than six consumers are receiving respite services at the state facility at any one time.

Two commenters stated that the revisions to Principle 62.01 are confusing and imply that respite services can be provided to five consumers in the residence of a sixth consumer. One commenter objected strongly to more than three consumers living in a single residence. The department agrees that the language as proposed is confusing and has revised it to specify that when HCS respite services are provided in a residence, including that of a consumer receiving HCS program services, no more than three persons receiving HCS program services or similar services for which the provider is reimbursed may receive services in the residence at any one time.

Two commenters commended the requirement in Principle 62.02 that the consumer or the consumer's LAR must agree to the provision of respite services in the consumer's residence. They asked that the principle also require that the preferences of the resident consumer for activities that will occur during the respite period be given priority over the preferences of the respite consumer. The department responds that the recommendation is worthy of consideration, but declines to make the revision at this time without the opportunity for all stakeholders to review and comment on the suggestion.

Two commenters recommended that a limit be placed on the number of days respite may be provided in a consumer's residence. The commenters stated that a limit is necessary to ensure that the resident consumer is not constantly disrupted by the temporary presence of other consumers, and offered to work with providers, consumers and LARs, other advocates, and the department to determine an appropriate limit. The department responds that the recommendation is worthy of consideration, but declines to make the revision at this time without the opportunity for all stakeholders to review and comment on the suggested limit.

The amendments are adopted under the Texas Health and Safety Code, § 532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, § 531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC)

with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS program.

§409.103. Payment Category Assignment and Provider Claims Payment.

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

(c) Reimbursement for HCS foster care, residential supports, and day habilitation is based upon the program participant's payment category assignment and the reimbursement rate for the specific service component provided.

(1) The payment category for a program participant is based upon a level-of-need (LON) assignment completed by TDMHMR or its designee as part of the level-of-care determination according to §406.203 of this title (relating to Eligibility for Level-of-care Determination). LON assignments are derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the program applicant/participant and from selected items on the MR/RC Assessment Form.

(A) An HCS Program applicant or participant is assigned one of the following five levels of need:

(i) An intermittent LON (LON 1) is assigned if the individual's ICAP service level score equals 7, 8, or 9;

(ii) A limited LON (LON 5) is assigned if the individual's ICAP service level score equals 4, 5, or 6;

(iii) An extensive LON (LON 8) is assigned if the individual's ICAP service level score equals 2 or 3;

(iv) A pervasive LON (LON 6) is assigned if the individual's ICAP service level score equals 1;

(v) Regardless of an individual's ICAP service level score, a pervasive plus LON (LON 9) is assigned if the individual meets the criteria set forth in subparagraph (C) of this paragraph.

(B) LON assignments 1, 5, and 8, made in accordance with subparagraph (A) of this paragraph may be increased to the next LON if:

(i) the individual exhibits dangerous behavior that could cause serious physical injury to the individual or others;

(ii) a written behavior intervention plan has been implemented that is based on ongoing written data, targets the dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the dangerous behavior occurs;

(iii) more staff are needed and available than would be needed if the individual did not exhibit dangerous behavior;

(iv) staff are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(v) the MR/RC Assessment Form is correctly scored with a "1" in the "Behavior" section.

(C) An individual who exhibits extremely dangerous behavior and whose MR/RC Assessment Form is correctly scored with a "2" in the "Behavior" section is assigned a pervasive plus LON (LON 9). Extremely dangerous behavior:

(i) could be life threatening to the individual or to others;

(ii) must be targeted with individualized objectives in a written behavior intervention plan that is based on ongoing written data and specifies intervention procedures to be followed when the behavior occurs; and

(iii) is managed by provider staff whose duty is to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day.

(2) The provider completes the ICAP, enters the resulting service level score on the MR/RC Assessment Form, and completes the remainder of the form Information entered on the MR/RC Assessment Form must represent the applicant's/participant's current status. A completed MR/RC Assessment Form is submitted to TDMHMR for initial program enrollment or for annual eligibility reevaluation.

(3) TDMHMR reviews LON assignments and, if made in accordance with criteria in this subsection, approves the LON assignment.

(A) If TDMHMR determines that information submitted for a LON was not correct or if information previously submitted has changed, the LON assignment is reevaluated and may be changed by TDMHMR. If the LON assignment is changed, reimbursement paid to providers will be adjusted back to the date of the original LON assignment in order to reflect the appropriate LON assignment.

(B) The provider in disagreement with an individual's changed LON assignment may request reconsideration by TDMHMR or its designee. Providers must submit a written request for reconsideration of a changed LON assignment in accordance with §409.120 of this title (relating to Utilization Review) to TDMHMR or its designee within 10 calendar days of notification of a changed LON assignment.

(4) TDMHMR may perform annual reevaluations of LON assignments in conjunction with annual reevaluations of ICF-MR LOC.

(A) If a higher LON assignment is requested at the time of the annual eligibility reevaluation, the provider must submit supporting documentation to TDMHMR describing the changes in the individual's needs in accordance with §409.120 of this title (relating to Utilization Review).

(B) A provider in disagreement with TDMHMR's denial to increase an individual's LON assignment may request reconsideration by TDMHMR. The provider must submit a written request for reconsideration of the denial in accordance with §409.120 of this title (relating to Utilization Review) to TDMHMR or its designee within 10 calendar days of notification of the denial.

(5) Providers requesting a change to a higher LON at times other than the annual reevaluation must submit an MR/RC Assessment Form with supporting documentation describing the changes in the individual's needs to TDMHMR in accordance with §409.120 (relating to Utilization Review). A provider in disagreement with TDMHMR's denial to increase an individual's LON assignment may request reconsideration by TDMHMR or its designee. The provider must submit a written request for reconsideration of the

denial in accordance with §409.120 of this title (relating to Utilization Review) to TDMHMR within 10 calendar days of notification of the denial.

(d)-(g) (No change.)

§409.109. Corrective Action and Provider Sanction.

The HCS provider must be in continuous compliance with the HCS Consumer Principles for Evidentiary Certification. Each HCS provider will receive a certification review at least annually in order to maintain certification status. The guidelines specified in §§409.110-409.115 of this title (relating to Hazards to Health, Safety, and Welfare; Level I Action; Level II Action; Level III Action; Unannounced or Intermittent Review Visits; and Discretionary Certification Sanctions) are used by TDMHMR to determine the need for provider sanctions and/or provider onsite follow up review visits that occur before those required concurrently with the recertification review. Current certification review corrective action plans required from the provider and related timelines remain in effect.
Figure: 25 TAC §409.109

This agency 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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Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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Subchapter E. Home and Community-based Waiver Services - OBRA (HCS-O)

25 TAC §409.167

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §409.167, concerning corrective action and provider sanction, of Chapter 409, Subchapter E, concerning home and community-based waiver services - OBRA (HCS-O) with changes to the text as proposed in the February 12, 1999, issue of the *Texas Register* (24 TexReg 909).

The amendments modify Principles 22 and 102 of the HCS-O Consumer Principles for Evidentiary Certification (Figure 1: 25 TAC §409.167). Principle 22 is amended to clarify that no more than three consumers receiving HCS-O program or similar services for which the provider is reimbursed may live in a foster/companion care residence at any one time, and that no more than three consumers, whether or not receiving HCS-O program services, may live in a residential support residence at any one time regardless of their relationship to each other or to the care provider. Principle 102 is amended to allow for the provision of out-of-home respite services for up to six consumers at a time in a respite facility that is not the residence of any person.

The proposed amendments to Principle 102 are revised upon adoption to ensure that consumers' needs and welfare are addressed in the selection of respite sites. Principle 102.01 is revised to specify that when HCS-O respite services are provided in a residence, including that of a consumer receiving HCS-O program services, no more than three consumers receiving HCS-O program services or similar services for which the provider is reimbursed may receive services in the residence at any one time. As proposed, the principle could have been interpreted to allow HCS-O services to be provided to five consumers in the residence of a sixth consumer or to allow an unlimited number of consumers to receive services in the residence of someone other than a consumer.

A hearing to accept oral and written testimony from members of the public was held on March 9, 1999, in Austin. No testimony was offered. Written comments were received from New Avenues of Hope of El Paso, private provider of HCS-O services; Private Providers Association of Texas, Austin; Advocacy, Inc., Austin; Beaumont State Center; and Amarillo State Center.

One commenter expressed support for Principle 22, which specifies that the residence of a consumer receiving foster/companion care or residential support must be designed for family-style living. The department acknowledges the support.

A commenter suggested that the addition of examples in HCS-O Principle 102.03 would be helpful. The department responds that the principles adequately describe the characteristics of a facility appropriate for providing respite to six consumers and therefore declines to provides examples of specific types of facilities. The department encourages providers to consult the department about specific sites they are considering.

One commenter asked if two sites located on the grounds of a state facility would qualify as "non-institutional" sites in which respite services could be provided to up to six people. The department responds that a respite facility located at a state facility that is not ICF/MR certified would qualify as an acceptable respite facility under the revised principle. The state facility could use both of its sites to provide HCS-O respite services as long as no more than six consumers are receiving respite services at the state facility at any one time.

Two commenters stated that the revisions to Principle 22 are confusing and imply that respite services can be provided to five consumers in the residence of a sixth consumer. One commenter objected strongly to more than three consumers living in a single residence. The department agrees that the language as proposed is confusing and has revised it to specify that when HCS-O respite services are provided in the residence of a consumer receiving HCS-O program services, no more than three consumers receiving HCS-O program services or similar services for which the provider is reimbursed may receive services in the residence at any one time.

Two commenters commended the requirement in Principle 102.02 that the consumer or the consumer's LAR must agree to the provision of respite services in the consumer's residence. They asked that the principle also require that the preferences of the resident consumer for activities that will occur during the respite period be given priority over the preferences of the respite consumer. The department responds that the recommendation is worthy of consideration, but declines to make the revision at this time without the opportunity for all stakeholders to review and comment on the suggestion.

Two commenters recommended that a limit be placed on the number of days respite may be provided in a consumer's residence. The commenters stated that a limit is necessary to ensure that the resident consumer is not constantly disrupted

by the temporary presence of other HCS-O consumers, and offered to work with providers, consumers and LARs, other advocates, and the department to determine an appropriate limit. The department responds that the recommendation is worthy of consideration, but declines to make the revision at this time without the opportunity for all stakeholders to review and comment on the suggested limit.

The amendments are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS-O program.

§409.167. Corrective Action and Provider Sanction.

The HCS-O provider must be in continuous compliance with the HCS-O Consumer Principles for Evidentiary Certification as described in this section. Each HCS-O provider will receive a certification review at least annually in order to maintain certification status. The guidelines specified in §§409.168-409.173 of this title (relating to Hazards to Health, Safety and Welfare; Level I Action; Level II Action; Level III Action; Unannounced or Intermittent Review Visits; and Discretionary Certification Sanctions) are used by TDMHMR to determine the need for provider sanctions and/or provider on-site follow-up review visits that occur before those required concurrently with the recertification review. Current certification review corrective action plans required from the provider and related timelines that are referenced in the HCS-O Program Provider Manual remain in effect, if applicable.

Figure: 25 TAC §409.167

This agency 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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Chair, Texas MHMR Board

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For further information, please call: (512) 206-4516

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Subchapter L. Mental Retardation Local Authority (MRLA) Program

25 TAC §409.531

The Texas Department of Mental Health and Mental Retardation (department) adopts amendments to §409.531, concerning certification status, of Chapter 409, Subchapter L, concerning mental retardation local authority (MRLA) program, with changes to the text as proposed in the February 12, 1999, issue of the *Texas Register* (24 TexReg 909).

The amendments modify Principle P14 and Principle P16 of MRLA Program Principles for Program Providers (Figure 1: 25 TAC §409.531). Principle P14 is amended to require that no more than three consumers receiving MRLA program or similar services for which the provider is reimbursed may live in a foster/companion care residence at any one time, and that no more than three consumers, whether or not receiving MRLA program services, may live in a residential support residence at any one time. Principle P16 is amended for the provision of out-of-home respite services for up to six consumers at a time in a respite facility which is not the residence of any person.

The proposed amendments to Principle 16.1 are revised upon adoption to ensure that consumers' needs and welfare are addressed in the selection of respite sites. Principle 16.1 is revised upon adoption to replace "are" with "shall" for consistency with other principles. Principle 16.2 is revised to specify that when MRLA respite services are provided in a residence, including that of a consumer receiving MRLA program services, no more than three consumers receiving MRLA program services or similar services for which the provider is reimbursed may receive services in the residence at any one time. As proposed, the principle could have be interpreted to allow MRLA services to be provided to five consumers in the residence of a sixth consumer or to allow an unlimited number of consumers to receive services in the residence of someone other than a consumer.

A hearing to accept oral and written testimony from members of the public was held on March 9, 1999, in Austin. No testimony was offered. Written comments were received from the Private Providers Association of Texas, Austin; Advocacy, Inc., Austin; and Beaumont State Center;.

One commenter expressed support for Principle 14, which specifies that the residence of an consumer receiving foster/companion care or residential support must be designed for family-style living. The department acknowledges the support.

Another commenter questioned whether Principle 14 would restrict family members from providing foster/companion care services in the consumer's home. The department responds that it does not. The principle was amended to clarify that no more than three consumers can be served in a foster/companion care home regardless of their relationship to one another or to the care provider. Under the waiver program, a family member who lives with an adult consumer may be paid to provide foster/companion care in the home when such an arrangement is considered to be in the consumer's best interests.

Two commenters stated that the revisions to Principle 16.2 are confusing and imply that respite services can be provided to five consumers in the residence of a sixth consumer. One commenter objected strongly to more than three consumers living in a single residence. The department agrees that the language as proposed is confusing and has revised it to specify that when MRLA respite services are provided in the residence of a consumer receiving MRLA program services, no more than three consumers receiving MRLA program services or similar services for which the provider is reimbursed may receive services in the residence at any one time.

Two commenters commended the requirement in Principle 16.3 that the consumer or the consumer's LAR must agree to the provision of respite services in the consumer's residence. They asked that the principle also require that the preferences of the resident consumer for activities that will occur during the respite period be given priority over the preferences of the respite consumer. The department responds that the recommendation is worthy of consideration, but declines to make the revision at this time without the opportunity for all stakeholders to review and comment on the suggestion.

Two commenters recommended that a limit be placed on the number of days respite may be provided in a consumer's residence. The commenters stated that a limit is necessary to ensure that the resident consumer is not constantly disrupted by the temporary presence of other MRLA consumers, and offered to work with providers, consumers and LARs, other advocates, and the department to determine an appropriate limit. The department responds that the recommendation is worthy of consideration, but declines to make the revision at this time without the opportunity for all stakeholders to review and comment on the suggested limit.

A commenter suggested that the addition of examples in MRLA Principle 16.4 would be helpful. The department responds that the principles adequately describe the characteristics of a facility appropriate for providing respite to six consumers and therefore declines to provides examples of specific types of facilities. The department encourages providers to consult the department about specific sites they are considering.

The amendments are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the MRLA program.

§409.531. Certification Status.

(a) MRLA program providers contracting with TDMHMR for participation in the MRLA Program must be in continuous compliance with the MRLA Program Principles for Program Providers as described in Mental Retardation Local Authority Program Principles for Program Providers. Each MRLA program provider participating in the MRLA Program will receive a certification review conducted by TDMHMR or its designee at least annually in order to maintain certification status.

Figure: 25 TAC §409.531(a)

(1) TDMHMR personnel will conduct all certification reviews of MRLA program providers operated by the local MRA.

(2) TDMHMR or its designee will conduct all certification reviews of non-MRA operated program providers.

(b) Certification review corrective actions required from the program provider as determined by prior reviews under the HCS or MRLA Consumer Principles for Certification and related timelines remain in effect until the first certification review as an MRLA program provider.

This agency 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 April 26, 1999.

TRD-9902424
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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Chapter 419. Medicaid State Operating Agency Responsibilities

Subchapter O. Enrollment of Medicaid Waiver Program Providers

25 TAC §§419.701-419.710

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§419.701 - 419.710 of Chapter 419, Subchapter O, concerning Enrollment of Medicaid Waiver Program Providers, which was proposed in the February 12, 1999, issue of the *Texas Register* (24 TexReg 910). Sections 419.701 - 419.707 and 419.709 are adopted without changes. Sections 419.708 and 419.710 are adopted with changes.

The new sections establish the process and conditions under which TDMHMR enrolls providers of home and community-based services waiver programs including Home and Community-based Services (HCS), Home and Community-based Services - OBRA (HCS-O), and Mental Retardation Local Authority (MRLA) Programs operated by TDMHMR as authorized by the Health Care Financing Administration in accordance with §1915(c) of the Social Security Act. The rule as adopted is intended to improve the services provided to a consumer who selects a newly enrolled provider by increasing the provider's knowledge about the requirements for participation as a program provider. The new rules also allow the department to terminate a provider agreement with a provisionally certified provider that has not been certified within the time frames specified in the rules to ensure that a provider remains knowledgeable about and able to meet current program standards. To ensure the consistency of provider qualifications, the conditions under which the department will approve the assignment of a provider agreement are formally defined.

All references to time periods expressed in "days" have been changed to "calendar days" for consistency with other sections of the rules. Language has been changed in §419.710(b) to require a program provider to notify TDMHMR at least 30 days, rather than 60 days, prior to the proposed assignment of its provider agreement. Language has been revised in §419.710(f) to allow TDMHMR to place a vender hold on a provider upon receiving a provider's notice of proposed assignment of its provider agreement. Language has been

added in §419.710(f)(5) to provide that TDMHMR will release a vendor hold if an assignment is not approved.

Testimony was provided by Private Providers Association of Texas (PPAT), Austin, at a public hearing held on February 19, 1999, in TDMHMR Central Office, Austin.

Written comments were submitted by Parent Association for the Retarded of Texas (PART), Austin; a parent of a state school resident, Garland; Avondale House, Houston; EduCare, Austin; Private Providers Association of Texas (PPAT), Austin; Richmond State School, Richmond; and Big Spring State Hospital, Big Spring.

A commenter recommended adoption of the subchapter as proposed and noted that the formalized enrollment process, orientation for potential providers, criteria for accepting application packets, duration of the provisional certification, and assignment of a waiver provider agreement assist a potential provider in preparing to provide services. The department appreciates the commenter's support of the rules.

Regarding §419.705(b)(1)(B)(i), two commenters recommended replacing the term "developmental disabilities" with the term "related conditions" in specifying the work experience requirements of the employee or contractor responsible for managing and overseeing direct services. The commenters stated that use of the broader term "developmental disabilities" exceeds the department's authority, which is to serve persons with mental retardation or related conditions. The department responds that "related conditions" are a subset of the larger category of developmental disabilities and that experience in serving persons with developmental disabilities has practical applicability to planning and delivering services to persons with mental retardation and related conditions. The work experience required in this section does not permit the department to serve a broader population than that authorized by state law.

One commenter stated that the requirement in §419.707(a) for providers to obtain a Home and Community Support Services Agency (HCSSA) license is burdensome, expensive, and does not enhance the quality of services. The commenter suggested that the licensure standard be incorporated into the Home and Community-based Services (HCS) standards to eliminate a second set of standards, license, and surveys. The department responds that TDMHMR waiver program providers are required to obtain and maintain a HCSSA license under the Texas Health and Safety Code, Chapter 142, Subchapter A (relating to Home and Community Support Services License). Under agreement with the Texas Department of Health, a TDMHMR waiver program provider may be deemed as meeting the licensure requirements if the provider serves only persons enrolled in a waiver program certified and monitored by TDMHMR. Although this agreement does not eliminate the requirement for obtaining the license, it does exclude duplicative surveys under two sets of standards.

With regard to §419.707(a), two commenters recommended that the 270-day time period for submitting a provisionally certified provider's HCSSA license be shortened because it is too long for consumers to be served by a provisionally certified provider. The department responds that the 270-day time period allows the provisionally certified provider adequate time to obtain its initial HCSSA license. Further, consumers may not enroll with or receive waiver program services from a provider until the provider has a current HCSSA license and enters into a provider agreement with the department.

With regard to §419.708, a commenter questioned the value of TDMHMR terminating a waiver program provider agreement with provisionally certified providers only because a specified time period has elapsed. The commenter suggested alternatives that would allow a provider to retain the provisional certification status without time limits. The department declines to revise the requirements as recommended because the section is intended to provide a mechanism for the department to end a provider agreement with a provider that fails to enroll an eligible consumer and, hence, fails to achieve certified status within the time period specified. The department considers the time periods reasonable and realistic for providers while ensuring that consumers are able to enroll with a provider that can meet current program standards.

Concerning the same section, two other commenters recommended that the time periods contained in the section be shortened to ensure the safety of the individuals served. The department responds that the time periods give a new provider enrolling under the requirements of this rule, as well as a current provisionally certified provider, a reasonable amount of time to enroll its first consumer. In all circumstances, the rule requires an initial on-site certification review by the department or its designee no less than 120 calendar days following the enrollment of the first consumer. This 120-day time frame represents the maximum time in which the department or its designee must conduct the initial on-site certification review and allows the department to review sufficient service delivery data to determine if the initial 12-month certification should be granted. The department notes that meeting the provisional certification requirements, as set forth in §419.706(c), helps ensure that providers are prepared to serve consumers. Furthermore, prior to the initial certification review, the local mental retardation authority that assisted the consumer and LAR in selecting a provider remains available to assist the consumer and LAR, if necessary, after enrollment. Also, when a consumer moves from a state school to waiver services a regional monitor visits the consumer within 30 days of the move. The department is currently developing a process to require that department staff visit the first consumer enrolled in a provisionally certified provider's program to ensure the health and welfare of the consumer prior to the certification review visit.

Two commenters requested that the requirement in §419.710(b) for a program provider to notify TDMHMR 60 days prior to the date the provider proposes to assign its provider agreement be reduced to 30 calendar days. One of the commenters noted that a 30-day time period for finalizing such an assignment reflects current industry practice. The department responds that it has revised the time period in §419.710(b) to allow 30 calendar days to notify TDMHMR of a proposed assignment.

Two commenters disagreed with the provisions in §419.710(c)(3) which would hold the assignor and assignee jointly and severally liable for liabilities or obligations that arise from actions, events, or conditions that existed prior to the effective date of an assignment of a waiver program provider agreement. The commenters also disagreed with the provisions in §419.710(g) which would allow the recoupment of Medicaid payments from the assignor or assignee for liabilities or obligations arising from any act, event, or condition which occurred or existed prior to the effective date of the assignment. The commenters recommended that the language be revised to reflect that the assignor would be held solely responsible for actions, events, or conditions occurring prior to

the effective date of the provider agreement assignment. The commenters reasoned that the provisions would impose undue delays in accomplishing an assignment transaction. One of the commenters stated that it would be unnecessary to also hold the assignee responsible for such circumstances because the department's interests would be adequately protected by the provisions in §419.710(f) which allow the department to impose a vendor hold on payments to the assignor until all audit exceptions are resolved. The same commenter requested that the department suspend implementation of the rules until a meeting could be held with the department to discuss reasonable alternatives to the proposal.

The department responds that it declines to make the recommended change because simply holding the assignor liable or withholding the assignor's Medicaid payments will not adequately protect the department from potential liabilities of the assignor. Even with 30 days' notice of an assignment, the amount of Medicaid payments that the department will be able to place on vendor hold may not be adequate to cover the liabilities. Additionally, the department may not be able to recover funds from the assignor beyond those placed on vendor hold because, after the date of the assignment, the assignor may not have recoverable assets or even exist as a business entity. To adequately protect its interests, the department must hold the assignee responsible for liabilities arising prior to the effective date of the assignment because it is the assignee, in the process of deciding whether to purchase the waiver program provider agreement from the assignor, that is in the best position to carefully investigate and consider potential liabilities related to the provider agreement. Furthermore, it is reasonable to expect the assignee and assignor to resolve any issues about potential liabilities within the terms of their purchase agreement. In response to the commenter's concerns about §419.710(g), the department believes that its interests in enforcing the assignee's liability are best protected by recouping Medicaid payments from the assignee. The department declines to postpone adoption of the rules.

A commenter expressed concern regarding §§419.710(c)(3) and 419.710(g) because the sections impede or effectively eliminate the acquisition of poor quality or financially unstable providers by providers known to have a solid record of service excellence and organizational stability. The department responds that it is not necessary to rely on the assignment of a provider agreement to resolve the poor performance of some providers - that is the purpose of the certification review process as described in department rules.

A commenter noted that in the situation when a provider has failed and is terminating services, the proposed rules could impede the smooth transition of consumers to a stable provider. Regarding the same situation, another commenter stated that if the consumers are at risk, the potential for liability may be so great that no responsible provider will assume the obligations of the provider agreement, leaving the department with no options favorable for the consumers. The department responds that in either situation, the transition of consumers to another provider does not have to occur through an assignment of contract process - a smooth and successful transition can be accomplished by following procedures the department has established for transferring consumers to other providers.

The commenter noted the provisions in the rules "address extremely isolated situations" and impose additional requirements which will unnecessarily complicate and interfere with the transaction of future assignments. The department responds that it is responsible for protecting its interests in all situations.

Two commenters stated that they had no comment.

The new sections are adopted under the Texas Health and Safety Code, §532.015(a), which provides TDMHMR with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has designated TDMHMR as the operating agency for selected Medicaid waiver programs.

§419.708. Provider Certification.

(a) No later than 120 calendar days following TDMHMR's approval of the enrollment of the first consumer in a provisionally certified provider's program, TDMHMR or its designee conducts a certification review in accordance with Chapter 409, Subchapter D of this title (relating to Home and Community-based Services), Chapter 409, Subchapter E of this title (relating to Home and Community-based Services - OBRA), or Chapter 409, Subchapter L of this title (relating to Mental Retardation Local Authority Program), as applicable.

(b) TDMHMR may terminate the waiver program provider agreement of a provisionally certified provider that is not certified within 540 calendar days following the effective date of the waiver program provider agreement.

(c) TDMHMR may terminate the waiver program provider agreement of a provisionally certified provider that was provisionally certified prior to the effective date of this subchapter but is not certified within 365 calendar days following the effective date of this subchapter.

(d) A program provider whose waiver program provider agreement has been terminated in accordance with subsections (b) or (c) of this section must re-apply to enroll as a program provider in accordance with this subchapter.

§419.710. Waiver Program Provider Agreement Assignment.

(a) No assignment of a waiver program provider agreement is effective until it is approved in writing by TDMHMR. The effective date of the assignment may not precede the date of TDMHMR's approval of the assignment.

(b) A program provider must notify TDMHMR Medicaid Administration in writing at least 30 calendar days prior to the proposed assignment of its waiver program provider agreement. This notification must include the legal name of the proposed assignee, proposed date of the assignment, and the provider vendor number. If the program provider fails to provide this notification in a timely manner, approval of the assignment may be delayed.

(c) Upon approval of the assignment, the program provider (hereafter referred to as the assignor) and the assignee, as indicated, are subject to the following provisions.

(1) The assignee must keep, perform and fulfill all of the terms, conditions and obligations that must be performed by the assignor under the provider agreement and this subchapter.

(2) The assignee is subject to all pending conditions which exist against the assignor, including but not limited to, any plan of correction, audit exception, vendor hold, or proposed contract termination.

(3) The assignor and the assignee are jointly and severally liable to TDMHMR for any liabilities or obligations that arise from any act, event, or condition which occurred or existed prior to the effective date of the assignment and which is identified in any survey, review, or audit conducted by TDMHMR.

(4) The assignor must complete and submit billing claims to TDMHMR for services provided prior to the approval date of the assignment in accordance with state rules.

(5) The assignee must complete the enrollment/transfer process within 95 calendar days of the effective date of the assignment if any consumer requests to transfer into or from the assignor's program or any initial enrollments into the assignor's program are pending as of the effective date of the assignment;

(6) The assignor must give written notification to each consumer or the consumer's LAR in the assignor's program of the proposed assignment, the proposed effective date of the assignment and of the consumer's option to transfer to another program provider.

(7) The assignee must retain written documentation signed by each consumer or the consumer's LAR verifying that the notification was received and indicates the consumer's or LAR's choice whether to receive services from the assignee after the assignment is effective or to transfer to another program provider.

(d) TDMHMR does not approve an assignment unless:

(1) the proposed assignee holds a current waiver program provider agreement with TDMHMR or is eligible to enter into a provider agreement with TDMHMR as specified in §419.707(a) of this title (relating to Provider Agreement);

(2) consumers are enrolled and receiving services or individuals are pending enrollment (as indicated by the TDMHMR Automated Enrollment and Billing System) in the assignor's program; and

(3) the assignor and the proposed assignee submit an assignment agreement to TDMHMR that includes:

(A) a statement that the assignor and assignee agree to the provisions set forth in subsection (c) of this section;

(B) the effective date of the assignment, the name and address of the assignor and assignee and the provider vendor number to be assigned;

(C) a statement that the assignment is subject to and contingent upon TDMHMR's written approval of the assignment or the assignment is void;

(D) the signatures of the authorized representatives of the assignor and the assignee acknowledged before a notary public;

(E) a blank space for TDMHMR's representative to sign indicating approval of the assignment agreement; and

(F) any other provision required by law to make the assignment agreement legally enforceable.

(e) TDMHMR may disapprove an assignment for good cause including, but not limited to:

(1) a vendor hold on Medicaid payments is currently in effect for a program operated by the proposed assignee; or

(2) a proposed contract/provider agreement termination is in effect for a program operated by the proposed assignee.

(f) On the date TDMHMR receives notice of a proposed assignment in accordance with subsection (b) of this section, TDMHMR may place a vendor hold on Medicaid payments to the assignor until all findings made from a survey, billing and payment review or audit which has been or is being conducted by TDMHMR are resolved.

(1) At its discretion, TDMHMR may allow an assignor to obtain a surety bond or an irrevocable letter of credit in order to release the vendor hold prior to completing a survey, billing and payment review, or audit.

(2) The surety bond or irrevocable letter of credit must be for a period of three years. The three-year period begins with the effective date of the assignment. TDMHMR specifies the amount of the surety bond or letter of credit.

(3) The surety bond or irrevocable letter of credit must be in a format acceptable to TDMHMR and must not include requirements for TDMHMR to:

(A) return the original bond or irrevocable letter of credit prior to receipt of payment; or

(B) submit a sight draft or any other draft or demand requirement other than TDMHMR's letter demanding payment.

(4) If the assignor submits an acceptable surety bond or irrevocable letter of credit to TDMHMR, TDMHMR releases the vendor hold.

(5) If TDMHMR does not approve the proposed assignment, the vendor hold is released.

(g) TDMHMR may recoup Medicaid payments from the assignor or assignee for liabilities or obligations arising from any act, event, or condition which occurred or existed prior to the effective date of the assignment and which is identified in a survey, review, or audit conducted by TDMHMR.

(h) If TDMHMR approves an assignment, TDMHMR or its designee conducts an on-site certification review within 120 calendar days of the effective date of the assignment in accordance with Chapter 409, Subchapter D of this title (relating to Home and Community-based Services), Chapter 409, Subchapter E of this title (relating to Home and Community-based Waiver Services - OBRA), or Chapter 409, Subchapter L of this title (relating to Mental Retardation Local Authority Program), as applicable.

This agency 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 April 26, 1999.

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Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

Subchapter B. Early Childhood Intervention Service Delivery

25 TAC §621.21

The Interagency Council on Early Childhood Intervention (ECI) adopts an amendment to §621.21, concerning purpose, without changes to the proposed text as published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1299) and will not be republished.

The amendment is adopted to reflect changes in statutory revisions by the 75th Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with 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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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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25 TAC §621.23

The Interagency Council on Early Childhood Intervention (ECI) adopts an amendment to §621.23, concerning Service Delivery Requirements for Comprehensive Services, without changes to the proposed text as published in the November 27, 1998, issue of the *Texas Register* (23 TexReg 11897) and will not be republished.

The amendment is adopted as a result of the rule review process. The amendment will update the rule. Elsewhere in this issue of the *Texas Register*, the ECI has adopted the review of the following sections: §§621.21-621.33. This review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with 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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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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Chapter 621. Early Childhood Intervention

The Interagency Council on Early Childhood Intervention (ECI) adopts amendments to §§621.25-621.31, 621.41-621.43, 621.45, 621.46, 621.48, and 621.49, concerning Early Childhood Intervention Service Delivery and Procedural Safeguards and Due Process Procedures, without changes to the proposed text as published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 363) and will not be republished.

The amendments are adopted as a result of the rule review process. The amendments will update existing regulations. Elsewhere in this issue of the *Texas Register*, the ECI has adopted the review of the following sections: §§621.41-621.43, 621.45, 621.46, 621.48, and 621.49.

No comments were received regarding adoption of the amendments.

Subchapter B. Early Childhood Intervention Service Delivery

25 TAC §§621.25-621.31

The amendments are adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with 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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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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Subchapter C. Procedural Safeguards and Due Process Procedures

25 TAC §§621.41-621.43, 621.45, 621.46, 621.48, 621.49

The amendments are adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with 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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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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Subchapter D. Early Childhood Intervention Advisory Committee

25 TAC §621.62

The Interagency Council on Early Childhood Intervention adopts an amendment to §621.62, concerning Early Childhood Intervention Advisory Committee, without changes to the proposed text as published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 369) and will not be republished.

This section was previously adopted on an emergency basis to comply with federal regulations. The emergency adoption was published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 339).

This section amends the size, composition and voting status of members of its Advisory Committee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 73, which authorizes the Interagency Council on Early Childhood Intervention to establish rules regarding services provided for children with developmental delays.

This agency 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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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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Proposal publication date: January 22, 1999
For further information, please call: (512) 424-6750

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25 TAC §621.64

The Interagency Council on Early Childhood Intervention (ECI) adopts an amendment to §621.64, concerning Advisory Committee Procedures, without changes to the proposed text as published in the November 27, 1998, issue of the *Texas Register* (23 TexReg 11902) and will not be republished.

The amendment was necessary in subsection (e). There is a reference to Article V, when in fact the proper reference is Article IX.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with 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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Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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Subchapter E. Early Childhood Intervention Service Delivery for Milestones Services

25 TAC §§621.81-621.84

The Interagency Council on Early Childhood Intervention (ECI) adopts the repeal of §§621.81-621.84, concerning Early Childhood Intervention Service Delivery for Milestones Services, without changes to the proposed text as published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1299) and will not be republished.

The rules are no longer necessary and are therefore being repealed.

Elsewhere in this issue of the *Texas Register* the ECI is contemporaneously adopting the review of Subchapter E. Early Childhood Intervention Service Delivery for Milestones Services, §§621.81-621.84. This review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Chapter 73, which provides the Interagency Council on Early Childhood Intervention with the authority to promulgate rules consistent with 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.

Filed with the Office of the Secretary of State on April 26, 1999.

TRD-9902455
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Effective date: May 16, 1999
Proposal publication date: February 26, 1999
For further information, please call: (512) 424-6750

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 11. Health Maintenance Organizations

Subchapter W. Single Service HMOs, Including Dental and Vision

28 TAC §11.2200, §11.2206

The Texas Department of Insurance adopts amendments to §11.2200 and new §11.2206 concerning dental health maintenance organizations (HMOs). The sections are adopted with changes to the proposed text as published in the December 25, 1998, issue of the *Texas Register* (23 TexReg 13012).

These proposed amendments and new section are necessary to implement legislation enacted by the 75th Legislature in Senate Bill 385 which requires dental HMOs with more than 10,000 enrollees in Texas to offer a dental point-of-service plan to an employer, association, or other private group arrangement that employs or has 25 or more employees or members and that contributes to the cost of dental benefit plan coverage to its employees only through an HMO provider panel. The rules set out disclosure requirements about the point-of-service plan that must be included as part of the group enrollment application, and if applicable, the group enrollment form, to allow informed, objective decisions in selecting dental care coverage. After receiving public comments on the proposed rules, the department has made changes based upon the public comments, as well as for clarification, punctuation, and consistency. The following revisions to the referenced sections were made: Section 11.2200(7) was changed from "point-of-service group enrollment application" to "point-of-service group disclosure statement;" language in the definition was changed from "[a]n application provided by an HMO that provides" to "[a] written statement containing information about" dental benefits; and "which statement" was added before "the HMO must provide to." The phrase "if the employer, association or private group arrangement accepts the dental point-of service plan" was added to §11.2200(7)(B) to clarify that disclosure must be made to potential enrollees only if an employee accepts a point-of-service option offered by an HMO. "Group Enrollment Application for Point-of-Service Plans" was omitted from the caption of §11.2206 and "Certificates" was changed to "Certification of Compliance." The phrase "and, if the employer elects to offer the point-of-service option, each enrollment form," was added after "each point-of-service application" in §11.2206(a). Proposed §11.2206(a)(4) was deleted.

Section 11.2200 adds definitions for "insurer," "point-of-service group disclosure statement," "point-of-service plan," and "qualified actuary." New §11.2206 sets forth the disclosures that must be included in the point-of-service disclosure statement and the requirement that an HMO that provides a point-of-service plan retain certification that the indemnity benefits correspond with benefits arranged or provided by the HMO.

General: A commenter commended the department for drafting rules that increase consumer awareness of available dental benefit coverage. Additionally, the commenter requested confirmation that under Insurance Code Article 20A.38 an enrollee should not be required to use either the HMO or indemnity benefits first nor should either product be subjected to any waiting periods or other negative incentives.

Agency Response: The department agrees that a goal of Article 20A.38 is to increase consumer awareness of the differences between the HMO and indemnity benefits available to the enrollee and to enable the enrollee to make an informed choice between the two. The department confirms that if an HMO offering a point-of-service option were to place constraints on access to one type of benefit in order to encourage an enrollee to select the other benefit, this would be contrary to the legislative intent behind the statute and the requirements of the rules.

Comment: A commenter requested clarification about a perceived discrepancy between requirements of the Insurance Code and statements in the preamble to the proposed rules. The commenter interprets the preamble to require that an HMO that offers a point-of-service option to an employer in accordance with Article 20A.38 must also offer the point-of-service option to every employer with which it contracts, regardless of the number of employees employed by those employers.

Agency Response: Neither Article 20A.38 nor the rules require an HMO to offer a point-of-service option to an employer, association, or other private group arrangement unless it employs 25 or more employees or has 25 or more members.

Comment: A commenter believes that the preamble to the proposed rule did not clearly outline all conditions required regarding applicability of the statute.

Agency Response: The department wishes to clarify that the statute applies to all HMOs that meet all of the conditions set forth in Article 20A.38 sections (a), (b) and (c). The requirements of all three sections must be read in conjunction with each other to give full meaning to the statute. The statute applies to each dental HMO or other single service HMO that provides dental benefits with more than 10,000 enrollees in this state enrolled in dental benefits plans based on a provider panel. All of these HMOs must offer a point-of-service plan to any employer, association, or other private group arrangement that employs or has 25 or more employees or members if the HMO's dental provider plan is the sole delivery system offered by the employer to the employees. It is then up to the employer, pursuant to Article 20A.38(d), to decide whether to make the employee responsible for paying the cost for the premium for the point-of-service plan to the extent that the premium exceeds the cost for the plan provided through a provider panel. Article 20A.38 also requires that the premium for the point-of-service option be based on the actuarial value of the point-of-service coverage.

Comment: A commenter was troubled by the use of the word "comparable" in the preamble to the proposed rules, noting that the word "corresponding" is used in the text of the rules and in Article 20A.38.

Agency Response: The department regrets any confusion the use of the word "comparable" may have caused. As used in the preamble, "comparable" was intended to be synonymous with "corresponding." The department agrees that the rules and the statute require corresponding benefits.

Sections 11.2200(6) and 11.2206(a): A commenter asked for the addition of language in the definition of "insurer" or the disclosure sections indicating that an insurer is not required to provide disclosure above and beyond the disclosure that the HMO is required to provide under the statute and rules.

Agency Response: The department agrees that there is no requirement in Article 20A.38 or the rules that an insurer with which an HMO has contracted for the provision of indemnity services must implement the disclosures required by this statute. These rules do not require an insurer to provide any disclosures or notice. However, the rules do provide that the HMO and insurer can contractually agree that the insurer will prepare the certification that relates to the indemnity coverage provided by the insurer on behalf of the HMO. However, the HMO retains responsibility for ensuring that the certification prepared by the insurer complies with the statute and rules.

Section 11.2206(a)(4): A commenter requested deletion of language requiring disclosure of premiums to prospective enrollees because it would increase costs and enrollees may be mislead about the cost for such coverage.

Agency Response: The department agrees that this requirement is problematic in that Article 20A.38(d) permits an employer to require an enrollee who selects coverage under the point-of-service plan to pay the premium costs that exceed the amount of premium paid by the employer for the HMO coverage. Therefore, the HMO would not be in a position to know or provide an enrollee with the actual costs of the coverage that the enrollee will be required to pay. Accordingly, this paragraph was deleted from the adopted rules. It should be noted, however, that these rules do not relieve an HMO of its responsibility to comply with other rules that require disclosure of premium costs by an HMO.

Section 11.2200(7)(B): A commenter requested that the phrase "if the employer, association or private group arrangement accepts the dental point-of service plan" be added after "any prospective enrollees in a dental point-of-services plan."

Agency Response: The department agrees with the commenter and has added this language to clarify that the disclosures required by the statute and rules must be made to potential enrollees only if the employer accepts the point-of-service option offered by the HMO.

For with changes: Texas Dental Association, DeltaCare, and National Association of Dental Plans.

The amendments and new section are adopted under the Insurance Code Articles 20A.38, 20A.22, and 1.03A. Article 20A.38 requires an HMO with more than 10,000 enrollees in Texas that offers dental benefits to offer a dental point-of-service plan to an employer, association, or other private group arrangement that employs or has 25 or more employees or members if its dental provider panel is the sole delivery system of dental benefits to its employees. Insurance Code Article 20A.38(c)(3) requires an HMO to provide disclosure statements as required by rules adopted under the Insurance Code for each dental plan offered. Insurance Code Article 20A.22(a) authorizes the Commissioner of Insurance to promulgate rules and regulations to carry out the provision of the Act. Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

§11.2200. Definitions.

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

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

(6) Insurer - An insurance company, a group hospital service corporation operating under Chapter 20 of the Texas Insurance Code, a fraternal benefit society operating under Chapter 10 of the Code, or a stipulated premium insurance company operating under Chapter 22 of the Code.

(7) Point-of-service group disclosure statement - A written statement containing information about dental benefits which statement the HMO must provide to:

(A) an employer, an association or other private group arrangement to whom the HMO must offer a dental point-of-service plan; and

(B) any prospective enrollees in a dental point-of service plan, if the employer, association or private group arrangement accepts the dental point-of service plan.

(8) Point-of-service plan - A plan provided through a contractual arrangement under which indemnity benefits for the cost of dental care services other than emergency care or emergency dental care are provided by an insurer in conjunction with corresponding benefits arranged or provided by an HMO that provides dental benefits and under which an enrollee may choose to obtain benefits or services under either the indemnity plan or the HMO plan in accordance with specific provisions of Insurance Code, Article 20A.38.

(9) Qualified actuary - An actuary who is either:

(A) a Fellow of the Society of Actuaries, or

(B) a Member of the American Academy of Actuaries.

§11.2206. Mandatory Disclosure Statements, Certification of Compliance.

(a) Each point-of-service group enrollment application and, if the employer, association or private group arrangement elects to offer the point-of-service option, each enrollment form, shall include a disclosure statement written in readable and understandable format that includes the following information:

(1) a statement that the dental indemnity benefits are provided through an insurer and that the dental care services are offered or arranged by the HMO;

(2) the name of the insurer and the name of the HMO offering the benefits; and

(3) an explanation that, in order to receive benefits:

(A) from the HMO, an enrollee must utilize only network providers, except for emergency dental care, and pay the copayments specified in the evidence of coverage;

(B) under the indemnity plan, the enrollee may utilize any provider but prior to receiving reimbursement, the enrollee must meet the required deductible and is responsible for the coinsurance amount specified in the policy or certificate.

(b) Each HMO offering a point-of-service plan shall retain on file a certification by an HMO officer that the point-of-service plan includes dental indemnity benefits that correspond to the benefits contained in the HMO evidence of coverage. The HMO may enter into agreement with the insurer or a qualified actuary to prepare the certification, provided that the HMO retains responsibility for obtaining the certification and shall keep the certification in its possession.

This agency 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 April 13, 1999.

TRD-9902403
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: May 13, 1999
Proposal publication date: December 25, 1998
For further information, please call: (512) 463–6327

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuel Tax

34 TAC §3.201

The Comptroller of Public Accounts adopts new §3.201, concerning the Motor Fuel Testing Fee, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1954). The text of the rule will not be republished.

As requested by the Commissioner of Agriculture and authorized by Texas Civil Statutes, Article 8614, the Comptroller of Public Accounts proposes a fee to be collected on a periodic basis from each distributor and supplier who deals in motor fuel. The purpose of the fee is to provide funds for the Texas Department of Agriculture to administer and enforce a program to test motor fuel for octane rating and alcohol content.

No comments were received regarding adoption of the new rule.

This new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements Texas Civil Statutes, Article 8614, §9.

This agency 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 April 23, 1999.

TRD-9902394
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: May 13, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 463–4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Subchapter B. Enforcement Action

37 TAC §3.22, §3.24

The Texas Department of Public Safety adopts amendments to §3.22 and §3.24, concerning the instances in which written warnings will not be issued and speed law enforcement, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12869).

The justification for these amendments is to clarify department policy.

No comments were received regarding adopting these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902277
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Subchapter D. Traffic Supervision

37 TAC §3.59, §3.62

The Texas Department of Public Safety adopts amendments to §3.59, Regulations Governing Transportation of Hazardous Materials and §3.62, Regulations Governing Transportation Safety. Section 3.62 is adopted with changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12870). Section 3.59 is adopted without changes and will not be republished.

The justification for the amendments will be to ensure to the public that a motor carrier is in compliance with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

The amendments are necessary to implement changes resulting from revisions, additions, and interpretations to the Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations. Additional amendments are provided to clarify the department's requirements for municipal certification of police officers to enforce the safety regulations and the procedures for administering the Compliance Audit Review Program.

Section 3.62(k)(3)(B) is amended to correct a grammatical error in spelling and §3.62(l)(2)(D) concerning Administrative Penalties is amended to correct the amount of the penalty which was incorrectly shown as $11,000 in the proposed rules to the correct amount of $1,100.

A summary of the comments received and the department's response to the comments follow:

COMMENT: The rules pertaining to §3.62(h), Municipal Certification Requirements, do not assure inspections will be conducted safely to the drivers and motoring public and the commercial motor vehicle drivers have knowledge that the inspectors are trained and certified to conduct such inspections through the use of special insignia that would be worn on the uniform of the certified officer.

RESPONSE: The department believes that it should be the responsibility of every officer enforcing the safety regulations to ensure that the roadside inspection is conducted in a safe environment for all parties involved as a normal course of action. Thus the need to add the suggested language, which is overly broad and open to varying interpretations which would only serve to create confusion in the program, is unnecessary.

The department is aware of the concerns of the motor carrier industry about which officers have been certified to enforce the regulations. However, we believe that the decision to require an insignia to be worn on the uniform of the certified police officers should be at the option of the municipalities within the uniform dress policies of the agencies and not a requirement that should be placed on the agencies by the department. We also believe that this is an issue that should be addressed at the motor carrier-police administrator level instead of at the driver-police officer level. To address this issue, the department will update and maintain an accurate list of all municipal police officers that have been trained and certified to enforce the regulations along with the agency contact person and make the list available to the motor carrier industry.

COMMENT: The language in §3.62(h)(2) concerning the de-certification of a municipality's authority to enforce the safety regulations should read "shall" instead of "may."

RESPONSE: The department believes that the language in the proposed rules provides a mechanism to de-certify a municipality's authority to enforce the safety regulations under certain conditions while also providing both sides with the opportunity to resolve problems without de-certification. Although this language is more permissive than that suggested by the industry, it has the potential of accomplishing the same results.

COMMENT: The rules pertaining to §3.62(j), Maintaining Certification, should include language pertaining to suspending the officer for failing to attend refresher training.

RESPONSE: The department believes that the language in the proposed rules adequately address this issue in that an officer must attend minimum refresher training once each year in order to maintain his or her certification.

COMMENT: The rules pertaining to §3.62(k), Safety Audit Program, concerning follow-up investigations of motor carriers that have been subject to an enforcement action should be amended to exclude any motor carrier having a satisfactory rating at the time of the enforcement action. Texas Motor Transportation Association (TMTA) is concerned that the use of existing personnel to conduct a follow-up investigation of a motor carrier that had obtained a satisfactory rating is unreasonable, unfair, and an inappropriate use of the department's resources given the thousands of motor carriers in the state that have never received a compliance review.

RESPONSE: The fact that a motor carrier had obtained a satisfactory safety rating in the previous investigation should not be the determining factor in deciding whether or not to conduct a follow-up investigation. The purpose of the follow-up investigation is to verify that the motor carrier has taken the steps to correct the violations that were discovered in the previous investigation that led to the enforcement action. The follow-up investigations are consistent with the department's requirement to implement a Compliance Review Program that is compatible with the federal program.

A public hearing was held on February 17, 1999 at the department headquarters in Austin. Listed below are the comments received at the hearing followed by the department's response:

COMMENT: Clarification was requested concerning what the cities are going to be required to do under the requirements of §3.62(h)(1)(A) pertaining to the cities executing a Memorandum of Understanding with the department concerning the working policies and procedures of the inspection program whereby the resources of all agencies will be maximized, duplication of efforts will be minimized, and uniformity in the program will be maintained.

RESPONSE: The purpose of the Memorandum of Understanding is to provide a framework within the safety enforcement program that will ensure that all agencies, both state and municipal, are conducting the inspections in the same manner, that all enforcement policies are uniform, and that all agencies recognize and accept the inspections of all of the certified agencies. The department will require the municipalities to enter into the Memorandum of Understanding and agree to comply with the same enforcement standards that the department is subject to on a national level. This framework will allow a motor carrier to travel between the different certified municipalities and throughout the state with no change in operating procedures resulting from different enforcement program.

COMMENT: Issue concerning the cities' acceptance and issuance of the Commercial Vehicle Safety Alliance (CVSA) decal.

RESPONSE: The Memorandum of Understanding will allow the department to distribute CVSA decals to the municipalities to be used by the police officers and placed on the vehicle to show that the vehicle has passed the inspection with no defects. As a condition of the Memorandum of Understanding, an agency agrees to accept a decal issued by any certified officer for a period of ninety days without re-inspecting the vehicle unless the officer detects an obvious violation. This program minimizes duplication of efforts.

COMMENT: Clarification of the language in §3.62(h)(1)(A) concerning maintaining uniformity in the inspection program. Will the department provide a representative for each region to serve as an overseer for the municipalities participating in that region?

RESPONSE: The department believes that the key to maintaining uniformity in the inspection program is communication. Thus, a representative from the department's License & Weight Service in each region will be assigned to maintain contact with the municipal police agency within the region on a routine basis to provide updates to the program, answer questions concerning the inspection and enforcement procedures, and help to resolve any conflicts or issues that may arise within the program.

COMMENT: The rules pertaining to §3.62(j), Maintaining Certification requiring that an officer must attend a refresher training course approved by the department once each year. What will the training pertain to and where and when will it be provided?

RESPONSE: The department is currently finalizing the outline for the refresher training course. The course will consist of information from each course offered in §3.62(i). An officer will be required to attend only that portion of the refresher training applicable to the course in which he or she has been certified. The one-week refresher course will be conducted at the Department of Public Safety Academy in Austin during the week of May 10 - 14 and May 17 - 21.

COMMENT: Issue concerning the officer's ability to conduct Level V inspections.

RESPONSE: The reference to the Level V inspections was taken from the CVSA guidelines and are intended to be used for terminal inspections completed by troopers conducting compliance reviews and not as one of the levels of roadside inspections conducted by the municipal officers.

COMMENT: The rules pertaining to §3.62(i)(4), Motor Coach course. Clarification was requested concerning the availability of and requirements to attend the Motor Coach Inspection Course.

RESPONSE: The Motor Coach Inspection Course is available for municipal officers. While the course is not mandatory for municipal officers, the officers must take the course in order to conduct inspections of the motor coach.

The interested parties to the proposed rules in attendance at the public hearing included Sergeant Lonnie Robinson and Patrolman R. Metcalf of the Pasadena Police Department, Sergeant Russell Schmidt of the Austin Police Department, and Les Findeisen of the Texas Motor Transportation Association.

The amendments are adopted pursuant to Texas Civil Statutes, Article 6675d, Texas Transportation Code, Chapter 644, and Texas Government Code, §411.006(4) and §411.018, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorize the director to adopt rules regulating the safe operation of commercial motor vehicles.

§3.62. Regulations Governing Transportation Safety.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 382, 385, 386, 390-393, and 395-397 including amendments and interpretations thereto. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely; and,

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code §643.001(6);

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) regional highway administrator means the director of the Texas Department of Public Safety;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code §548.001(1);

(9) foreign commercial motor vehicle has the meaning assigned by Texas Civil Statutes, Article 6675c-2;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; and,

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 48,000 pounds when operating intrastate;

(C) a vehicle designed to transport more than 15 passengers, including the driver; and,

(D) a vehicle transporting hazardous material requiring a placard.

(2) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code §548.001(1) is subject to the record keeping requirements in 49 Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(3) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(4) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(5) All regulations contained in Title 49, Code of Federal Regulations, Parts 382, 385, 386, 390-393 and 395-397, and all amendments thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(6) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

(d) Exemptions. Exemptions to the adoption in subsection (a) of this section were made pursuant to Texas Transportation Code §644.052, Texas Civil Statutes, Article 6675d, §5 (as authorized by Senate Bill 370 and House Bill 1418), and §5 (as authorized by Senate Bill 1486), and §3A and are adopted as follows:

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting a seed cotton module; or,

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty.

(3) Drivers in intrastate commerce who are not transporting hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug testing requirements contained in Title 49, Code of Federal Regulations, Part 382.

(4) The maintenance of any type of government form, separate company form, driver's record of duty status, or a driver's daily log is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if;

(A) the owner has another method by which he keeps, as a business record, the date, time and location of the delivery of product or service so that a general record of the driver's hours of service may be compiled; or

(B) another law requires or specifies the maintenance of delivery tickets, sales invoices, or other documents which show the date of delivery and quantity of merchandise delivered, so that a general record of the driver's hours of service may be compiled; and

(C) the business records generally include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day; and

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, Part 395.8(j)(2) for drivers used for the first time or intermittently.

(5) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(6) Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(7) Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except 391.11(b)(4) and Subpart E, Parts 393, 395, and 396, except §396.17.

(e) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

(1) Title 49, Code of Federal Regulations, Part 393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period.

(3) Drivers of vehicles operating in intrastate transportation claiming the 150 mile radius exemption in subsection(d)(4) of this section must return to the work reporting location and be released from work within 12 consecutive hours.

(4) Title 49, Code of Federal Regulations, Part 391.11b(l), is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age.

(5) Title 49, Code of Federal Regulations, Part 391.1lb(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(6) The Alcohol Testing Regulations of Title 49, Code of Federal Regulations, Part 382 will become effective January 1, 1996, for intrastate drivers.

(7) The Drug Testing Regulations of Title 49, Code of Federal Regulations, Part 382, as in effect on December 21, 1990, under Part 391.81, remain in effect under this adoption of Part 382.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 Code of Federal Regulations 571.121) applicable to the vehicle at the time it was manufactured.

(9) Texas Transportation Code, Chapter 642, concerning identifying markings on commercial motor vehicles shall take precedence over Title 49, Code of Federal Regulations, Part 390.21, for vehicles operated in intrastate commerce.

(10) Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2) is not applicable to intrastate motor carriers making residential deliveries of heating fuels, public utilities as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, and the Texas Water Code and charged with the responsibility for maintaining essential services to the public to protect health and safety provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code §644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has been on duty for more than 70 hours in seven days.

(f) Vision Waiver. Under this section the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under Title 49, Code of Federal Regulations, Part 391.41(b)(10) provided that intrastate drivers meet the vision standards specified in § 16.9 of this title (relating to Qualifications to Drive in Intrastate Commerce).

(1) Applications for a waiver shall be accepted by the Texas Department of Public Safety's Motor Carrier Bureau.

(2) Waivers will be approved by the director or his designee and issued in conjunction with the medical examiner's certificate required by Title 49, Code of Federal Regulations, Part 391.43.

(3) Waivers granted under this paragraph are valid for a period not to exceed two years after the date of the medical examiner's physical examination of the vision waiver applicant.

(4) Applications for renewals will be granted provided the applicant continues to meet the vision standards adopted by the Texas Department of Public Safety (intrastate drivers must meet vision standards specified in §16.9 of this title, relating to Qualifications to Drive in Intrastate Commerce) and all other requirements of Title 49, Code of Federal Regulations, Part 391.43.

(5) Applicants denied a waiver may appeal the decision of the department by contacting the director, in writing, within 20 days after receiving notification of the denial. The request for an appeal must contain the name, address and driver's license number of the applicant, the reasons why the waiver should be granted, and include all pertinent documents which support the reasons why the waiver should be granted. The denial is stayed pending the review of the director. The decision of the director is final.

(g) Authority to Enforce.

(1) An officer of the department may enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d.

(2) An officer of the department may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of a federal safety regulation or rule adopted under Texas Transportation Code, §644, and Texas Civil Statutes, Article 6675d, by declaring the vehicle or operator out-of-service using the North American Standard Uniform Out-of-Service Criteria as a guideline.

(3) Police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (h) of this section and certified by the department may enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 2.4 million or more; or,

(C) a municipality any part of which is located in a county bordering the United Mexican States.

(4) A certified police officer from an authorized municipality may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality if the vehicle or operator of the vehicle is in violation of a federal safety regulation or rule adopted under Texas Transportation Code, §644, and Texas Civil Statutes, Article 6675d, by declaring the vehicle or operator out-of-service using the North American Standard Uniform Out-of-Service Criteria as a guideline.

(h) Municipal Certification Requirements.

(1) Police officers from an authorized municipality may be trained and certified to enforce the federal safety regulations provided the municipality:

(A) executes a Memorandum of Understanding with the department concerning the working policies and procedures of the inspection program whereby the resources of all agencies will be maximized, duplication of efforts will be minimized, and uniformity in the inspection program will be maintained;

(B) implements a program that ensures their officers are conducting the inspections following the guidelines approved by the department;

(C) implements a program that ensures their officers perform the required number of inspections annually to maintain the officers' certification;

(D) agrees to suspend immediately any officer that fails to maintain their certification or that fails to perform the inspections following the guidelines approved by the department;

(E) provides a list to the department by January 31st of each year of the officers that have been suspended and are no longer certified;

(F) provides all roadside inspection data to the department through electronic systems that are compatible with the department's system within 30 days of the inspection.

(2) Failure to comply with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality may constitute grounds to decertify the municipality's authority to enforce the federal safety regulations.

(i) Training and Certification Requirements.

(1) Minimum standards. Police officers from the municipalities specified in subsection (g) of this title and certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections.

(2) Hazardous materials. Police officers desiring to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections.

(3) Cargo Tank Specification. Police officers desiring to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) successfully complete a Cargo Tank Inspection Course:

(D) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections.

(4) Motor Coach. Police officers desiring to enforce motor coach requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Motor Coach Inspection Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 24 level one inspections.

(5) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(6) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all police officers attending the training course, including the police officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each police officer or municipality the cost of providing the training course(s).

(j) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a municipal officer must:

(A) Perform a minimum of 32 Level I or Level V inspections per calendar year.

(B) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I or II) shall be conducted on vehicles containing non-bulk quantities of hazardous materials.

(C) If the officer is certified to perform cargo tank/bulk packaging inspections, at least eight inspections (Levels I or II) shall be conducted on vehicles transporting hazardous materials in cargo tanks.

(D) If the officer is certified to perform motorcoach/bus inspections, at least eight of the inspections shall be conducted on motorcoaches/buses.

(2) To maintain certification, an officer must attend minimum refresher training approved by the department once each year.

(3) In the event an officer does not perform the minimum number of inspections within a calendar year, his or her certification shall be suspended.

(4) To be recertified, an officer shall pass the applicable examinations which may include the North American Standard Inspection, the General Hazardous Materials Inspection Course, the Cargo Tank/Bulk Packaging Inspection Course, and/or the Motorcoach/Bus Inspection Course and repeat the specified number of inspections with a certified officer.

(5) any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (i) of this section.

(k) Safety Audit Program. The rules in this subsection, as authorized by Texas Transportation Code §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety

rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) Definitions specific to the Safety Audit Program are as follows:

(A) Compliance Review means an on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability means an evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent Hazard means any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, Part 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k).

(F) Unsatisfactory Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k).

(2) Inspection of Premises.

(A) Authority to Inspect. An officer or employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code§644.155.

(B) Entry of Premises. The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) by presenting to the motor carrier;

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code §644.104, is liable to the state for a civil penalty not to exceed $1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code §644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(3) Compliance Review Audits. A Compliance Review will be conducted based upon the following criteria:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles which are substantiated by valid documentation. Complaints for the purpose of this criterion include involvement in a fatality accident;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an Unsatisfactory Safety Rating from the immediately previous Compliance Review;

(D) requests from the Legislature and state or federal agencies; and,

(E) request for a safety rating determination.

(4) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, Part 385.7. The following safety ratings will be assigned:

(i) Satisfactory Safety Rating;

(ii) Conditional Safety Rating;

(iii) Unsatisfactory Safety Rating.

(C) The provisions of Title 49, Code of Federal Regulations, Part 385.13 relating to "Unsatisfactory safety rating - Prohibition on transportation of hazardous materials and passengers" is hereby adopted by the department and is applicable to intrastate motor carriers.

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 15 days of the completion of the compliance review.

(i) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

(ii) A notification of an "unsatisfactory" safety rating will also include a notice that the motor carrier will be subject to the provisions of Title 49, Code of Federal Regulations, Part 385.13 which prohibit motor carriers rated "unsatisfactory" from operating a commercial motor vehicle to transport:

(I) hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations; or

(II) more than 15 passengers, including the driver.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, Part 385.13 will be subject to a civil suit filed by the Attorney General from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) Request for a change in a safety rating. A request for a change in a safety rating must be submitted to the Manager of the Motor Carrier Bureau within the time schedule provided in Parts 385.15 and 385.17 of Title 49, Code of Federal Regulations.

(G) The safety rating assigned to a motor carrier will be made available to the public upon request.

(H) Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

(l) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of Texas Civil Statutes, Article 6675d or a provision of the Texas Transportation Code Title 7, Subtitle B, Chapter 522 (relating to Commercial Driver's License), Subtitle C, Chapters 541 - 600 (relating to the Rules of the Road),and Subtitle F, Chapter 644 (relating to Commercial Motor Vehicles), including any amendments not codified in the Texas Transportation Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code §644.153(b).

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation. A penalty under this section may not exceed the maximum penalty provided for violations of a similar federal safety regulation as provided under 49 United States Code, §521(b), §5123, and Title 49, Code of Federal Regulations, Parts 386.81, 386.82, and Appendix A to Part 386.

(A) Record keeping violations. These are violations of the administrative requirements of the Federal Safety Regulations. A penalty shall not exceed $550 for each violation. Each day of a violation shall constitute a separate violation, except that the total of all administrative penalties assessed against any violator for all violations relating to any single violation shall not exceed $2,750.

(B) Serious pattern of safety violations. These violations are considered the middle range of violations between those of record keeping noncompliance and a willful case of negligence. These violations are not an isolated event but rather a tolerated pattern of noncompliance. An administrative penalty may be assessed in an amount not to exceed $1,100 for each violation; except that the maximum penalty for each such pattern of safety violations shall not exceed $11,000.

(C) Substantial health or safety violations. These are violations which could reasonably lead to or have resulted in serious personal injury or death. An administrative penalty may be assessed in an amount not to exceed $11,000 for each violation.

(D) Employee non-record keeping violations. These are acts committed by a driver of a non-record keeping nature that are considered to be of gross negligence or a reckless disregard for safety. The employee may be assessed an administrative penalty in an amount not to exceed $1,100.

(E) Hazardous materials violations. A person that knowingly violates a hazardous material regulation is liable for an administrative penalty of at least $250 but not more than $27,500 for each violation. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstance and exercising reasonable care would have that knowledge. A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(3) The amount of the administrative penalty shall be determined by taking into account the following factors:

(A) nature of the violation;

(B) circumstances of the violation;

(C) extent of the violation;

(D) gravity of the violation;

(E) degree of culpability;

(F) history of prior offenses;

(G) any hazard to the health or safety of the public caused by the violation or violations;

(H) the economic benefit gained by the violation(s);

(I) ability to pay;

(J) the amount necessary to deter future violations;

(K) effect on ability to continue to do business;

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

(M) efforts to correct the violation; and

(N) such other matters as justice and public safety may require.

(m) Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter. The notification will consist of the requirements of Title 49, Code of Federal Regulations, Part 386.11.

(2) The notification may be submitted to the motor carrier's principal place of business by certified mail, first class mail, or personal delivery. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier must reply within 20 days of receipt of a claim letter. The reply must contain:

(A) an admission or denial of each allegation of the claim and a concise statement of facts constituting each defense;

(B) a statement of whether the motor carrier requests an administrative hearing concerning the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty;

(C) a statement of whether the motor carrier requests an informal hearing under subsection (1) of this section;

(D) a statement of whether the motor carrier accepts the determination and recommended penalty;

(E) a statement of whether the motor carrier wishes to negotiate the terms of payment or settlement of the amount of the penalty, or the terms and conditions of the order; and

(F) a certification that the reply has been served in accordance with Title 49, Code of Federal Regulations, Part 386.31.

(n) Informal hearing.

(1) Request. If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee.

(2) Procedure. An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) Resolution. In the event matters are resolved in the motor carrier's favor, the manager or the director's designee will send the carrier written notification that the proposed penalty is withdrawn.

(4) Modified penalty. If matters are resolved resulting in a modified penalty, the manager or the director's designee may prepare a settlement agreement as provided by subsection (p) of this section.

(5) Failure to resolve. If matters are not resolved in the informal hearing, the department will initiate a formal enforcement action as provided by subsection (o) of this section.

(o) Formal Enforcement Action.

(1) If the motor carrier requests an administrative hearing, fails to respond in a timely manner to the claim letter as identified in subsection (m) of this section, or does not negotiate a settlement, the department may initiate a formal enforcement action as a contested case. The department will provide written notice of such action to the motor carrier.

(2) A contested case under this subsection will be governed by Texas Government Code, Chapter 2001, subchapters C and D, and Chapter 29 of this title (relating to General Rules of Practice and Procedure), and not by Title 49, Code of Federal Regulations, Part 386, Subparts D and E.

(p) Collection and Settlement.

(1) If the motor carrier does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(2) At any time prior to the date on which a final order is issued by the director, the department and the motor carrier may agree to enter into a compromise settlement agreement. The compromise settlement agreement shall be signed by the motor carrier and the director, or the director's designee and will reflect that the motor carrier consents to the assessment of a specific administrative penalty or other action by the department against the motor carrier.

(3) Simultaneously with the filing of a compromise settlement agreement, the motor carrier shall remit a cashier's check or money order to the Texas Department of Public Safety.

(q) Installment Payment of Administrative Penalty.

(1) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay. An application shall be submitted on a form approved by the department.

(2) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(3) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

(r) Suspension and revocation by the Texas Department of Transportation.

(1) The director will determine whether the department will request the Texas Department of Transportation to suspend or revoke a registration issued by the Texas Department of Transportation based upon the department's compliance review.

(2) This determination may be based upon the following:

(A) an unsatisfactory safety rating under Title 49, Code of Federal Regulations, Part 385;

(B) multiple violations of Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d;

(C) multiple violations of one of these rules; and/or,

(D) multiple violations of the Uniform Traffic Act or Transportation Code.

(3) Once the determination has been made the director will forward a letter to the executive director of the Texas Department of Transportation requesting said department initiate a suspension/revocation proceeding against the motor carrier.

(4) Any suspension/revocation action initiated by the Texas Department of Transportation, pursuant to this section, shall be administered in the manner specified by the rules of the Texas Department of Transportation. This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority Issued in Austin, Texas on March 24, 1999. Dudley M. Thomas Director Texas Department of Public Safety

This agency 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 April 19, 1999.

TRD-9902276
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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37 TAC §3.63

The Texas Department of Public Safety adopts the repeal of §3.63, concerning Route Designations for Non-Radioactive

Hazardous Materials on Texas Highways, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12876).

The justification for this repeal will be to make the public aware that the Department of Public Safety is no longer the state routing agency for non-radioactive hazardous materials. That responsibility has been transferred to the Texas Department of Transportation.

No comments were received regarding repeal of the section.

The repeal is adopted pursuant to Texas Civil Statutes, Article 6675d, Texas Transportation Code, Chapter 644, and Texas Government Code, §411.006(4), which provides the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorize the director to adopt rules regulating the safe operation of commercial motor vehicles.

This agency 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 April 19, 1999.

TRD-9902275
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Subchapter E. Requirements For Displaying Vehicle Inspection Certificate

37 TAC §3.71, §3.75

The Texas Department of Public Safety adopts the repeal of §3.71 and §3.75, concerning the statutory provisions regarding certain registered vehicles and the exception of those vehicles from the requirements of undergoing a vehicle inspection and displaying a valid inspection certificate, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12877).

The justification for the repeal will be a clearer interpretation and understanding of the exemptions associated with the vehicle inspection program.

No comments were received regarding the repeal of these sections.

The repeals are adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902274
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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37 TAC §3.71

The Texas Department of Public Safety adopts new §3.71, concerning vehicles exempt from the vehicle inspection program, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12877).

The justification for this new section will be a clearer interpretation and understanding of the exemptions associated with the vehicle inspection program

No comments were received regarding the adoption of this new section.

The new section is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902273
Dudley M. Thomas
Director
Texas Department of Public Safety
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Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Subchapter G. Hazardous Materials Incidents

37 TAC §3.102

The Texas Department of Public Safety adopts the repeal of §3.102, concerning Reporting of Releases of Hazardous Materials by Carriers, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12878).

The justification for the repeal of §3.102 is deemed necessary to simplify the reporting requirements for motor carriers and railroad operators who must also comply with the provisions of Title 49, Code of Federal Regulations, §171.15 and §171.16. Texas Government Code, §411.018 authorizes the department to establish rules for the reporting of hazardous materials spills or incidents. The section also authorizes the department to adopt the Federal Hazardous Materials Regulations which have been adopted by reference in 37 TAC§3.59 (relating to Regulations Governing Transportation of Hazardous Materials). Since the Hazardous Materials Regulations contain reporting requirements which are applicable to both interstate and intrastate motor carriers, the department believes that the requirements of §3.102 are duplicative and therefore, not necessary.

No comments were received regarding the repeal of this section.

The repeal is adopted pursuant to Texas Government Code, §411.006(4) and 411.018, which provides the director with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorizes the director to adopt provisions of the hazardous materials regulations.

This agency 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 April 19, 1999.

TRD-9902272
Dudley M. Thomas
Director
Texas Department of Public Safety
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Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Chapter 5. Criminal Law Enforcement

Subchapter A. Investigation

37 TAC §§5.1–5.3

The Texas Department of Public Safety adopts the repeal of §§5.1-5.3, concerning Criminal Law Enforcement, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12878).

The justification for this repeal will be the removal of unnecessary rules.

No comments were received regarding the repeal of these sections.

The repeals are adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902271
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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37 TAC §5.1

The Texas Department of Public Safety adopts new §5.1, concerning Conduct of a Criminal Investigation, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12879).

The justification for this new section will be clarification of department policy regarding criminal investigations.

No comments were received regarding the adoption of this new section.

The new section is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902270
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Subchapter B. Stored or Impounded Vehicles

37 TAC §5.11

The Texas Department of Public Safety adopts the repeal of §5.11, concerning Expenditure Authorization, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12879).

The justification for this repeal will be the removal of unnecessary rules.

No comments were received regarding the repeal of this section.

The repeal is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902269
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Subchapter C. Criminal Law Enforcement Imprest Fund

37 TAC §5.21

The Texas Department of Public Safety adopts the repeal of §5.21, concerning Expenditure of Imprest Funds, without

changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12880).

The justification for this repeal will be the removal of unnecessary rules.

No comments were received regarding the repeal of this section.

The repeal is adopted pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of 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.

Filed with the Office of the Secretary of State on April 19, 1999.

TRD-9902268
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Chapter 25. Safety Responsibility Regulations

37 TAC §§25.1–25.5, 25.13–25.15, 25.17, 25.18

The Texas Department of Public Safety adopts amendments to §25.14, and §25.18, concerning Safety Responsibility Regulations, with changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12882). Sections 25.1-25.5, 25.13, 25.15, and 25.17 are adopted without changes and will not be republished.

The justification for these amendments will be to ensure that individuals are fully informed regarding the obligations of both the department and Texas motorists pursuant to the Motor Vehicle Safety Responsibility Act.

Amendments to these sections include the reformatting of subsections and paragraphs in order to add and delete language intended to clarify action the department may take regarding accidents, the filing of proof of financial responsibility, and the processing of compliance-related items under the Motor Vehicle Safety Responsibility Act.

Section 25.14 listed the incorrect statutory reference. Texas Civil Statutes was repealed during the last legislative session and recodified as Texas Transportation Code. Therefore, Texas Transportation Code is listed as the correct reference in this adoption.

Section 25.18 Subsection (b) as previously proposed has been deleted and subsection (c) reformatted to Subsection (b) as the Safety Responsibility Bureau no longer has legislative or statutory authority to charge a filing fee.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Transportation Code, Chapter 601, which provides that the department shall administer and enforce this chapter.

§25.14. Appeals.

(a) The appeals provisions in Texas Transportation Code, §601.158, apply only to appeals under Texas Transportation Code, Chapter 601. The appeals provisions in Texas Transportation Code §601.401, apply to all other suspensions under the Act.

(b) When the department is not served as required by law with a stay order or injunction, no existing injunction or stay order shall operate to suspend any act or order of the department until a copy signed by the court or certified by the court clerk is received in the office of the department at Austin.

(c) Before a suspension can be lifted on a stay pending a trial on the merits, where [~~criminal~~] charges are filed arising out of the accident, the party appealing a decision under the Act must file either proof of financial responsibility, Form SR-22, or evidence of dismissal. Such party will be notified of these requirements in writing to the attorney of record or to the aggrieved party.

§25.18. Fees.

(a) No statutory filing fee is required if:

(1) financial responsibility by insurance is shown;

(2) the party was legally parked or stopped;

(3) nonconsent applies to the owner;

(4) the party is not the owner of the vehicle;

(5) the accident occurred on private property;

(6) the parties are exempted from paying the fee by reason of governmental immunity;

(7) there is an affidavit of no suspended items; or

(8) there is no probability of judgment.

(b) Proof of financial responsibility maintained by a certificate of insurance must be filed on Form SR-22. When a party's license and registrations have been suspended, a $50 reinstatement fee and proof of financial responsibility are prerequisites for the withdrawal of such suspension. When a party's license and registrations are suspended in several cases and proof of financial responsibility is required in each case, only one $50 reinstatement fee is required.

This agency 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 April 19, 1999.

TRD-9902267
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: May 9, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

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Part V. Texas Board of Pardons and Paroles

Chapter 143. Executive Clemency

Subchapter D. Reprieve of Execution

37 TAC §143.43

The Policy Board of the Texas Board of Pardons and Paroles adopts an amendment to §143.43, concerning the application process to the Board for a recommendation to the governor of a reprieve from execution, with two changes in response to comments to the proposed text as published in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1145).

The amendment is adopted for the purpose of clarifying the procedures and changing the time deadlines for submitting the applications to the Board in order to give the Board members more time to consider the applications.

There were several written comments to the proposed amended rule by two parties, Ms. Maurie Levin and Mr. Bruce P. Bower. Mr. Bill Habern and Ms. Cynthia Orr, acting on behalf of the Texas Criminal Defense Lawyers Association, adopted Ms. Levin's written comments on the proposed amendments to the rule.

Ms. Levin commented that the 25 day deadline before the execution date for submission of applications for clemency would not give inmates or their attorneys adequate time to prepare because the execution date is set by the state district judge many times only 30 days in advance, and because the inmates and their attorneys are not timely informed of the execution date. In addition, Ms. Levin commented that, because of the nature of the clemency process in Texas, it is unrealistic to expect inmates' attorneys to apply for clemency before the appellate courts have had time to rule at least until the first round of habeas appeals has been completed. According to Ms. Levin, "that stage is often not reached until mere weeks before the execution." Ms. Levin comments that a 10-day or 14-day deadline would "give the attorney a more realistic chance of filing a complete, timely clemency application."

Ms. Levin also appeared before the Board to comment at the public hearing scheduled as part of the Policy Board meeting on March 31, 1999, pursuant to §2001.029 of the Texas Government Code. In response to questions, Ms. Levin estimated that most death row inmates have had between three and ten prior execution dates before the final execution date is set.

In order to address Ms. Levin's concerns, the Policy Board is changing the provision in subsection (a) to provide that applications for clemency be submitted 21 days (rather than 25 days) before the execution date. It is suggested that, before the execution date is set, attorneys for death row inmates could provide written notice of representation to the state district judge who presided over the capital murder trial, as well as contacting the appropriate district clerk who maintains the records of the case. A request could be made that the attorney be given immediate notice by the clerk of the court of any execution date set by the trial judge. By these actions, the inmate's attorney can expect to receive timely notice that the execution date has been set, and the attorney will then be able to make timely application to the Board for clemency on behalf of the inmate.

Ms. Levin's final comment was that the proposed deletion of language in subsection (b)(1), which provided for a vote of the majority of the Board in order to recommend that the Governor grant a reprieve injects a "lack of clarity" into the process. In response to Ms. Levin's comment, the Policy Board is adding language to subsection (b) to track the language in Article IV, Section 11 of the Texas Constitution and clarify that a recommendation for a reprieve must be made by a majority of the Board in written and signed form.

Written comments were also received from Mr. Bruce P. Bower, who testified in the public hearing for himself and on behalf of the Austin Peace and Justice Coalition which requested a public hearing pursuant to §2001.029 of the Texas Government Code. Mr. Bower suggested that the Board deadline for applications for reprieve should remain at five days prior to the execution date, given the reduced mental capacity of death row inmates and the growing number of wrongful convictions. In addition, Mr. Bower commented that procedures should be changed to allow the submission of applications by fax and by e-mail. Mr. Bower also suggested that the Board should provide assistance to those who request assistance in making application to the Board for reprieves.

In response to Mr. Bower's comments, the Policy Board adopts a change in the proposed rule to provide for an application deadline of 21 days prior to the execution date. Regarding Mr. Bower's comment on whether the Board accepts applications by fax or electronic mail, the Board has accepted applications for clemency review by facsimile. Although attorneys for inmates are free at any time to communicate with the Board via electronic mail, at this time legal counsel would not advise the Board to accept applications for clemency by that method, given the difficulty of ensuring that documents sent by that medium remain secure. The Policy Board declines to make that change at this time.

Regarding Mr. Bower's suggestion that Board assistance be provided for applicants, there is no set application form required. While any suggestions to improve the application process are welcomed by the Board, any assistance to the inmate by the Board in the preparation of the clemency application could well require the Board to render legal advice, presenting a possible conflict of interest situation on the part of Board personnel. State attorneys are prohibited from rendering legal representation to private citizens. Therefore, the Policy Board declines to adopt the suggestion at this time.

The amendment is adopted under the Texas Constitution, Article IV, Section 11, and the Code of Criminal Procedure, Article 48.01, which provides the Board with authority to recommend reprieves, commutations of punishments and pardons to the governor.

§143.43. Procedure in Capital Reprieve Cases.

(a) The written application in behalf of a convicted person seeking a board recommendation to the governor of a reprieve from execution must be delivered to the Texas Board of Pardons and Paroles, Clemency Section, Austin, Texas, not later than the twenty-first calendar day before the execution is scheduled. Otherwise, the applicant's recourse will be directly to the governor.

(b) The board shall consider and decide applications for reprieve from execution. Upon review, a majority of the board, or a majority thereof, in written and signed form, may:

(1) recommend to the governor a reprieve from execution;

(2) not recommend a reprieve from execution; or

(3) set the matter for a hearing as soon as practicable and at a location convenient to the board and the parties to appear before it.

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

(f) After the conclusion of the hearing, the board shall render its decision, reached by majority vote, within a reasonable time, which decision shall be either to:

(1) recommend to the governor a reprieve from execution;

(2) not recommend a reprieve from execution; or

(3) recess the proceedings without rendering a decision on the merits, if a reprieve has been granted by the governor or if a court of competent jurisdiction has granted a stay of execution.

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

This agency 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 April 20, 1999.

TRD-9902319
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: May 11, 1999
Proposal publication date: February 19, 1999
For further information, please call: (512) 463–1883

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Subchapter E. Commutation of Sentence

37 TAC §143.57

The Policy Board of the Texas Board of Pardons and Paroles adopts an amendment to §143.57, concerning the application process to the Board for a recommendation to the governor of a Commutation of Death Sentence to a Lesser Penalty, with two changes in response to comments to the proposed text as published in the February 19, 1999, issue of the *Texas Register* (24 TexReg 1146).

The amendment is adopted for the purpose of clarifying the procedures and changing the time deadlines for submitting the applications to the Board in order to give Board members more time to consider the applications.

There were several written comments to the proposed amended rule by two different parties, Ms. Maurie Levin and Mr. Bruce P. Bower. Mr. Bill Habern and Ms. Cynthia Orr on behalf of the Texas Criminal Defense Lawyers Association adopted Ms. Levin's comments on the proposed amendments to the rule and on behalf of the Association requested a public hearing pursuant §2001.029 of the Texas Government Code.

Ms. Levin commented that the 25-day deadline before the execution date for submission of applications for clemency would not give inmates or their attorneys adequate time to prepare because the execution date is set by the state district judge many times only 30 days in advance, and because the inmates and their attorneys are not timely informed of the execution date. In addition, Ms. Levin commented that, because of the nature of the clemency process in Texas, it is unrealistic to expect inmates' attorneys to apply for clemency before the appellate courts have had time to rule at least until the first round of habeas appeals has been completed. According to Ms. Levin, "that stage is often not reached until mere weeks before the execution." Ms. Levin comments that a ten-day or 14-day deadline would "give the attorney a more realistic chance of filing a complete, timely clemency application."

Ms. Levin also appeared before the Board to comment at the public hearing scheduled as part of the Policy Board meeting on March 31, 1999, pursuant to §2001.029 of the Texas Government Code. In response to questions, Ms. Levin estimated that most death row inmates have had between three and 10 prior execution dates before the final execution date is set.

In order to address Ms. Levin's concerns, the Policy Board is changing the provision in paragraph (2)(A) to provide that applications for clemency be submitted 21 days (rather than 25 days) before the execution date. It is suggested that, before the execution date is set, attorneys for death row inmates could provide written notice of representation to the state district judge who presided over the capital murder trial, as well as contacting the appropriate district clerk who maintains the records of the case. A request could be made that the attorney be given immediate notice by the clerk of the court of any execution date set by the trial judge. By these actions, the inmate's attorney can expect to receive timely notice that the execution date has been set, and the attorney will then be able to make timely application to the Board for clemency on behalf of the inmate.

Ms. Levin's final comment was that the proposed deletion of language in paragraph (2)(B), which provided for a vote of the majority of the Board in order to recommend that the Governor grant a reprieve injects a "lack of clarity" into the process. In response to Ms. Levin's comment, the Policy Board is adding language to paragraph (2) (B) to track the language in Article IV, Section 11 of the Texas Constitution and clarify that a recommendation for a commutation must be made by a majority of the Board in written and signed form.

Written comments were also received from Mr. Bruce P. Bower, who testified in the public hearing for himself and on behalf of the Austin Peace and Justice Coalition which requested a public hearing pursuant to §2001.029 of the Texas Government Code. Mr. Bower suggested that the Board deadline for applications for commutation should remain at five days prior to the execution date, given the reduced mental capacity of death row inmates and the growing number of wrongful convictions. In response to Mr. Bower's comments, the Policy Board adopts a change in the proposed rule to provide for an application deadline of 21 days prior to the execution date.

Mr. Bower also commented and suggested that the Board adopt procedures requiring a full public hearing on all applications for clemency from death row inmates, list specific reasons for its actions and that the Board hold itself to set listed criteria when making clemency decisions, as detailed in legislation (House Bill 397 and House Bill 398) presently pending before the 76th Legislature. As the Policy Board is taking steps to change the clemency procedures by these adopted rules others in the near future, the Policy Board declines to make those specific changes at this time. In addition, the above changes have been the subject of recent litigation at the state and federal level, by which the Board's present clemency procedures were upheld by state and federal courts. The Board awaits the final decisions of those cases, which are on appeal.

In addition, Mr. Bower commented that procedures should be changed to allow the submission of applications by fax and by e-mail. Mr. Bower also suggested that the Board should

provide assistance to those who request assistance in making application to the Board for commutations of sentence.

Regarding Mr. Bower's comment on whether the Board accepts applications by fax or electronic mail, the Board has accepted applications for clemency review by facsimile. Although attorneys for inmates are free at any time to communicate with the Board via electronic mail, at this time legal counsel would not advise the Board to accept applications for clemency by that medium, given the difficulty of ensuring that documents sent by electronic mail remain secure. The Policy Board declines to make that change at this time.

Regarding Mr. Bower's suggestion that Board assistance be provided for applicants, there is no set application form required. While any suggestions to improve the application process are welcomed by the Board, any assistance to the inmate by the Board in the preparation of the clemency application could well require the Board to render legal advice, presenting a possible conflict of interest situation on the part of Board personnel. State attorneys are prohibited from rendering legal representation to private citizens. Therefore, the Policy Board declines to adopt the suggestion at this time.

The amendment is adopted under the Texas Constitution, Article IV, Section 11, and the Code of Criminal Procedure, Article 48.01, that provide the Board with authority to recommend reprieves, commutations of punishments and pardons to the governor.

§143.57. Commutation of Death Sentence to Lesser Penalty.

The board will consider recommending to the governor a commutation of death sentence to a sentence of life imprisonment or the appropriate maximum penalty that can be imposed upon receipt of:

(1) a request from the majority of the trial officials of the court of conviction; or

(2) a written request of the convicted person or representative setting forth all grounds upon which the application is based, stating the full name of the convicted person, the county of conviction, and the execution date.

(A) The written application in behalf of a convicted person seeking a board recommendation to the governor of commutation of the death sentence to a lesser penalty must be delivered to the Texas Board of Pardons and Paroles, Clemency Section, Austin, Texas, not later than the twenty-first calendar day before the day the execution is scheduled.

(B) The board shall consider and decide applications for commutation of the death sentence to a lesser penalty. Upon review, a majority of the board, or a majority thereof, in written and signed form, may:

(i) recommend to the governor the commutation of the death sentence to a lesser penalty;

(ii) not recommend commutation of the death sentence to a lesser penalty; or

(iii) set the matter for a hearing pursuant to §143.43 of this Chapter (relating to Procedure in Capital Reprieve Cases).

This agency 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 April 20, 1999.

TRD-9902318

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: May 11, 1999
Proposal publication date: February 19, 1999
For further information, please call: (512) 463–1883

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Chapter 145. Parole

Subchapter B. Terms and Conditions of Parole

37 TAC §145.27

The Policy Board of the Texas Board of Pardons and Paroles adopts new rule 37 TAC §145.27, concerning a Condition Requiring Certain Releasees to Participate in the Texas Department of Public Safety Personal Identification Program, without changes to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 682). The text of the rule will not be republished.

The new rule is proposed for the purpose of adopting into rule Policy Board Order 98-10.01 adopted and made effective on October 7, 1998. This rule will require all parole certificates of all persons released on parole or mandatory supervision to participate in the Texas Department of Public Safety Driver's License Program or Personal Identification Program as a term and condition of parole or mandatory supervision.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Code of Criminal Procedure, Article 42.18, §8(g), and Government Code, §508.044(d)(3), which provide the Policy Board with the authority to adopt impose conditions on a person released to parole or mandatory supervision; and Government Code, §508.045, which provides parole panels with the authority to act in matters of release to parole or mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 1999.

TRD-9902320
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: May 11, 1999
Proposal publication date: February 5, 1999
For further information, please call: (512) 463–1883

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 2. Medically Needy Program

Subchapter A. Program Requirements

40 TAC §2.1006, §2.1010

The Texas Department of Human Services (DHS) adopts amendments to §2.1006 and §2.1010, concerning requirements for application and determining income eligibility, in its Medically Needy Program chapter. Also in this issue of the *Texas Register*, DHS is adopting similar policies in Chapter 4, Medicaid Programs–Children and Pregnant Women.

The justification for the amendments is to comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, effective September 30, 1996.

The amendments will function by ensuring that DHS is in compliance with federal requirements.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 32, which provides the department with the authority to administer medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendments are adopted in compliance with federal requirements effective September 30, 1996.

The amendments implement the Human Resources Code, §§32.001-32.042.

§2.1006. Requirements for Application.

(a) (No change.)

(b) Resources. Resource limits and types of countable and exempt resources for MNP are the same as those outlined in the Texas Department of Human Services' TANF rules in Chapter 3 of this title (relating to Income Assistance Services) with the following exceptions:

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

(3) an alien sponsor's (and spouse's) resources are only counted for applicants admitted into the United States on or after December 19, 1997.

(c)-(g) (No change.)

§2.1010. Determining Income Eligibility.

Income eligibility is determined using the Temporary Assistance for Needy Families (TANF) eligibility requirements outlined in the TANF rules with the following exceptions:

(1) the types of countable and exempt income are the same as those outlined in the TANF rules except TANF payments are countable income for the Medically Needy program (MNP).

(2) the medically needy needs allowance standard, which is 133 1/3% of the highest TANF payment standard, is used to determine eligibility.

(3) the TANF earned income disregard is not allowed as a deduction for MNP.

(4) (No change.)

(5) lump sum payments that meet the TANF definition of unearned income are counted as income in the first month that the change can be effective.

(6)-(7) (No change.)

(8) alien sponsor's (and spouse's) income is only counted for applicants admitted into the United States on or after December 19, 1997.

This agency 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 April 23, 1999.

TRD-9902412
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: September 30, 1996
For further information, please call: (512) 438–3765

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Chapter 4. Medicaid Programs–Children and Pregnant Women

Subchapter A. Eligibility Requirements

40 TAC §4.1006, §4.1010

The Texas Department of Human Services (DHS) adopts amendments to §4.1006 and §4.1010, concerning requirements for application and determining income eligibility, in its Medicaid Programs–Children and Pregnant Women chapter. Also in this issue of the *Texas Register*, DHS is adopting similar policies in Chapter 2, Medically Needy Program.

The justification for the amendments is to comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, effective September 30, 1996.

The amendments will function by ensuring that DHS is in compliance with federal requirements.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 32, which provides the department with the authority to administer medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendments are adopted in compliance with federal requirements effective September 30, 1996.

The amendments implement the Human Resources Code, §§32.001-32.042.

§4.1006. Requirements for Application.

To be eligible for the Medicaid Programs for Children and Pregnant Women (CPW) Program, clients must meet the following requirements.

(1) Citizenship. Citizenship requirements for CPW applicants are the same as requirements for Temporary Assistance for Needy Families (TANF) applicants outlined in DHS's TANF rules in Chapter 3 of this title (relating to Income Assistance Services).

(2) Resources. Resource limits and types of countable and exempt resources for CPW are the same as those outlined in DHS's TANF rules, with the following exceptions:

(A) (No change.)

(B) The food stamp resource policy for households with no members 60 or over is applied when determining eligibility for children under six and children six or older born on or after October 1, 1983. Exception: DHS follows the TANF resource policy for loans.

(C)-(D) (No change.)

(E) The TANF and Food Stamp policy for transferring resources to qualify for assistance does not apply to the CPW program.

(F) An alien sponsor's (and spouse's) resources are only counted for applicants admitted into the United States on or after December 19, 1997.

(3) Age and relationship. Eligible children must meet the age and relationship requirements outlined in the TANF rules with the following exceptions:

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

(C) Children in two-parent families must meet the TANF relationship requirements to be eligible.

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

(4) (No change.)

(5) School attendance. Eligible children must meet the school attendance requirements outlined in the TANF rules.

(6) Social security number. Eligible members of the budget group must meet the social security number requirement outlined in the TANF rules. Ineligible members are requested to provide social security numbers, but they are not required to provide their numbers.

(7) (No change.)

(8) Third-party resources. Eligible members of the budget group must cooperate in third- party resources activities outlined in the TANF rules.

(9) Strikers. The TANF striker policy applies to children described in §4.1004(5) of this title (relating to Eligible Groups). The policy does not apply to persons described in §4.1004(1)-(4).

§4.1010. Determining Income Eligibility.

Income eligibility is determined using the Temporary Assistance for Needy Families (TANF) eligibility requirements outlined in the TANF rules with the following exceptions:

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

(9) Ongoing eligibility for pregnant women is not denied because of increased income;

(10) The 185% income test is not applied to type programs 46 and 47; and

(11) Alien sponsor's (and spouse's) income is only counted for applicants admitted into the United States on or after December 19, 1997.

This agency 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 April 23, 1999.

TRD-9902413
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: September 30, 1996
For further information, please call: (512) 438-3765

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part I

The Comptroller of Public Accounts proposes to review and consider for readoption, revision, or repeal all sections of Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter D (relating to Occupation Tax on Sulphur Producers), Subchapter F (relating to Motor Vehicle Sales Tax), Subchapter I (relating to Miscellaneous Occupation Taxes), Subchapter J (relating to Petroleum Products Delivery Fee), Subchapter M (relating to Inheritance Tax), Subchapter T (relating to Manufactured Housing Sales and Use Tax), Subchapter X (relating to Pari-mutuel Wagering Racing Revenue), and Subchapter Z (relating to Coastal Protection Fee). This review and consideration is being conducted in accordance with Article IX, §167, of House Bill 1, 75th Texas Legislature. The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

In accordance with the above referenced §167, the Comptroller will accept comments regarding whether the reason for adopting or readopting each of these rules continues to exist. The comment period will last for 30 days beginning with the publication of this notice in the *Texas Register*.

Comments pertaining to this notice to review Subchapters D, F, I, J, T, and Z may be submitted to Bryant K. Lomax, Manager, Tax Policy Division , P.O. Box 13528, Austin, Texas, 78711-3528.

Comments pertaining to this notice to review Subchapter M may be submitted to Tom Ellis, Manager, Revenue Accounting Division, P.O. Box 13528, Austin, Texas, 78711-3528.

Comments pertaining to this notice to review Subchapter X may be submitted to Jimmy Archer, Manager, Criminal Investigation Division, P.O. Box 13528, Austin, Texas, 78711-3528.

TRD-9902445
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Filed: April 26, 1999

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Texas Department of Economic Development

Title 10, Part V

The Texas Department of Economic Development (Department) files this notice of intention to review and consider for readoption Chapter 180 related to Industrial Projects pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process the Department is proposing amendments to §180.1 and §180.2. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the Department will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new section. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, for hand-deliveries, P.O. Box 12728, Austin, Texas 78711-2728, for US Mail, and (512) 936-0415 for Facsimiles.

TRD-9902326
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: April 20, 1999

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The Texas Department of Economic Development (Department) files this notice of intention to review and consider for readoption Chapter 197 related to Private Donations pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process the Department is proposing amendments to §§197.1, 197.2, 197.4, and 197.6. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the Department will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new section. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 N. Congress, Suite 130, Austin, Texas 78701, for hand-deliveries, P.O. Box 12728, Austin, Texas 78711-2728, for US Mail, and (512) 936-0415 for Facsimiles.

TRD-9902325
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: April 20, 1999

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Employees Retirement System of Texas

Title 34, Part IV

The Employees Retirement System of Texas has reviewed §73.15, concerning Proportionate Retirement Program-Benefits, in accordance with the Appropriations Act, Article IX, §167, and proposes the rule be amended to delete subsection (a). Please refer to the Proposed Rule Section to review the amendment to §73.15.

Comments on this proposed review may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas, 78711-3207 or e-mail Mr. Nail at wnail@ers.state.tx.us.

TRD-9902375
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Filed: April 21, 1999

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Texas Department of Health

Title 25, Part I

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 43, Utilization Control, §§43.22-43.25.

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. These rules will be reviewed to determine whether they are obsolete, whether the rules reflect current legal and policy considerations, and whether the rules reflect current procedures of the department. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to Becky Brownlee, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9902540
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 28, 1999

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Texas Department of Licensing and Regulation

Title 16, Part IV

The Texas Department of Licensing and Regulation (department) files this notice of intent to review and consider for readoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 60, Texas Commission of Licensing and Regulation. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director, Legal Services, P.O. Box 12157, Austin, Texas, 78711, facsimile-(512) 475-2872, or by e-mail: theda.lambert@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Subchapter A. Authority and Responsibilities

16 TAC §60.1. Authority.

16 TAC §60.10. Definitions.

Subchapter B. Organization

16 TAC §60.60. Responsibilities of the Commission-General Provisions.

16 TAC §60.61. Responsibilities of the Commission-Meetings.

16 TAC §60.62. General Powers and Duties of the Commission.

16 TAC §60.63. Responsibilities of the Department and Executive Director.

16 TAC §60.64. Duration of Advisory Committee/Boards/Councils.

16 TAC §60.65. Petition for Adoption of Rules.

Subchapter C. Fees

16 TAC §60.80. Program Fees.

16 TAC §60.81. Charges for Providing Copies of Public Information.

16 TAC §60.82. Dishonored Check Fee.

Subchapter D. Practice and Procedure

16 TAC §60.100. Purpose and Scope.

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

16 TAC §60.102. Agreements to be in Writing.

16 TAC §60.103. Hearings Examiner.

16 TAC §60.104. Conduct and Decorum.

16 TAC §60.106. Parties.

16 TAC §60.107. Representative Appearances.

16 TAC §60.108. Form and Content of Pleadings.

16 TAC §60.120. Motions.

16 TAC §60.121. Service of Documents on Parties.

16 TAC §60.122. Examination and Correction of Pleadings.

16 TAC §60.123. Amended Pleadings.

16 TAC §60.124. Prepared Testimony and Exhibits.

16 TAC §60.150. Dismissal Without Hearing.

16 TAC §60.151. Disposition by Agreement.

16 TAC §60.152. Prehearing Conference.

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

16 TAC §60.154. Consolidation.

16 TAC §60.155. Discovery.

16 TAC §60.156. Place and Nature of Hearings.

16 TAC §60.157. Order of Procedure.

16 TAC §60.158. Briefs.

16 TAC §60.159. Participation by Telephone.

16 TAC §60.160. Failure to Attend Hearing and Default.

16 TAC §60.170. Reporters and Transcripts.

16 TAC §60.171. The Record.

16 TAC §60.172. Evidence.

16 TAC §60.173. Offer of Proof.

16 TAC §60.174. Formal Exceptions Not Required.

16 TAC §60.190. Proposals for Decision.

16 TAC §60.191. Filing of Exceptions and Replies.

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

TRD-9902487
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: April 27, 1999

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The Texas Department of Licensing and Regulation (department) files this notice of intent to review and consider for readoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 61, Boxing. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director, Legal Services, P.O. Box 12157, Austin, Texas, 78711, facsimile-(512) 475-2872, or by e-mail: theda.lambert@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Subchapter A. Professional and Amateur Boxing

16 TAC §61.1. Authority.

16 TAC §61.10. Definitions.

16 TAC §61.20. Licensing-Promoter.

16 TAC §61.21. Licensing-Referee.

16 TAC §61.22. Licensing-Matchmaker.

16 TAC §61.23. Licensing-Judge.

16 TAC §61.24. Licensing-Timekeeper.

16 TAC §61.25. Licensing-Manager.

16 TAC §61.26. Licensing-Second.

16 TAC §61.27. Licensing-Boxer.

16 TAC §61.40. Bond Requirements for Promoters.

16 TAC §61.50. Reporting Requirements-Promoter.

16 TAC §61.51. Reporting Requirements-Ringside Physician.

16 TAC §61.52. Reporting Requirements-Manager.

16 TAC §61.53. Reporting Requirements-Boxer.

16 TAC §61.60. Responsibilities of the Department for Timekeepers.

16 TAC §61.61. Responsibilities of the Department for Medical Consultants.

16 TAC §61.62. General Prohibitions.

16 TAC §61.63. Responsibilities of the Department for Officials.

16 TAC §61.70. Responsibilities of Promoter.

16 TAC §61.71. Responsibilities-Medical Consultants.

16 TAC §61.72. Responsibilities-Ringside Physician.

16 TAC §61.73. Responsibilities-Referee.

16 TAC §61.74. Responsibilities-Judge.

16 TAC §61.75. Responsibilities-Matchmakers.

16 TAC §61.76. Responsibilities-Manager.

16 TAC §61.77. Responsibilities-Second.

16 TAC §61.78. Responsibilities-Boxers.

16 TAC §61.79. Responsibilities of the Licensee-Female Boxer.

16 TAC §61.80. Fees-Annual Application Fees.

16 TAC §61.90. Sanctions-Administrative Penalties.

16 TAC §61.91. Sanctions-Revocation, Suspension, or Denial because of a Criminal Conviction.

16 TAC §61.92. Sanctions-Indefinite Suspension.

16 TAC §61.100 . Technical Requirements-Conduct of Promotion.

16 TAC §61.101. Technical Requirements-Ring and Equipment.

16 TAC §61.102. Technical Requirements-Contract between Promoter and Boxer.

16 TAC §61.103. Technical Requirements-Tickets.

16 TAC §61.104. Technical Requirements-Ringside Physician.

16 TAC §61.105. Technical Requirements-Referee.

16 TAC §61.106. Technical Requirements-Judge Scoring.

16 TAC §61.107. Technical Requirements-Timekeeper.

16 TAC §61.108. Technical Requirements-Between-round Care.

16 TAC §61.109. Technical Requirements-Boxer.

16 TAC §61.110. Technical Requirements-Boxer's Weigh-in and Time Requirements.

16 TAC §61.111. Waiver of Rules.

16 TAC §61.112. Technical Requirements-Post-Contest Procedures.

16 TAC §61.113. Technical Requirements-Championship Contests.

16 TAC §61.114. Technical Requirements-Amateur Contests.

16 TAC §61.115. Technical Requirements-Kickboxers.

Subchapter B. Elimination Tournaments

16 TAC §61.200. General.

16 TAC §61.201. Definitions.

16 TAC §61.202. Registration Requirements.

16 TAC §61.204. Reporting Requirements-Promoter.

16 TAC §61.205. General Prohibitions.

16 TAC §61.206. Responsibilities of the Promoter.

16 TAC §61.207. Responsibilities of the Ringside Physician.

16 TAC §61.208. Responsibilities of the Registrant-Female Contestant.

16 TAC §61.209. Fees.

16 TAC §61.210. Technical Requirements.

16 TAC §61.211. Technical Requirements-Contestant's Weigh-in and Time Requirements.

TRD-9902488
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: April 27, 1999

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Texas Optometry Board

Title 22, Part XIV

The Texas Optometry Board proposes to review Title 22, Chapters 277, Practice and Procedure; 279, Interpretations; and 280, Therapeutic Optometry; pursuant to House Bill 1, Article IX, §167, 75th Legislature, Regular Session (1997), and the review plan previously filed by the agency. The agency proposes to review for re-adoption the following rules:

Sections 277.1-277.6 regarding Complaint Procedures, Disciplinary Proceedings, Probation, Reinstatement, Felony Convictions, Administrative Fines and Penalties; §§279.1-279.7, 279.9, and 279.17, regarding Interpretations; and §§280.1-280.6, regarding Application for Certification, Required Education, Certified therapeutic Optometrist, utilization of Pharmaceutical Drugs for Therapeutic Optometry, and Advertising by Therapeutic Optometrists.

The agency is proposing to amend §279.13 on this day. That proposal will be published in the Proposed Rules section of the *Texas Register*.

The agency has made an initial finding that the reasons for adopting these rules continue to exist.

Comments on the proposed readoption may be submitted in writing to Ms. Lois Ewald, Texas Optometry Board, 333 Guadalupe, Suite 2-420, Austin, Texas, 78701-3942, phone: (512) 305-8502, e-mail: Lois.Ewald@mail.capnet.state.tx.us. Comments will be accepted for 30 days after publication of this notice in the *Texas Register*.

TRD-9902385
Lois Ewald
Executive Director
Texas Optometry Board
Filed: April 22, 1999

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Texas Workers' Compensation Commission

Title 28, Part II

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 133 concerning Benefits - Medical Benefits. This review is pursuant to the General Appropriations Act, Article IX, Section 167, 75th Legislature.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules.

Comments regarding the Section 167 requirement as to whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on June 7, 1999, and submitted to Donna Davila, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

§133.1 Information Required in Communications.

§133.2 Sharing Medical Reports and Test Results.

§133.3 Responsibilities of Treating Doctor.

§133.100 Required Medical Reports.

§133.101 Initial Medical Report.

§133.102 Subsequent Medical Report.

§133.103 Specific Medical Report.

§133.104 Consultant Medical Report.

§133.105 Physical or Occupational Therapy Report.

§133.106 Fair and Reasonable Fees for Required Reports and Records.

§133.206 Spinal Surgery Second Opinion Process.

§133.300 Carrier Payment of Bills from Health Care Providers.

§133.301 Carrier Audit of Bills from Health Care Providers.

§133.302 Notification of Intent to Perform On-Site Audit.

§133.303 Procedure for On-Site Audits: Payments After Audit.

§133.304 Notice of Medical Payment Dispute.

§133.305 Request for Medical Dispute Resolution.

§133.401 Orders for Production of Documents.

§133.402 Delivery of Order: Compliance.

§133.403 Noncompliance: Enforcement.

TRD-9902503
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 27, 1999

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Adopted Rule Reviews

Texas Animal Health Commission

Title 4, Part II

The Texas Animal Health Commission adopts the review of Chapter 37 (§37.1 and §37.2), concerning Screwworms, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The proposed review was published in the March 26 1999, issue of the *Texas Register* (24 TexReg 2359)

The agency's reasons for adopting the rules contained in this chapter continue to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 37, Screwworms.

TRD-9902419
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: April 26, 1999

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Interagency Council on Early Childhood Intervention

Title 25, Part VIII

The Interagency Council on Early Childhood Intervention (ECI) adopts the review the following sections from Chapter 621 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter B. Early Childhood Intervention Service Delivery.

§621.21

§621.22

§621.23

§621.24

§621.25

§621.26

§621.27

§621.28

§621.29

§621.30

§621.31

§621.32

§621.33

The proposed review was published in the November 27, 1998, issue of the *Texas Register* (23 TexReg 11969)

The agency's reasons for adopting the rules contained in this chapter continue to exist.

The ECI is contemporaneously adopting amendments to §§621.21, §621.23, and 621.25-621.31 elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review.

This concludes the review of Subchapter B. Early Childhood Intervention Service Delivery.

TRD-9902456
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: April 26, 1999

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The Interagency Council on Early Childhood Intervention (ECI) adopts the review the following sections from Chapter 621 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter C. Procedural Safeguards and Due Process Procedures.

§621.41

§621.42

§621.43

§621.45

§621.46

§621.48

§621.49

The proposed review was published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 423)

The agency's reasons for adopting the rules contained in this chapter continue to exist.

The ECI is contemporaneously adopting amendments to these sections elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review.

This concludes the review of Subchapter C. Procedural Safeguards and Due Process Procedures.

TRD-9902457
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: April 26, 1999

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The Interagency Council on Early Childhood Intervention (ECI) adopts the review the following sections from Chapter 621 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter Subchapter E. Early Childhood Intervention Service Delivery for Milestones Services.

§621.81

§621.82

§621.83

§621.84

The proposed review was published in the February 26, 1999 issue of the *Texas Register* (24 TexReg 1401)

The agency is repealing the rules contained in this chapter because they are no longer necessary.

The ECI is contemporaneously adopting the repeal of §§621.81-621.84 elsewhere in this issue of the *Texas Register*. The sections are no longer necessary.

No comments were received regarding adoption of the review.

This concludes the review of Subchapter E. Early Childhood Intervention Service Delivery for Milestones Services.

TRD-9902458
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: April 26, 1999

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Texas Department of Health

Title 25, Part I

The Texas Department of Health (department) readopts the amendments to Title 25, Texas Administrative Code, Part I, Chapter 229, Food and Drug, Subchapter X, Licensure of Device Distributors and Manufacturers, §§229.432 - 229.433, 229.441, and 229.443, which were published as final rules in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12353), and readopts §§229.431, 229.434 - 229.440, and 229.442 which have not been proposed for any change. The Notice of Intention to Review was published in the September 4, 1998 issue of the *Texas Register* (23 TexReg 9078). There were no comments received for any of the sections due to the publication of the Notice of Intention to Review. Section 229.444 also was included in the Notice of Intention to Review, however, an amendment will be proposed to that section by the Board of Health in April 1999, and finally adopted later in 1999.

These sections have been reviewed in accordance with the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, which requires that each state agency review and consider for readoption each rule adopted by that agency. The department has determined that reasons for readopting the sections continue to exist.

TRD-9902478
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 27, 1999

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Texas Commission on Jail Standards

Title 37, Part IX

The Texas Commission on Jail Standards adopts the review of the following sections from Chapter 260 (concerning County Correctional Centers) pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter A. General.

260.1, 260.2, 260.3 and 260.4

Subchapter B. CCC Design, Construction and Furnishing Requirements

260.100, 260.101, 260.102, 260.103, 260.104, 260.105, 260.106, 260.107, 260.108, 260.109, 260.110, 260.111, 260.112, 260.113, 260.114, 260.115, 260.116, 260.117, 260.118, 260.119, 260.120, 260.121, 260.122, 260.123, 260.124, 260.125, 260.126, 260.127, 260.128, 260.129, 260.130, 260.131, 260.132, 260.133, 260.134, 260.135, 260.136, 260.137, 260.138, 260.139, 260.140, 260.141, 260.142, 260.143, 260.144, 260.145, 260.146, 260.147, 260.148, 260.149, 260.150, 260.151, 260.152, 260.153, 260.154, 260.155, 260.156, 260.157, 260.158, 260.159, 260.160, 260.161, 260.162 and 260.163

The proposed review was published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2359)

No comments were received regarding adoption of the review.

The agency's reasons for adopting the rules contained in this chapter continue to exist.

This concludes the review of Chapter 260, County Correctional Centers.

TRD-9902418
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: April 26, 1999

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The Texas Commission on Jail Standards adopts the review of the following sections from Chapter 261 (concerning Existing Construction Rules) pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

Subchapter A. Existing Maximum Security Design, Construction and Furnishing Requirements.

261.100, 261.101, 261.102, 261.103, 261.104, 261.105, 261.106, 261.107, 261.108, 261.109, 261.110, 261.111, 261.112, 261.113, 261.114, 261.115, 261.116, 261.117, 261.118, 261.119, 261.120, 261.121, 261.122, 261.123, 261.124, 261.125, 261.126, 261.127, 261.128, 261.129, 261.130, 261.131, 261.132, 261.133, 261.134, 261.135, 261.136, 261.137, 261.138, 261.139, 261.140, 261.141, 261.142, 261.143, 261.144, 261.145, 261.146, 261.147, 261.148, 261.149, 261.150, 261.151, 261.152, 261.153, 261.154, 261.155, 261.156, 261.157, 261.158, 261.159, 261.160, 261.161, 261.162, 261.163, 261.164, 261.165, 261.166, 261.167, 261.168, 261.169, 261.170 and 261.171

Subchapter B. Existing Lockup Design, Construction and Furnishing Requirements.

261.200, 261.201, 261.202, 261.203, 261.204, 261.205, 261.206, 261.207, 261.208, 261.209, 261.210, 261.211, 261.212, 261.213, 261.214, 261.215, 261.216, 261.217, 261.218, 261.219, 261.220, 261.221, 261.222, 261.223, 261.224, 261.225, 261.226, 261.227, 261.228, 261.229, 261.230, 261.231, 261.232, 261.233, 261.234,261.235, 261.236, 261.237, 261.238, 261.239, 261.240, 261.241, 261.242, 261.243, 261.244, 261.245, 261.246, 261.247, 261.248, 261.249, 261.250, 261.251, 261.252, 261.253, 261.254, 261.255, 261.256, 261.257, 261.258, 261.259, 261.260, 261.261, 261.262, 261.263, 261.264, 261.265 and 261.266

Subchapter C. Existing Minimum Security Design, Construction and Furnishing Requirements.

261.300, 261.301, 261.302, 261.303, 261.304, 261.305, 261.306, 261.307, 261.308, 261.309, 261.310, 261.311, 261.312, 261.313, 261.314, 261.315, 261.316, 261.317, 261.318, 261.319, 261.320, 261.321, 261.322, 261.323, 261.324, 261.325, 261.326, 261.327, 261.328, 261.329, 261.330, 261.331, 261.332, 261.333, 261.334, 261.335, 261.336, 261.337, 261.338, 261.339, 261.340, 261.341, 261.342, 261.343, 261.344, 261.345, 261.346, 261.347, 261.348, 261.349, 261.350, 261.351, 261.352, 261.353, 261.354, 261.355, 261.356, 261.357, 261.358, 261.359, 261.360 and 261.361

The proposed review was published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2359)

No comments were received regarding adoption of the review.

The agency's reasons for adopting the rules contained in this chapter continue to exist.

This concludes the review of Chapter 261, Existing Construction Rules.

TRD-9902417
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: April 26, 1999

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Texas Department of Public Safety

Title 37, Part I

The Texas Department of Public Safety (DPS) has completed the review of Chapter 3, Traffic Law Enforcement; Chapter 5, Criminal Law Enforcement; and Chapter 25, Safety Responsibility Regulations. Pursuant to the requirements of §167 of the Appropriations Act the DPS readopts the following: Chapter 3: §§3.1-3.10, 3.21, 3.23, 3.25-3.29, 3.41, 3.42, 3.51-3.58, 3.60, 3.61, 3.72-3.74, 3.76, 3.91, 3.101, 3.111, and 3.121; and Chapter 25: §§25.6-25.12, 25.16, and 25.19-25.21.

The proposed review was published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12693)

The DPS received no comments as to whether the reason for adopting the rules continues to exist. The DPS finds that the reason for adopting these rules continues to exist.

As part of the review process, the DPS proposed amendments to the following sections as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12869). The proposed amendments are Chapter 3 §§3.22, 3.24, 3.59, and 3.62. The DPS proposed for repeal §§3.63, 3.71, 3.75, and 3.102 with the simultaneous filing of new §3.71. Chapter 5 amendments included the repeal of §§5.1-5.3, 5.11, and 5.21, with the simultaneous filing of new §5.1. Amendments to Chapter 25 included §§25.1-25.5, 25.13-25.15, 25.17, and 25.18.

No comments were received regarding adoption of the review. The DPS finds that the reason for adopting these rules continues to exist.

TRD-9902278
Dudley M. Thomas
Director
Texas Department of Public Safety
Filed: April 19, 1999

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Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter M (relating to Procedures and Filing Requirements in Particular Commission Proceedings), §§22.241 relating to Investigations; 22.242 relating to Complaints; 22.243 relating to Rate Change Proceedings; 22.244 relating to Review of Municipal Rate Actions; 22.245 relating to Notice of Intent Petitions; and 22.246 relating to Administrative Penalties as noticed in the January 15, 1999 *Texas Register* (24 TexReg 307). The commission readopts §§22.241-22.244 and §22.246, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, §167 (§167) and finds that the reason for adopting these rules continues to exist. The commission repeals §22.245. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the §167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed amendments to §§22.241-22.244 as published in the *Texas Register* on January 15, 1999 (24 TexReg 285). The commission proposed the repeal of §22.245 as published in the *Texas Register* on January 15, 1999 (24 TexReg 288). The commission proposed no changes to §22.246. Central Power and Light Company (CPL), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU), the Texas electric utility operating companies of the Central and South West Corporation (collectively CSW Companies); Southwestern Bell Telephone Company (SWBT); Texas Electric Cooperatives, Inc. (TEC); and Texas Utilities Electric Company (TUEC) filed comments on the proposed amendments. These comments are summarized in the preamble for the adoption of the proposed amendments.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the 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.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

TRD-9902373
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 21, 1999

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Texas Savings and Loan Department

Title 7, Part IV

The Finance Commission of Texas has completed the review of Texas Administrative Code, Title 7, Chapter 75 (§§75.1-75.127), relating to Applications, as noticed in the December 25, 1998, issue of the *Texas Register* (23 TexReg 13109). No comments were received regarding the substance of these rules or whether the reason for adopting these rules continues to exist.

The Texas Savings and Loan Department, which administers these rules, re-adopts these sections, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, Section 167, and finds that the reason for adopting these rules continues to exist.

TRD-9902396
James L. Pledger
Commissioner

Texas Savings and Loan Department
Filed: April 23, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is 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. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Organic Standards and Certification Administrative Penalty Matrix

The Texas Department of Agriculture (the department) is publishing the following Organic Standards and Certification Administrative Penalty Matrix to inform the regulated public. This matrix has been developed to provide consistent, uniform, and fair penalties for violations of Chapter 18, Subchapter A, Texas Agriculture Code (the Code). The department's authority for the enforcement of Chapter 18 is found in the Code, 12.020, whereby the department may assess administrative penalties up to a maximum of $500.00 for each violation. Each day that a violation continues or occurs may be considered a separate violation for purposes of assessing administrative penalties.

The department is amending existing language of the organic administrative penalty matrix by adding administrative penalties for certifying agents operating without proper registration in Texas. The amendment will enable the department to assess penalties for organic certifying agents in violation of Chapter 18, Organic Standards and Certification.

For each type of offense there is a penalty range for initial violations. The range increases for subsequent violations. The ranges were established by considering the criteria set forth in the Code, 12.020(d): (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public; (2) the damage to property or the environment caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require.

The Texas Legislature has given the department the responsibility for ensuring that producers, processors, distributors and retailers obtain proper certification in order to offer food, feed or fiber as organic and for ensuring the validation of the organic claim. Also, methods used for production, processing and handling of organic products must prevent the commingling of non-organic and organic products, or contamination of organic products from prohibited materials. In addition, processed or packaged food products must be properly labeled indicating proper certification and that the product is organic or contains organic ingredients. These factors will be considered on a case-by-case basis.

The Legislature has also given the department the responsibility for ensuring that organic private certifiers obtain proper registration in order to certify or provide organic inspection services to producers, processors, distributors, or retailers in Texas, in accordance with Texas Organic Standards.

The low end of each range is the presumptive base penalty for each violation, and represents an appropriate penalty for violations which are considered "minor" with respect to the criteria in the Code, 12.020(d). Penalties may be increased to the maximum within each range as the department considers the facts of each violation in light of the criteria in the Code, 12.020(d).

This matrix is effective upon publication and supercedes the matrix published in the September 24, 1996 issue of the Texas Register, 21 TexReg 9195.

Figure: Organic Standards and Certification Administrative Penalty Matrix

OFFENSE		FIRST VIOLATION	SECOND VIOLATION	SUBSEQUENT VIOLATIONS
Operating without a valid certification		$250 - $350	$350 - $500	$500
Certifying or providing organic inspection services without a valid registration		$250 - $350	$350-$500	$500
Misrepresentation of food, feed or fiber as organic	Marketing/advertising non-organic as organic	$300 - $400	$400 - $500*	$500*
	Commingling with non-organic	$125 - $250	$250 - $500*	$500*
	Contamination from prohibited materials	$125 - $250	$250 - $500*	$500*
Mislabeling of processed or packaged organic products		$125 - $250	$250 - $500*	$500*
Violation of a stop-sale order		$500	$500*	$500*

* A subsequent violation may also result in revocation of certification for a period prescribed by the department.

TRD-9902490
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: April 27, 1999

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Office of the Attorney General

Contract Award

This publication is filed pursuant to Texas Government Code, Section 2254.030. The Request for Proposal was published in the February 26, 1999 issue of the *Texas Register* (24 TexReg 1478-1481).

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General of Texas ("the OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS"). Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate. Contractor will prepare Indirect Cost Allocation Plans for FY98 (based on actual expenditures) and for FY00 (based on budgeted expenditures) in accordance with OMB Circular A-87, for submission to HHS for federal approval and will negotiate approval of those plans with HHS. Contractor will also analyze existing legal billing rates of the OAG for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY00 billing rates for legal services. Contractor will negotiate with HHS for approval of the FY00 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of these plans and billing rates.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is DMG-Maximus, Inc., whose business address is 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is $48,000. The term of the contract began on April 22, 1999, and will terminate on August 31, 1999, unless federal approval is still pending for the plans. In such case, the contract will continue until August 31, 2000 for the sole purpose of obtaining the necessary federal approval.

DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plans must be submitted to HHS no later than June 30, 1999. The final report regarding the FY00 billing rates for legal services must be submitted to the OAG no later than August 31, 1999.

TRD-9902483
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 27, 1999

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Notice of Settlement of a Texas Solid Waste Disposal Act and Resource Conservation and Recovery Act Enforcement Action

Notice is hereby given that a consent decree involving the United States, State of Texas, Encycle/Texas, Inc. and ASARCO, Inc. was lodged with the United States District Court for the Southern District of Texas on April 15, 1999.

Case Title: United States and State of Texas v. Encycle/Texas, Inc. and ASARCO Incorporated.

Background: In this action the United States and State of Texas sought injunctive relief and civil penalties under the Texas Solid Waste Disposal Act ("TSWDA"), §3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6928(a), and the United States sought injunctive relief and civil penalties under §309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. §1319(b) and (d). The Texas portion of the decree resolves civil penalty and injunctive relief claims of the State of Texas against Encycle/Texas, Inc. ("Encycle") and ASARCO Inc. ("ASARCO") under the TSWDA and RCRA for alleged violations of hazardous waste regulations associated with materials management practices at Encycle's facility in Corpus Christi, Texas and ASARCO's facilities in El Paso and Amarillo, Texas. The violations that are the subject of this settlement relate to Encycle's receipt, generation, management, treatment, storage and disposal of hazardous wastes its Corpus Christi facility. Encycle is in the business of recycling/recovering metals from metal bearing wastes. ASARCO is the parent corporation of Encycle. ASARCO is also the owner and operator of the Texas Smelter, a primary copper smelter and associated sulfuric acid manufacturing plant located in the City of El Paso, Texas.

Nature of the Settlement: This agreement is part of a national settlement involving the United States and the State of Texas. The Texas portion of the settlement resolves alleged violations at Encycle/Texas, Inc. and ASARCO's Texas Smelter.

Proposed Settlement: The decree requires Encycle and ASARCO Inc. to: update Encycle's solid waste permit at the Corpus Christi facility; revise Encycle/Texas, Inc.'s hazardous waste management procedures; perform appropriate RCRA corrective action at Encycle and at ASARCO's El Paso facility; develop and use innovative metals recycling technology at Encycle; perform an auto and truck tire recycling project at El Paso; implement an enhanced corporate-wide environmental management and compliance auditing system at ASARCO's operating domestic facilities. The settlement also includes payment of civil penalties for alleged past violations totaling $5.5 million ($2 million to be paid to the State of Texas). In addition, the settlement also requires Encycle and ASARCO to perform supplemental environmental projects, including a permanent 30 acre environmental conservation area for public use to be maintained by ASARCO in Corpus Christi; and an air quality project to reduce particulate pollution in the El Paso area.

The Office of the Attorney General will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Copies of the proposed consent decree may be examined at the Office of the Attorney General, 300 West 15th Street, 10th Floor, Austin, Texas. A copy of the consent decree may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the judgment should be directed to Albert M. Bronson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0911.

TRD-9902416
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 26, 1999

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Texas Health and Safety Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Texas Health and Safety Code. Before the State may settle a judicial enforcement action under these Codes, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of these Codes.

Case Title and Court: Harris County and the State of Texas acting by and through the Texas Natural Resources Conservation Commission and the Texas Department of Health, v. Mary Lawrence, individually and d/b/a Chip's RV Park, Chip's Motors, Inc. and Chip's Enterprises, Inc., in the 61st District Court of Harris, County, Texas.

Nature of Defendant's Operations: Defendants operate a Mobile Home Park at 1700 South Main in Houston, Harris County that has been in violation of the Texas Water Code and Texas Health and Safety Code due to illegal discharge of sewage and failure to properly maintain its public water system. Remediation of the violations is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The judgment permanently enjoins Defendants Mary Lawrence, individually and d/b/a Chip's RV Park, Chip's Motors, Inc. and Chip's Enterprises, Inc. to close Chip's RV Park, to prohibit the use of the property at 1700 South Main for residential and commercial purposes, and to cease supplying water to any individual or business, until such time as the defendants sell the property or the sewage and water supply facilities thereon are made to comply with all applicable state and local regulations. Defendants shall pay $1,000.00 in civil penalties and $1,000.00 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the Judgment, and written comments on the proposed settlement should be directed to Sherry L. Peel, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. **Written comments must be received within 30 days of publication of this notice to be considered.**

TRD-9902501
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 27, 1999

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of April 14, 1999, through April 22, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Phillips Petroleum Company; Location: The project is located in Galveston Bay, State Tracts 119, 126, and 127, in Chambers County, Texas; Project Number 99-0157-F1; Description of Proposed Action: The applicant requests an Oil Field Development Permit to perform oil and gas production activities in State Tracts 119, 126, and 127 in Galveston Bay. The applicant's proposed oil field development, to be known as the Cedar Point Project, is anticipated to start in mid-August of 1999. All drilling operations for the exploration of oil and gas will be performed from barges. Temporary pilings will be placed adjacent to the drilling barge for the mooring of support vessels. These pilings will be removed upon completion of drilling operations. Type of Application: U.S.A.C.E. permit application number 21631 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: City of Houston; Location: The project site is located at the George Bush Intercontinental Airport, on the northwest quadrant of Will Clayton Parkway and Lee Road, in Houston, Harris County, Texas; Project Number 99-0158-F1; Description of Proposed Action: The applicant proposes to fill approximately 4.9 acres of isolated wetlands to construct an air cargo facility and taxiway; extend an existing taxiway; relocate a non-jurisdictional segment of Garners Bayou; and excavate a 40-acre storm water detention pond. Construction of the new air cargo facility will also require relocation of a non-jurisdictional segment of Garners Bayou 1,000 feet to the west. The proposed work will impact approximately 4.9 acres of isolated depressional wetlands. Type of Application: U.S.A.C.E. permit application number 21630 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Encap Golf L.L.C.; Location: The project is located at the closed BFI Holmes Road Landfill, on the south side of Holmes Road, approximately 1/4 mile west of the intersection of Holmes Road and Kirby Drive, in Houston, Harris County, Texas; Project Number 99-0159-F1; Description of Proposed Action: The applicant is seeking authorization to fill approximately 22.6 acres of isolated wetlands in the process of converting a closed 435-acre municipal solid waste landfill to a 36-hole golf course under the Brownfields Redevelopment Initiative. The site currently contains approximately 39.5 acres of isolated wetlands; Type of Application: U.S.A.C.E. permit application number 21655 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

FEDERAL AGENCY ACTIVITIES:

Applicant: Minerals Management Service - Western Gulf Lease Sale 174; Project Number 99-0133-F2; Description of Proposed Activity: The MMS has scheduled the proposed sale for August 1999. This is the third WPA sale scheduled in the 1997-2002 Outer Continental Shelf Oil & Gas Leasing Program. The proposed sale area includes about 3,640 unleased blocks covering about 20 million acres located 9 to 200 miles offshore in water depths ranging from 8 to 3,000 meters. Proposed Sale 174 would offer for lease all unleased blocks in the Western Gulf, with the following exceptions: two whole blocks and two partial blocks that lie within the Flower Garden National Marine Sanctuary; blocks 793, 799, and 816 in the Mustang Island Area which have been identified by the Navy as needed for testing equipment and for training mine warfare personnel; and blocks beyond the U.S. Exclusive Economic Zone, in the area referred to as the northern portion of the Western Gap. The MMS regulates all OCS operations under provisions of the OCS Lands Act and regulations at 30 CFR Part 250.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is,

or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9902528
Larry R. Soward
chief Clerk, General Land Office
Coastal Coordination Council
Filed: April 28, 1999

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Concho Valley Workforce Development Board

Request for Proposals

The Concho Valley Workforce Development Board (CVWDB) is soliciting proposals for the operation of Child Care Services (including Child Care Management/DCCDS, ECDR, and CCT). CVWDB is requesting one proposer to deliver all services.

The RFP will be released at 10:00 AM on May 3, 1999. Interested parties may request a copy from Joyce Sneed, CVWDB, P.O. Box 2779, San Angelo, TX 76902, phone (915) 655-2005, fax (915) 482-8900.

A proposers' conference will be held on May 10, 1999, at 1:00 PM in the meeting room of the Cactus Hotel, 36 East Twohig, San Angelo, TX.

DEADLINE. Responses must be received in the CVWDB offices by 4:00 PM central daylight savings time on June 2, 1999.

TRD-9902536
Michael Smith
Board Chairman
Concho Valley Workforce Development Board
Filed: April 28, 1999

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Office of Consumer Credit Commissioner

Notices of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Articles 1D.003 and 1D.009 for the period of 04/26/99 - 05/02/99 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Articles 1D.003 and 1D.009 for the period of 04/26/99 - 05/02/99 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Article 1E.003 for the period of 05/01/99 - 05/31/99 is 10% for Consumer/Agricultural/Commercial/ credit thru $250,000.

The judgment ceiling as prescribed by Article 1E.003 for the period of 05/01/99 - 05/31/99 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9902376
Leslie L. Pettijohn
Commissioner
Consumer Credit Commissioner of Texas
Filed: April 21, 1999

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The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 05/03/99 - 05/09/99 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 05/03/99 - 05/09/99 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009[3] for the period of 05/01/99 - 05/31/99 is 18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009 for the period of 05/01/99 - 05/31/99 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-9902507
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 27, 1999

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Texas Department of Criminal Justice

Notice of Cancellation

The Texas Department of Criminal Justice forwards this notice of cancellation for the Request for Qualifications published in the April 30, 1999, issue of the *Texas Register*. Requisition Number: 696-FD-0-P002.

TRD-9902524
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 28, 1999

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Notices of Contract Award

The Texas Department of Criminal Justice forwards this notice of Contract Award for the Texas Youth Commission, Brownwood State School Administrative Segregation Unit and Site Improvements (Requisition Number - 696-FD-9-B016) published in the December 11, 1998 issue of the *Texas Register*.

The contract was awarded on March 22, 1999, to CME Builders Engineers, Inc., for a dollar amount of $2,196,580 (Contract Number - 696-FD-9-C0107).

TRD-9902525
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 28, 1999

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The Texas Department of Criminal Justice forwards this notice of Contract Award for the Texas Youth Commission, Gainesville State School HVAC Replacement TYC (Requisition Number - 696-FD-9-B013) published in the December 4, 1998 issue of the *Texas Register*.

The contract was awarded on March 22, 1999, to Raven Construction and Supply Company for a dollar amount of $127,227 (Contract Number - 696-FD-9-C0104).

All of the award was awarded to a HUB certified woman-owned business.

TRD-9902526
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 28, 1999

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Texas Department of Economic Development

Announcement of Availability of REMI Model

State agencies may use sophisticated policy analysis tool through agreement with the Texas Department of Economic Development.

The Texas Department of Economic Development has acquired the Regional Economic Models Inc.'s (REMI) model for the State of Texas. REMI is used throughout the United States to show impacts of economic and demographic changes on a regional economy resulting from public policy decisions regarding environmental laws, utility deregulation, business expansion, and taxes, among others. REMI contains historical population and demographic data going back to 1969 and includes a baseline forecast through 2030. REMI is a dynamic model of the U.S. and Texas economies and only requires a personal computer to operate.

Prior to use of the model, other state agencies will be required to sign an interagency agreement and reimburse the Texas Department of Economic Development with a portion of the annual maintenance fees for the model. REMI will deliver the Texas regional model to participating agencies after a secondary user's license has been purchased directly from REMI.

CONTRACT DEADLINE. Agencies interested in beginning use of the REMI model in FY2000 must submit a completed interagency contract by **July 15, 1999.**

Please contact Branner Steward at the Texas Department of Economic Development for additional information concerning the REMI model, the secondary user's license, and the interagency contract. Phone: (512) 936-0291.

TRD-9902423
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: April 26, 1999

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Kristin Newkirk at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual PAC Campaign Finance Report, due January 15, 1999

Francis Cook, Across The Track PAC, 6930 Martin Luther King, Jr Boulevard, Houston, Texas, 77033

S W Ligon, Americans For Equal Access to Higher Education, P.O. Box 300272, Houston, Texas, 77230-0272

Ann Cowan, Bell County Democrats In Action, 505 West Royal, Temple, Texas, 76501

Charles M. Miles, Black Voter Action Project, 7204 Marywood Circle, Austin, Texas, 78723

Johnny Atkinson, Committee For Better Education, HC 1, Box 624A, Goodrich, Texas, 77335

Angela Frazier, Dallas Gay & Lesbian Alliance PAC, P.O. Box 190712, Dallas, Texas, 75219

Enrique Barrera, Edgewood PAC, 6435 Buena Vista, San Antonio, Texas, 78237

Alfred Adask, Equity Under All Law, 9794 Forest Lane #159, Dallas, Texas, 75243

Steven A. Bennett, Friends Sandy Kress, John Sharp, Paul Hobby, David Cain & Royce West, 1700 Pacific Avenue #4100, Dallas, Texas, 75201

B L Helm, Galveston County Apartment Association, 305 21st Street #247, Galveston, Texas, 77550

Claudia G Smith, Grand Prairie Federation of Teachers, 1400 Bandera Drive, Arlington, Texas, 76018

Jeffrey Lawlor, Greater Austin Partnership PAC, 1712 East Riverside Drive, Box 138, Austin, Texas, 78741

Sherry Griffith, Houston Heights PAC, 626 Algregg, Houston, Texas, 77008

Richard Torres, Houston Hispanic Chamber of Commerce, 1737 Sunset Boulevard #20, Houston, Texas, 77005-1758

Clarence B. Bagby, Houston Historic Preservation PAC, 2003 Kane Street, Houston, Texas, 77007-7612

Richard M. Lannen, Jesse Oliver Campaign, 900 Jackson Street #600, Dallas, Texas, 75202

Karen Ann Lee, Kendall County Republican Women, 36 Pfeiffer Road, Boerne, Texas, 78006

Vidal DeLeon, McLennan County Mexican Americans For Better Government, 16619 Baylor Avenue, Waco, Texas, 76706

William Muirhead, Muirhead Election Committee, 158 Countrywood Est, Cleveland, Texas, 77327

H J Johnson, Pleasant Wood Pleasant Grove PAC, P.O. Box 150408, Dallas, Texas, 75305-0408

David Jackson, Republican Communications Network, P.O. Box 703936, Dallas, Texas, 75370-3936

Leopoldo Botello, San Antonio Certified Public Accountants PAC, P.O. Box 101047, San Antonio, Texas, 78201

Pat Stevens, South Denton County PAC, 2025 Aspen Drive, Highland Village, Texas, 75067

Charlie Broadaway, Southlake Citizens Committee, 600 Bentwood Lane, Southlake, Texas, 76092

Fernando Contreras, Southside Democrats, P.O. Box 37278, San Antonio, Texas, 78237-0278

Thomas Plequette, Southwestern Committee on Political Education, P.O. Box 1261, Amarillo, Texas, 79170

Brad Bacom, TALI-PAC, 2626 Calder #203, Beaumont, Texas, 77702

Edward Hickson, Tarrant County Deputy Sheriffs, 111 North Houston #211, Fort Worth, Texas, 76102

Reynaldo Moreno, Texas Association of Hispanic Firefighters, P.O. Box 996, Austin, Texas, 78767

Lemuel Price, Texas Coalition Of Black Democrats Dallas Chapter, 3016 50th Street, Dallas, Texas, 75216

Charles Gaines, Texas Tea PAC, 16338 Southampton Drive, Spring, Texas, 77379

G Daniel Mena, Unity 94 El Paso County, 3233 North Piedras, El Paso, Texas, 79930-3703

Deadline: Semiannual Candidate/Officeholder Campaign Finance Report, due January 15, 1999

Kathleen Ballanfant, 5160 Spruce, Bellaire, Texas, 77401

Burgess Beall, 5510 Icon Street, Austin, Texas, 78744-3837

Stephen Birch, 4911 Haverwood Ld #2924, Dallas, Texas, 75287-4440

Patricia Blount, Route 7 Box 169, Paris, Texas, 75462

William Brandt, 808 Victoria Lane, Southlake, Texas, 76092

Howard Bridges JR., 434 West Kiest Boulevard. #100, Dallas, Texas, 75224

Shene Casey, 256 County Road 3101, Greenville, Texas, 75402

Anna Cavazos Ramirez, 1307 Wingfoot Loop, Laredo, Texas, 78041

Chloe Jack Daniel, P.O. Box 810570, Dallas, Texas, 75381-0570

Jeanne Doogs, 300 Trinidad Court, Fort Worth, Texas, 76126

Richard Draheim Jr, 275 Henry Chandlers Drive, Rockwall, Texas, 75087

Russell Duerstine, 3202 Sunset Drive, San Angelo, Texas, 76904

Deborah Dunsinger, 450 El Dorado #1303, Webster, Texas, 77598

James Fowler, P.O. Box 763, Lancaster, Texas, 75146

Mario Garcia, 735 West 10th, Mercedes, Texas, 78570

Baltazar Garcia, 712 McDaniel, Houston, Texas, 77022

Juan Garcia, 1101 South Cameron, Alice, Texas, 78332

Thomas Gatton, 2320 Southwest Freeway #C, Houston, Texas, 77098

Samuel Gonzalez, 15721 Maiden Lane, Houston, Texas, 77053

Arthur Granado, 2002 Airline #1309, Corpus Christi, Texas, 78412

Anton Hackebeil, P.O. Box 220, Hondo, Texas, 78861-0220

Michael J. Hardy, P.O. Box 136704, Fort Worth, Texas, 76136-0704

David Hart, P.O. Box 79034, Saginaw, Texas, 76179

Robert Ashton Herrera, P.O. Box 37177, San Antonio, Texas, 78237-0177

Samuel Hudson, P.O. Box 150972, Dallas, Texas, 75315-0972

Elizabeth Jandt, 112 North Austin, ST, Seguin, Texas, 78155

Dennis Jones, P.O. Box 1027, Lufkin, Texas, 75902

S Christopher Larue, 4014 Richmond Avenue, Houston, Texas, 77027

Raymundo Mancera, 6316 Normandy Drive, El Paso, Texas, 79925-1805

Alberto Martinez, P.O. Box 549, San Diego, Texas, 78384

Roman Martinez, 1009 Graceland, Houston, Texas, 77009

Robert Mendoza, P.O. Box 5566, Brownsville, Texas, 78523-5566

Norbon Mitchell, 1709 Martel, Fort Worth, Texas, 76103

Patrick Morris, P.O. Box 35, Decatur, Texas, 78234

William Muirhead, 158 Countrywood Est, Cleveland, Texas, 77327

Robert Offutt, 1519 Spanish Oaks, San Antonio, Texas, 78213

Alice Oliver-Parrott, 480 Thunder Canyon Road, Canyon Lake, Texas, 78133

Morris Overstreet, P.O. Box 12817, Austin, Texas, 78711

Fernando Ramirez, 2735 Lakeshore Drive, Port Arthur, Texas, 77640

Charles Rothrock, P.O. Box 81, Mexia, Texas, 76667-0081

Christina Ryan, 27129 Paula Lane, Conroe, Texas, 77385

Roger Settler, 1824 IH 35 South #312, Austin, Texas, 78704

Heriberto Silva, P.O. Box 249, Garciasville, Texas, 78547

Victor Smith, 1423 West Red Bird Lane, Dallas, Texas, 75232

Steve Stockman, P.O. Box 57135, Webster, Texas, 77598

Mina Colin Strother, P.O. Box 88, Jasper, Texas, 75951

Raul Villaronga, P.O. Box 10233, Killeen, Texas, 76547-0233

Melva Washington-Becnel, 2403 Arbor, Houston, Texas, 77004

Michael Yarbrough, 1314 Texas Ave. #515, Houston, Texas, 77002

Deadline: Monthly or Annual Lobby Activity Report, Due January 11, 1999

J Richard Davis, P.O. Box 1188, Houston, Texas, 77251-1188

Mary Beth McHale, 2495 Natomas Park Drive #550, Sacramento, California, 95833

Mark Seale, 701 Brazos #600, Austin, Texas, 78701

Melinda Wheatley, P.O. Box 40519, San Antonio, Texas, 78229

Deadline: Monthly PAC Report, Due January 5, 1999

Roy Waters, Texas Committee, 1000 Louisiana Street, 70th Floor, Houston, Texas, 77002

Deadline: Monthly PAC Report, Due December 5, 1998

Robert Ruiz, Houston Police Patrolmens Union, 811 North Loop West, Houston, Texas, 77008-1726

Raymond Hernandez, International Longshoremens Association Local #24, 7811 Harrisburg, Houston, Texas, 77012

TRD-9902491
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: April 27, 1999

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General Services Commission

Notice of Amendment Number 1 to Contract Airline Fares Request for Proposal

The General Services Commission (the "GSC") announces Amendment Number 1 to Request for Proposals ("RFP") for Contract Airline Fares (RFP Number 9-0499AF) to be provided to the State of Texas pursuant to the Texas Government Code, §2171.052. Any contract which results from this RFP shall be for the term of September 1, 1999, through August 31, 2000.

Preproposal Conference: Amendment Number 1 changes the preproposal conference from Wednesday, April 28, 1999, to Thursday, May 6, 1999, in Austin, Texas. The conference is scheduled from 1:00 p.m. to 3:00 p.m. at the following address: General Services Commission, Central Services Building, Room 402, 1711 San Jacinto Blvd., Austin, Texas 78701. The purpose of the conference is to review the content of this RFP and to answer attendees questions.

Submission of Response to the RFP: Amendment Number 1 also changes the submission of response to the RFP from May 19, 1999, to on or before 3:00 p.m., Central Daylight Time, on May 27, 1999, and shall be delivered or sent to: The General Services Commission, Attn: Bid Services, RFP Number 9-0499AF, 1711 San Jacinto Blvd., Room 180, Austin, Texas 78701, or P.O. Box 12047, Austin, Texas 78711-3047.

Copies of RFP: If you are interested in receiving a copy of the RFP and Amendment Number 1, contact Ms. Gerry Pavelka, Program Director, at (512) 463-3559 to request a copy(s).

TRD-9902473
Judy Ponder
General Counsel
General Services Commission
Filed: April 26, 1999

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Texas Department of Health

Licensing Action 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 table below. The subheading labeled “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.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
FORT WORTH	DVI OF TEXAS INC	L05247	FORT WORTH	0	04/12/99
FORT WORTH	ALL SAINTS ADVANCED IMAGING CENTER	L05251	FORT WORTH	0	04/01/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ALVIN	EQUISTAR CHEMICALS LP CHOCOLATE BAYOU PLANT	L03363	ALVIN	18	04/12/99
ARANSAS PASS	COASTAL BEND HOSPITAL INC DBA NORTH BAY HOSPITAL	L03446	ARANSAS PASS	17	04/14/99
ARLINGTON	ARLINGTON CANCER CENTER	L03211	ARLINGTON	53	04/08/99
AUSTIN	AUSTIN HEART PA	L04623	AUSTIN	10	04/01/99
BAYTOWN	BAYCOAST MEDICAL CENTER	L02462	BAYTOWN	28	04/13/99
BEAUMONT	R LELDON SWEET M D P A OUTPATIENT CARDIOVASCULAR SERV	L05029	BEAUMONT	2	04/01/99
BEDFORD	CARTER BLOODCARE	L00630	BEDFORD	36	04/06/99
CONROE	SADLER CLINIC	L04899	CONROE	8	03/30/99
CONTROE	COLUMBIA REGIONAL MEDICAL CENTER	L01769	CONROE	50	03/30/99
DALLAS	COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS	L01976	DALLAS	112	04/14/99
DALLAS	COOPER CLINIC PA DBA COOPER CLINIC	L05138	DALLAS	2	03/30/99
DENTON	METRO NORTH CLINIC	L05235	DENTON	1	04/06/99
EL PASO	COLUMBIA MEDICAL CENTER EAST	L02551	EL PASO	35	04/09/99
EL PASO	CHEVRON PRODUCTS CO	L02669	EL PASO	10	04/06/99
EL PASO	COLUMBIA MEDICAL CENTER EAST NUCLEAR MEDICINE	L02715	EL PASO	37	04/09/99
EULESS	COR SPECIALTY ASSOCIATES OF NORTH TEXAS	L05062	EULESS	6	04/12/99
FORT WORTH	SYNCOR INTERNATIONAL CORPORATION	L02905	FORT WORTH	49	04/08/99
GRAND PRAIRIE	DALLAS FORT WORTH MEDICAL CENTRAL GRAND PRAIRIE	L02612	GRAND PRAIRIE	32	04/12/99
HOUSTON	MEMORIAL HERMANN HOSPITAL SYSTEM	L01168	HOUSTON	51	04/06/99
HOUSTON	SAFETY-KLEEN FS INC	L04862	HOUSTON	1	03/31/99
HOUSTON	BERNARDO TREISTMAN M D P A	L05083	HOUSTON	2	04/13/99
LAKE JACKSON	NON DESTRUCTIVE INSPECTION CORPORATION	L02712	LAKE JACKSON	64	04/12/99
LUFKIN	PINEY WOODS HEALTHCARE SYSTEM LLC DBA WOODLAND HGTS	L01842	LUFKIN	35	04/06/99
MCALLEN	VALLEY HEART CENTER	L05149	MCALLEN	5	03/31/99
POINT COMFORT	ALCOA ALUMINA & CHEMICALS LLC POINT COMFORT OPERATION	L05186	POINT COMFORT	1	04/08/99
PORT LAVACA	UNION CARBIDE CORPORATION	L03105	PORT LAVACA	13	04/06/99
PORT LAVACA	SEADRIFT COKE LP	L03432	PORT LAVACA	9	04/01/99
SAN ANGELO	SHANNON MEDICAL CENTER	L02174	SAN ANGELO	33	04/08/99
SAN ANTONIO	SOUTH TEXAS RADIOLOGY GROUP	L00325	SAN ANTONIO	90	04/08/99
SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCENCE CENTER AT SA	L01279	SAN ANTONIO	80	04/14/99
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO	L05076	SAN ANTONIO	8	04/06/99

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
SAN ANTONIO	BIONUMERIK PHARMACEUTICALS INC	L05226	SAN ANTONIO	1	04/13/99
TEXARKANA	MINAKSHI J PATEL MD FACC	L04738	TEXARKANA	4	04/08/99

TEXAS CITY	AMOCO OIL COMPANY	L00254	TEXAS CITY	48	04/13/99
THE WOODLANDS	MEMORIAL HOSPITAL THE WOODLANDS	L03772	THE WOODLANDS	22	04/01/99
THE WOODLANDS	MEMORIAL HOSPITAL THE WOODLANDS	L03772	THE WOODLANDS	23	04/13/99
THROUGHOUT TEXAS	H & G INSPECTION COMPANY INC	L02181	HOUSTON	126	04/15/99
THROUGHOUT TEXAS	GENERAL INSPECTION SERVICES	L02319	HOUSTON	31	04/06/99
THROUGHOUT TEXAS	SONIC SURVEYS INC	L02622	MONT BELVIEU	14	04/07/99
THROUGHOUT TEXAS	RAYTHEON ENGINEERS AND CONSTRUCTORS INC	L02662	HOUSTON	72	04/06/99
THROUGHOUT TEXAS	SOUTHERN SERVICES INC	L02683	LAKE JACKSON	61	04/06/99
THROUGHOUT TEXAS	METCO	L03018	HOUSTON	85	04/08/99
THROUGHOUT TEXAS	GLOBAL X-RAY & TESTING CORP	L03663	ARANSAS PASS	68	04/08/99
THROUGHOUT TEXAS	FUGRO SOUTH INC	L03875	AUSTIN	11	04/05/99
THROUGHOUT TEXAS	PROFESSIONAL SERVICE INDUSTRIES INC	L03924	DALLAS	14	04/12/99
THROUGHOUT TEXAS	DESERT INDUSTRIAL X-RAY	L04590	ODESSA	22	04/07/99
THROUGHOUT TEXAS	CONAM INSPECTION	L05010	HOUSTON	18	04/06/99
VICTORIA	CITIZENS MEDICAL CENTER	L00283	VICTORIA	61	04/01/99
WICHITA FALLS	VETROTEX CERTAINTEED CORPORATION	L02269	WICHITA FALLS	26	04/15/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
THROUGHOUT TEXAS	PROFESSIONAL SERVICE INDUSTRIES INC	L03642	HOUSTON	17	04/14/99
THROUGHOUT TEXAS	TEAM CONSULTANTS INC	L04012	DALLAS	6	04/12/99
THROUGHOUT TEXAS	ENPROTEC INC	L04266	ABILENE	10	04/07/99

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
EL PASO	SOIL MECHANICS INTERNATIONAL	L04333	EL PASO	3	04/15/99
HOUSTON	THE INSTITUTE FOR REHABILITATION AND RESEARCH	L04000	HOUSTON	15	04/01/99

EXEMPTIONS ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
BREMOND	TEXAS NEW MEXICO POWER COMPANY	L04280	BREMOND	0	04/08/99

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, 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 *Texas Regulations for Control of Radiation* 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 license(s) will not be inimical to the health and safety of the public

or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756–3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9902477
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 27, 1999

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

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 Southwest Diagnostic Imaging Center (licensee-L03763) of San Antonio, Texas. A penalty of $5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code (TAC), Chapter 289.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9902474
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 27, 1999

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Notice of Request for Proposals for One Year Diabetes Awareness Among at Risk Minorities in Dallas County

PURPOSE: The Texas Department of Health (department) is accepting requests for proposals (RFPs) from community-based organizations (CBOs) wishing to increase diabetes awareness and education within their community. The project will target at risk minorities residing in Dallas County at risk for developing Type 2 Diabetes. This Project will develop the following products: (1) an assessment of the organization's capacity to design, implement a Diabetes Awareness/ Education Program; (2) development of a lay instructor pool; and (3) a quality assurance plan of action for performance monitoring. The performing agency must provide evidence that it is meeting the following objectives: (1) staffing patterns with qualified staff designated to Diabetes Awareness/Education; (2) consensus on community wide priorities that describe population based objectives compatible with the Healthy Communities 2000 Model Standards; (3) increase the organization's credibility, and establish a specific efforts and accomplishments (SEA) performance system; (4) identification and recruitment of program champions within the organizational structure and the community; (5) significant systems change within the applicant's organizational structure and in the community; and (6) applicant's infrastructure and performance improvement.

ELIGIBLE APPLICANTS: Eligible applicants include local health departments and not-for-profit organizations. Individuals are not eligible to apply. Eligible applicants must demonstrate congruence between health promotion/prevention activities and the applicant's organizational mission.

AVAILABLE FUNDS: Approximately $44,000 is expected to be available to fund one project for approximately 36 months. The specific dollar amount to be awarded to the selected applicants will depend upon the merit and scope of the proposed project. The project period is from July 1, 1999, through June 30, 2002.

SELECTION CRITERIA: The top ranking applicant will be funded. The applicant may not receive the amount requested due to the limitation of funds and in order to provide services in other areas. Final budgets will be decided by department staff based on reviewer recommendations and negotiations with the applicant. The department reserves the right to make funding decisions based on the need to provide diabetes prevention services across geographic areas and to allocate funding based on an analysis of resources already available in a particular community in order to avoid duplication of services. Analysis may include data such as other state or federally funded projects present and Diabetes prevalence data.

If two or more applications targeting the same population in the same geographic location receive the same score, preference will be given to the applicant that has not received Texas Diabetes Program and Texas Diabetes Council funding within the last three years. In the event of a tie and one of the tied applicants is a public health department, the grant will be awarded to the public health department in accordance with state law.

DEADLINE: The original and three copies of the RFP must be submitted on or before 5:00 p.m., Central Daylight Saving Time, on June 1, 1999, to Pete Hoffman, M.S., CHES., Texas Department of Health Diabetes Program and the Texas Diabetes Council, Tower Building Room 401, 1100 West 49th Street, Austin, Texas 78756-3199. Applications received after the due date and time shall not be considered for review. Application review will be completed by June 8, 1999, with written notification being sent to all applicants, shortly thereafter.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible complete applications will be reviewed by a panel of reviewers, and scored according to the following criteria: clarity and appropriateness of the application; extent of the applicant's experience and capacity; applicant's description of the service area; service delivery plan and budget; and involvement of the applicant's senior level management

and other diabetes stakeholders in the development, implementation and institutionalization of the project in their community.

FOR INFORMATION: For a copy of the RFP, and other information, contact Mr. Pete Hoffman, Texas Diabetes Program/Council at (512) 458-7490 or at E-mail: Pete.Hoffman@tdh.state.tx.us.

TRD-9902533
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 28, 1999

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Notice of Request for Proposals for Four Year (State) Diabetes Awareness and Education in the Community Projects

PURPOSE: The Texas Department of Health (department) is accepting requests for proposals (RFPs) from community-based organizations (CBOs) wishing to increase diabetes awareness and education within their community. The Diabetes Awareness and Education in the Community (DAEC) Project will target Hispanic Americans, African Americans, the elderly and other groups at risk for developing Type 2 Diabetes. This Project will develop the following products: (1) an assessment of the organization's capacity to design, implement a DAEC; (2) a community wide assessment that establishes baseline data; and (3) a plan of action for local enhancement of the DAEC Project during year two. The DAEC must provide evidence that the performing agency is meeting the following objectives: (1) staffing patterns with qualified staff designated to the DAEC; (2) consensus on community wide priorities that describe population based objectives compatible with the Healthy Communities 2000 Model Standards; (3) increase the organization's credibility, and establish a service efforts and accomplishments (SEA) performance system; (4) identification and recruitment of program champions within the organizational structure and the community; (5) progress in reaching the 2003 objective to increase the visibility of the DAEC to at least 15% of the target population before August 31, 2003; (6) progress in reaching the 2003 objective to increase the community's understanding of Diabetes by at least 10% from baseline before August 31, 2003; (7) significant systems change within the applicant's organizational structure and in the community; (8) intellectual capital development within the organizational structure and the community; (9) applicant's infrastructure and performance improvement; (10) increase access to health care and education services from baseline; and (11) achieve established workload measure by reaching the negotiated number of people through awareness activities.

ELIGIBLE APPLICANTS: Eligible applicants include local health departments and not-for-profit organizations. Individuals are not eligible to apply. Eligible applicants must demonstrate congruence between health promotion/prevention activities and the applicant's organizational mission.

AVAILABLE FUNDS: Approximately $1 million is expected to be available to fund ten projects for approximately 12 months. Funds will be available for four years if funding is available from the Texas Legislature and if the applicant's performance is satisfactory. The maximum award per applicant is up to $100,000. The specific dollar amount to be awarded to the selected applicants will depend upon the merit and scope of the proposed project. It is expected that funding will remain level throughout the project period, September 1, 1999, through August 31, 2003.

SELECTION CRITERIA: Applicants will be funded in order of ranking, however, all applications receiving recommendations for funding may not be funded, as the amount of total funding available is limited. Higher ranking projects in individual regions may not be funded in order to ensure that diabetes prevention services are available in other areas of the state where the prevalence of Diabetes is higher. Applicants may not receive the amount requested due to the limitation of funds or in order to provide services in other areas. Final budgets will be decided by department staff based on reviewer recommendations and negotiations with the applicant. The department reserves the right to make funding decisions based on the need to provide diabetes prevention services across geographic areas and to allocate funding based on an analysis of resources already available in a particular community in order to avoid duplication of services. Analysis may include data such as other state or federally funded projects present and diabetes prevalence data.

In the event of a tie and one of the tied applicants is a public health department, the grant will be awarded to the public health department in accordance with state law.

DEADLINE: The original and three copies of the RFP must be submitted on or before 5:00 p.m., Central Daylight Saving Time, on June 7, 1999, to Pete Hoffman, M.S., CHES., Texas Department of Health Diabetes Program and the Texas Diabetes Council, Tower Building Room 401, 1100 West 49th Street, Austin, Texas 78756-3199. Applications received after the due date and time shall not be considered for review. Application review will be completed by June 15, 1999, with written notification being sent to all applicants, shortly thereafter.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible complete applications will be reviewed by a panel of reviewers, and scored according to the following criteria: clarity and appropriateness of the application; extent of the applicant's experience and capacity; applicant's description of the service area; service delivery plan and budget; and involvement of the applicant's senior level management and other diabetes stakeholders in the development, implementation and institutionalization of the DAEC project in their community.

FOR INFORMATION: For a copy of the RFP, and other information, contact Pete Hoffman, M.S., CHES, Texas Diabetes Program/Council at (512) 458-7490 or at E-mail: pete.hoffman@tdh.state.tx.us. The RFP will be available on or about May 10, 1999.

TRD-9902532
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 28, 1999

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Notice of Request for Proposals for One Year Community-Based Diabetes Awareness and Education in the Community

PURPOSE: The Texas Department of Health (department) is accepting requests for proposals (RFPs) from community-based organizations (CBOs) wishing to increase Diabetes awareness and education within their community. The program will target Hispanic Americans, African Americans, the elderly and other groups at risk for developing Type 2 Diabetes. This Project will develop the following products: (1) a community wide assessment that establishes base line data; and (2) a plan of action for local enhancement of the pro-

ject. The Project must provide evidence that the performing agency is meeting the following objectives: (1) staffing patterns with qualified staff designated to Diabetes Awareness and Education; (2) consensus on community wide priorities that describe population based objectives compatible with the Healthy Communities 2000 Model Standards; (3) increase the organization's credibility, and establish a specific efforts and accomplishments (SEA) performance system; (4) identification and recruitment of program champions within the organizational structure and the community; (5) increase the visibility of the project to at least 15% of the target population; 6) increase the community's understanding of diabetes by at least 10% from baseline; (7) significant systems change within the applicant's organizational structure and in the community; (8) intellectual capital development within the organizational structure and the community; (9) applicant's infrastructure and performance improvement; (10) increase access to health care and education services from baseline; and (11) achieve established workload measure by reaching the negotiated number of people through awareness activities.

ELIGIBLE APPLICANTS: Eligible applicants include local health departments and not-for-profit organizations. Individuals are not eligible to apply. Eligible applicants must demonstrate congruence between health promotion/prevention activities and the applicants organizational mission.

AVAILABLE FUNDS: Approximately $416,000 is expected to be available to fund five projects for approximately 12 months with a grant maximum of $98,000. The specific dollar amount to be awarded to the selected applicants will depend upon the merit and scope of the proposed project.

SELECTION CRITERIA: Applicants will be funded in order of ranking; however, all applications receiving recommendations for funding may not be funded as the amount of total funding available is limited. Higher ranking projects in individual regions may not be funded in order to ensure that diabetes prevention services are available in other areas of the state where the prevalence of Diabetes is higher. Applicants may not receive the amount requested due to the limitation of funds or in order to provide services in other areas. Final budgets will be decided by department staff based on reviewer recommendations and negotiations with the applicant. The department reserves the right to make funding decisions based on the need to provide diabetes prevention services across geographic areas and to allocate funding based on an analysis of resources already available in a particular community in order to avoid duplication of services. Analysis may include data such as other state or federally funded projects present and diabetes prevalence data. If two or more applications targeting the same population in the same geographic location receive the same score, preference will be given to the applicant that has not received Texas Diabetes Program and Texas Diabetes Council funding within the last three years. In the event of a tie and one of the tied applicants is a public health department, the grant will be awarded to the public health department in accordance with state law.

DEADLINE: The original and three copies must be submitted on or before 5:00 p.m., Central Daylight Saving Time, on June 22, 1999, to Pete Hoffman, M.S., CHES., Texas Department of Health Diabetes Program and the Texas Diabetes Council, Tower Building Room 401, 1100 West 49th Street, Austin, Texas 78756-3199. Applications received after the due date and time shall not be considered for review. Application review will be completed by August 31, 1999, with written notification being sent to all applicants, shortly thereafter.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible complete applications will be reviewed by a panel of reviewers, and scored according to the following criteria: clarity and appropriateness of the application; extent of the applicant's experience and capacity; applicant's description of the service area; service delivery plan and budget; and involvement of the applicant's senior level management and other diabetes stakeholders in the development, implementation and institutionalization of the DAEC Project in their community.

FOR INFORMATION: For a copy of the RFP, and other information, contact Mr. Pete Hoffman, Texas Diabetes Program/Council at (512) 458-7490 or at E-mail: Pete.Hoffman@tdh.state.tx.us.

TRD-9902530
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 28, 1999

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Notice of Request for Proposals for Three Year (Federal) Diabetes Awareness and Education in the Community Projects

PURPOSE: The Texas Department of Health (department) is accepting requests for proposals (RFPs) from community-based organizations (CBOs) wishing to increase Diabetes awareness and education within their community. The Diabetes Awareness and Education in the Community (DAEC) Project will target Hispanic Americans, African Americans, the elderly and other groups at risk for developing Type 2 Diabetes. This project will develop the following products: (1) an assessment of the organization's capacity to design, implement a DAEC; (2) a community wide assessment that establishes baseline data; and (3) a plan of action for local enhancement of the DAEC project during year two. The DAEC must provide evidence that the performing agency is meeting the following objectives: (1) staffing patterns with qualified staff designated to the DAEC; (2) consensus on community wide priorities that describe population based objectives compatible with the Healthy Communities 2000 Model Standards; (3) increase the organization's credibility, and establish a service efforts and accomplishments (SEA) performance system; (4) identification and recruitment of program champions within the organizational structure and the community; (5) progress in reaching the 2002 objective to increase the visibility of the DAEC to at least 15% of the target population before June 30, 2002; (6) progress in reaching the 2002 objective to increase the community's understanding of Diabetes by at least 10% from baseline before June 30, 2002; (7) significant systems change within the applicant's organizational structure and in the community; (8) intellectual capital development within the organizational structure and the community; (9) applicant's infrastructure and performance improvement; (10) increase access to health care and education services from baseline; and (11) achieve established workload measure by reaching the negotiated number of people through awareness activities.

ELIGIBLE APPLICANTS: Eligible applicants include local health departments and not-for-profit organizations. Individuals are not eligible to apply. Eligible applicants must demonstrate congruence between health promotion/prevention activities and the applicant's organizational mission.

AVAILABLE FUNDS: Approximately $200,000 is expected to be available to fund two projects for approximately 12 months. Funds will be available for three years if funding is available from the Centers for Disease Control and Prevention (CDC) and if the

applicant's performance is satisfactory. The maximum award per applicant is up to $100,000. The specific dollar amount to be awarded to the selected applicants will depend upon the merit and scope of the proposed project. It is expected that funding will remain level throughout the project period, July 1, 1999, through June 30, 2002.

SELECTION CRITERIA: Applicants will be funded in order of ranking, however, all applications receiving recommendations for funding may not be funded, as the amount of total funding available is limited. Higher ranking projects in individual regions may not be funded in order to ensure that diabetes prevention services are available in other areas of the state where the prevalence of Diabetes is higher. Applicants may not receive the amount requested due to the limitation of funds or in order to provide services in other areas. Final budgets will be decided by department staff based on reviewer recommendations and negotiations with the applicant. The department reserves the right to make funding decisions based on the need to provide diabetes prevention services across geographic areas and to allocate funding based on an analysis of resources already available in a particular community in order to avoid duplication of services. Analysis may include data such as other state or federally funded projects present and diabetes prevalence data.

In the event of a tie and one of the tied applicants is a public health department, the grant will be awarded to the public health department in accordance with state law.

DEADLINE: The original and three copies of the RFP must be submitted on or before 5:00 p.m., Central Daylight Saving Time, on June 7, 1999, to Pete Hoffman, M.S., CHES., Texas Department of Health Diabetes Program and the Texas Diabetes Council, Tower Building Room 401, 1100 West 49th Street, Austin, Texas 78756-3199. Applications received after the due date and time shall not be considered for review. Application review will be completed by June 8, 1999, with written notification being sent to all applicants, shortly thereafter.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible complete applications will be reviewed by a panel of reviewers, and scored according to the following criteria: clarity and appropriateness of the application; extent of the applicant's experience and capacity; applicant's description of the service area; service delivery plan and budget; and involvement of the applicant's senior level management and other diabetes stakeholders in the development, implementation and institutionalization of the DAEC Project in their community.

FOR INFORMATION: For a copy of the RFP, and other information, contact Pete Hoffman, M.S., CHES, Texas Diabetes Program/Council at (512) 458-7490 or at E-mail: pete.hoffman@tdh.state.tx.us. The RFP will be available on or about May 10, 1999.

TRD-9902531
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 28, 1999

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Uranium By-Product Material Licenses Amendments

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L03626 issued to Everest Exploration, Incorporated, for its Hobson Project located in Karnes County, approximately one mile south of Hobson, Texas, along FM 81 (mailing address: Everest Exploration, Incorporated, P. O. Box 1339, Corpus Christi, Texas, 78401). Amendment number four: (1) changes environmental reporting requirements to only be required during processing plant operation to be consistent with environmental monitoring requirements; (2) changes environmental survey requirements to only be required during processing plant operation.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC) Chapter 289, that the licensee has met the standards appropriate to this amendment. No environmental assessment is necessary for this action, since the department has determined that the action will not have a significant impact on the human environment

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment to the license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A person affected is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing, Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license will remain in effect.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting 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 8407 Wall Street, Austin, Texas.

TRD-9902475
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 27, 1999

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The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L02402 issued to Rio Grande Resources Corporation located three miles northwest of Panna Maria, Texas, in Karnes County, north of FM 81. Amendment number 03: (1) deletes or modifies references and conditions pertaining to certain expired and/or terminated authorizations; (2) modifies completion date of the final radon barrier and radon flux testing to account for recent inclement weather conditions; (3) modifies the environmental monitoring program to reflect procedural and regulatory

updates in groundwater sampling; (4) releases specified facility areas for unrestricted use while awaiting Nuclear Regulatory Commission concurrence on removal from the license; and (5) renumbers the license from Radioactive Material License RW02402 to Radioactive Material License L02402 to reflect the transfer of jurisdiction to the department by the 75th Session of the Texas Legislature. This transfer was effective July 20, 1997.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC) Chapter 289, that the licensee has met the standards appropriate to this amendment. No environmental assessment is necessary for this action, since the department has determined that the action will not have a significant impact on the human environment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment to the license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A person affected is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license will remain in affect.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting 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 8407 Wall Street, Austin, Texas.

TRD-9902476
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 27, 1999

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Health and Human Services Commission

Request for Proposal

Project CHOICE (Consumers Have Options for Independence In Community Environments) is a grant-funded initiative that will assist individuals who are elderly or persons with disabilities at risk of institutionalization to remain or return to the community. Project CHOICE will be piloted in the Tarrant/Parker and Nueces/Kleberg county areas during the time period of July 1999-August 2000. The Request for Proposal can be found on the Health and Human Services Commission (HHSC) web site at www.hhsc.state.tx.us, or obtained by calling Kay Ghahremani at (512) 424-6509.

HHSC is issuing a Request for Proposal (RFP) to consumer, advocacy and other community-based organizations in each of the pilot areas to do the following: conduct focus groups and/or interviews with consumers and their families to identify barriers that they encounter and information on the kind of assistance needed to address these barriers; develop and implement an Outreach Plan to locate individuals who wish to transition from or avoid nursing facility placement; serve as an intensive service coordinator for targeted consumers and their families, assisting consumers and their families with accessing services, following up with them to ensure that services are in place, and developing a sustainable network of individuals and organizations that can provide on-going support.

An organization will be selected for each of the two pilot sites, and must have a local office in the pilot area. Maximum award for this contract is $40,000 for each of the two pilot sites, or $80,000 for both sites. Please contact Kay Ghahremani at (512) 424-6518 for a copy of the RFP or for more information.

DEADLINE. Responses are due on June 4, 1999.

TRD-9902529
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: April 28, 1999

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Heart of Texas Council of Governments

Request for Proposals

The Heart of Texas Workforce Development Board (HOTWDB) is accepting proposals for Child Care Services for the six county area of McLennan, Bosque, Hill, Falls, Limestone and Freestone. Proposals are due by June 1, 1999 at 5:00 p.m. Any proposal received after that time and date will not be considered.

For specifications, the Request for Proposal (RFP) is available from the Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas 76701 or by calling (254) 756-7822.

A PreProposal Conference will be held on May 10, 1999. This meeting will begin at 10:00 a.m. and will be held at the offices of the Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas 76701.

The Heart of Texas Workforce Development Board reserves the right to reject any and/or all proposals and to make awards as they may appear to be advantageous to the Heart of Texas Workforce Development Board.

TRD-9902480
Brenda Campbell
Executive Assistant
Heart of Texas Council of Governments
Filed: April 27, 1999

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Manufactured Housing Division

Notice is hereby given of a public comment period to be held by the Texas Department of Housing and Community Affairs (the

"Department") at 507 Sabine Street, 4th floor board room, Austin, Texas, at 9:00 a.m., Tuesday, June 8, 1999. The public hearing is to accept comments on the amendments to rules 10 Texas Administrative Code, §80 (West Pamphlet 1997)("Rules"), concerning manufactured housing. The proposed amendments to §§80.53 - 80.55 may be found in the proposed rule section of this publication of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Texas Department of Housing and Community Affairs Manufactured Housing Division, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or email at schoate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Texas Department of Housing and Community Affairs, Manufactured Housing Division, P. O. Box 12489, Austin, Texas 78711-2489 or comments may be faxed to (512) 475-4760.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Texas Revised Civil Statutes Annotated, Article 5221f (Vernon 1997) and 10 Texas Administrative Code (West Pamphlet 1997).

Individuals who require auxiliary aids for this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-9902410
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 23, 1999

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Texas Department of Human Services

Announcement of Availability of Funds by the Family Violence Program

The Texas Department of Human Services (TDHS) Family Violence Program announces the availability of funds not to exceed $1,500,000 to provide nonresidential services which promote self sufficiency and independence for domestic violence victims, pursuant to the Family Violence Prevention and Services Act, US Department of Health and Human Services.

Funds will be awarded on a competitive basis to eligible private or public nonprofit applicants who best demonstrate the ability to efficiently deliver services to domestic violence victims in Texas, as outlined in the Request for Proposals. Each proposal will be reviewed and rated by a committee on a scale of 100 points. At a minimum one eligible proposal will be selected from each of the 11 TDHS regions, however awards will be made only to those proposals receiving a score of 70 points or above. A maximum of $75,000 will be awarded per individual contract. Historically Underutilized Businesses, Minority Businesses and Women?s Enterprises and Small Businesses who qualify are encouraged to apply. Additional eligibility qualifications are outlined in the Request for Proposals.

Organizations may apply for funding under Group I or Group II.

Group I

75% of the contract awards will be to organizations whose primary service is to victims of family violence, or who have provided comprehensive services to family violence victims for a minimum of two years. Applications from family violence shelter centers and nonresidential centers must apply under Group I.

Group II

The remaining 25% of contract awards will be to organizations whose primary service is not necessarily for victims of family violence but who have an established record of providing services to a specific population or community that requires adaptations in service delivery to address unique characteristics such as cultural, ethnic, or linguistic background, challenges due to immigration status, migratory employment, homelessness, etc.

Applicant agencies currently operating under contract with TDHS to provide family violence services may not apply for funds under this announcement for the purpose of funding existing services. Such applicant agencies must propose to initiate new, expanded, and/or innovative services which meet an unmet need as specified in the Request for Proposals.

DEADLINE. The project period for this announcement is September 1, 1999, to August 31, 2000. All proposals must be received at the Texas Department of Human Services by 5:00 p.m. C.S.T. on June 1, 1999.

To obtain the Request for Proposals described in this announcement, contact: Karen Parker, Family Violence Program Administrator; Texas Department of Human Services; PO Box 149030, Mail Code W-230; Austin, Texas 78714-0930; Fax (512) 438-5538; Email karen.parker@dhs.state.tx.us.

TRD-9902539
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: April 28, 1999

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Open Solicitation for Clay County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for Clay County, County #039, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, (August 1998 - January 1999) six-month period: 97.5%, 93.1%, 93.2%, 90.9%, 94.5%, 91.7%. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., June 7, 1999, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on June 17, 1999. If there are insufficient available beds after the primary selection to reduce occupancy rates to less that 90%, TDHS will

place a public notice in the Texas Register announcing an additional open solicitation period for those individuals wishing to construct a facility.

TRD-9902492
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: April 27, 1999

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Open Solicitation for Hansford County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice), for Hansford County, County #098, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, (August 1998 - January 1999) six-month period: 97.0%, 97.0%, 90.1%, 90.5%, 94.7%, 92.1%. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., June 7, 1999, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on June 17, 1999. If there are insufficient available beds after the primary selection to reduce occupancy rates to less that 90%, TDHS will place a public notice in the Texas Register announcing an additional open solicitation period for those individuals wishing to construct a facility.

TRD-9902494
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: April 27, 1999

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Open Solicitation for Kent County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in Kent County, County #132, identified in the February 26, 1999, issue of the *Texas Register* (24 TexReg). Potential contractors desiring to construct a 90-bed nursing facility in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., June 7, 1999, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5% of the estimated total cost of the proposed or completed facility. Each application must be complete at the time of its receipt. TDHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the Texas Register announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9902495
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: April 27, 1999

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Open Solicitation for San Jacinto County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in San Jacinto County, County #204, identified in the February 26, 1999, issue of the Texas Register (24 TexReg 1485). Potential contractors desiring to construct a 90-bed nursing facility in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., June 7, 1999, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring

payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5% of the estimated total cost of the proposed or completed facility. Each application must be complete at the time of its receipt. TDHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the Texas Register announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9902493
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: April 27, 1999

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of STARNET INSURANCE COMPANY to STARNET CASUALTY COMPANY, a foreign fire and casualty company. The home office is in Wilmington, Delaware. Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9902538
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 28, 1999

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Continental Insurance Company proposing to use rates for personal automobile insurance (classic automobile program) that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing a rate of -65% below the benchmark for BI/CSL liability; -90% below the benchmark for PIP; -80% below the benchmark for Medical Payments; -84% below the benchmark for UM/UIM; -69% below the benchmark for Comprehensive; and -76% below then benchmark for Collision.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Art. 5.101, §3(h), is made with the Chief Actuary, Mr. Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9902481
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 27, 1999

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Third Party Administrators Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Platinum Safety and Claims Services, L.L.C., a domestic third party administrator. The home office is Tyler, Texas.

Application for admission to Texas of Investors Marketing Group, Inc., (doing business under the assumed name of Annuity and Life Services), a foreign third party administrator. The home office is Jacksonville, Florida.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9902482
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 27, 1999

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The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Disability Reinsurance Management Services, Inc., (doing business under the assumed name of Disability RMS), a foreign third party administrator. The home office is Dover, Delaware.

Application for incorporation in Texas of El Paso First Health Network, Inc., a domestic third party administrator. The home office is El Paso, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9902537
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 28, 1999

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Texas Department of Mental Health and Mental Retardation

Notice of Joint Public Hearing on the Reimbursement Rates for Small State-Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) for Bluebonnet Trails Community MHMR Center, Center for Health Care Services, Heart of Texas Regional MHMR Center, Helen Farabee Center, Johnson/Navarro County MHMR Center, Hill Country Community MHMR Center, and West Texas Center for MHMR

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint

public hearing to receive public comment on the new reimbursement rates for small state-operated intermediate care facilities for the mentally retarded (ICFs/MR) Bluebonnet Trails Community MHMR Center, Center for Health Care Services, Heart of Texas Regional MHMR Center, Helen Farabee Center, Johnson/Navarro County MHMR Center, Hill Country Community MHMR Center, and West Texas Center for MHMR, effective January 1, 1999, through December 31, 1999. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Thursday, May 20, 1999, at 9:00 a.m. in Room 240 of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512)206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by noon on Monday, March 22, 1999. Interested parties may obtain a copy of the reimbursement briefing package by calling the Reimbursement and Analysis Section at (512) 206-5753. The reimbursement briefing package will be available 10 days prior to the hearing.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TTY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

TRD-9902527
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: April 28, 1999

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding CHAPPELL, INC., Docket Number 1996-0818-PST-E; Facility ID Number 7877; Enforcement ID Number E11268 on April 12, 1999 assessing $29,800 in administrative penalties with $8,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-4113 or Merrillee Gerberding, Enforcement Coordinator at (512)239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAHARD EGG FARM, INC., Docket Number 1998-0115-AGR-E; TNRCC ID Number 12123 on April 12, 1999 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney at (512)239-1736 or Claudia Chaffin, Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JERRY DAVISS, Docket Number 1996-0856-LII-E; Irrigator License Number 5867; Enforcement ID Number 3542 on April 12, 1999 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512)239-5915 or Brian Lehmkuhle, Enforcement Coordinator at (512)239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR YOUNIS KHAIL DBA SUPER STOP #5, Docket Number 1998-1141-PST-E; PST ID Number 0006519; Enforcement ID Number 12948 on April 12, 1999 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator at (512)239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOSEPH ENDARI, Docket Nos. 1998-0773-PST-E and 1998-0774-PST-E; TNRCC ID Nos. 0026694 and 006513; Enforcement ID Nos. 12670 and 12671 on April 12, 1999 assessing $8,125 in administrative penalties with $7,525 deferred.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (817)469-6750 or J. Craig Fleming, Enforcement Coordinator at (512)239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ODELL GEER CONSTRUCTION COMPANY, Docket Number 1998-0078-AIR-E; Account Number BF-0057-I; Enforcement ID Number 12146 on April 12, 1999 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Z. Hernandez, Staff Attorney at (512)239-0612 or Suzanne Walrath, Enforcement Coordinator at (512)239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZEXEL USA CORPORATION, Docket Number 1998-1150-AIR-E; Account Number TA-1207-L; Enforcement ID Number 12985 on April 12, 1999 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K O STEEL FOUNDRY & MACHINE, Docket Number 1998-1242-AIR-E; Enforcement ID Number BG-0112-O; Enforcement ID Number 12822 on April 12, 1999 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HELENA LABORATORIES, Docket Number 1998-0643-AIR-E; Enforcement ID Number JE-0275-W; Enforcement ID Number 12449 on April 12, 1999 assessing $16,200 in administrative penalties with $3,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)239-

1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DAVID RAY DBA D & R DESIGN, Docket Number 1998-0266-AIR-E; TNRCC ID Number FG-05512-I; Enforcement ID Number 12314 on April 12, 1999 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512)239-0677 or Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DOUGLAS BOWSER DBA BOWSER'S AUTO BODY, Docket Number 1998-0008-AIR-E; Account Number TA-3554-T; Enforcement ID Number 12094 on April 12, 1999 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Z. Hernandez, Staff Attorney at (512)239-0612 or David Henrichs, Enforcement Coordinator at (512)239-1883, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CHARLIE PALMER, Docket Number 1997-0419-LII-E; Unlicensed Irrigator; Enforcement ID Number 12717 on April 12, 1999 assessing $2,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney at (817)469-6750 or Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ERNEST ROMO, Docket Number 1997-0423-LII-E; Enforcement ID Number 12480 on April 12, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512)239-6224 or Claudia Chaffin, Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF PORT ARTHUR, Docket Number 1998-0261-MWD-E; Permit Nos. 10364-01 and 10364-02; Enforcement ID Nos. 8261 and 8622 on April 12, 1999 assessing $56,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-4113 or Michael Meyer, Enforcement Coordinator at (512)239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AVALON WATER SUPPLY & SEWER SERVICE CORPORATION, Docket Number 1998-0209-MWD-E; Permit Number 11022-001 (Expired); Enforcement ID Number 8161 on April 12, 1999 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512)239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ROBERT WEBB, Docket Number 1996-0266-AGR-E; No TNRCC Permit 9556 on April 12, 1999 assessing $2,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Z. Hernandez, Staff Attorney at (512)239-0612 or Claudia Chaffin, Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding VICTOR SIMEK, Docket Number 1998-0373-OSI-E; TNRCC ID Number 1791; Enforcement ID Number 12217 on April 12, 1999 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney at (512)239-1736 or Claudia Chaffin, Enforcement Coordinator at (512)239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OKLAHOMA METAL PROCESSING COMPANY, INC., Docket Number 1998-0864-IWD-E; WQ Permit Number 03532; Enforcement ID Number 12731 on April 12, 1999 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARTHUR HERNANDEZ DBA CENTRAL TEXAS UTILITY SERVICES AND CONSULTING, Docket Number 1998-0314-UCR-E; TNRCC ID Number 20185; Enforcement ID Number 12334 on April 12, 1999 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512)239-0677 or Craig Carson, Enforcement Coordinator at (512)239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF LAREDO, Docket Number 1998-0839-MSW-E; MSW Landfill Permit Number 1693; Enforcement ID Number 11840 on April 12, 1999 assessing $66,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Hernandez, Staff Attorney at (512)239-0612 or Carol Piza, Enforcement Coordinator at (512)239-6729, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9902504
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 27, 1999

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Final Notice of Deletion of Newton Wood Preserving Company State Superfund Site

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is advising the public of the deletion (delisting) of a facility from the state registry (state Superfund registry) of sites which may constitute an imminent and substantial endangerment to public health and safety or the

environment due to a release or threatened release of hazardous substances into the environment.

The site which has been deleted is the Newton Wood Preserving Company state Superfund site which was originally published for listing on the state Superfund register in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5831).

This notice is issued to finalize the deletion process which began on March 12, 1999, when the executive director of the TNRCC issued a public notice in the *Texas Register* (24 TexReg 1860) of TNRCC's intent to delete the Newton Wood site from the state Superfund registry, following the determination made pursuant to 30 TAC §335.344(c) that the site had been accepted into the TNRCC Voluntary Cleanup Program and was thereby eligible for deletion. The notice in the March 12, 1999, issue of the*Texas Register* (24 TexReg 1860) further indicated that the TNRCC shall, upon requests filed with or initiated by the executive director, hold a public meeting, in accordance with 30 TAC §335.344 (b), if a written request was filed with the executive director of the TNRCC within 30 days of notice of the agency's intent to delete. Equivalent publication of the notice in the *Texas Register* (24 TexReg 1860) was also published in the March 11, 1999, edition of the Newton County News.

The TNRCC did not receive a request for a public meeting from the potentially responsible parties or any interested persons during the request period (within 30 days of publication of notice), therefore, the Newton Wood Preserving Company state Superfund site is hereby deleted from the Texas state Superfund registry. All inquiries regarding the deletion of this site should be directed to Barbara Daywood, TNRCC Community Relations, (800) 633-9363 (within Texas only) or (512) 239- 2463.

TRD-9902534
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 28,1999

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Notice of District Petition

Petitioners filed a petition for creation of Fort Bend County MUD Number 121 pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The proposed District will contain approximately 495.828 acres located within Fort Bend County and within the extraterritorial jurisdiction of Richmond, Texas. According to the petition, a preliminary investigation has been made to determine the cost of said project to be approximately $20,230,744.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the TNRCC Internal Control Number; (3) the statement "I/we request a public hearing"; (4) a brief description of how you would be adversely affected by the granting of the request in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition had hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9902506
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 27, 1999

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC 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 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 June 6, 1999. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC 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 of the proposed AOs is available for public inspection at both the TNRCC'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 these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 6, 1999. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC 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 TNRCC in writing.

(1) COMPANY: **AGM Texaco, Incorporated;** DOCKET NUMBER: 98-0719-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0026715; LOCATION: Houston, Harris

County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(1) and (2), and the Act, §382.085(b), by failing to successfully complete all applicable tests required in the Stage II Vapor Recovery Test Procedure Handbook within thirty days of installation and annually; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system; 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; 30 TAC §115.242(9) and the Act, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system; and 30 TAC §115.244(1) and the Act, §382.085(b), by failing to conduct daily inspections for the Stage II vapor recovery system; PENALTY: $600; ENFORCEMENT COORDINATOR: Jason C. Harris, (713) 767-3609; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: **The City of Blanco;** DOCKET NUMBER: 1998-1222-PWS-E; IDENTIFIER: Public Water Supply Number 0160002; LOCATION: Blanco, Blanco County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(j), by failing to compile a thorough plant operations manual that is up-to-date for operator review and reference; PENALTY: $375; ENFORCEMENT COORDINATOR: Sandy VanCleave (512) 239-0667; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: **Timothy M. Bradberry and Sallie M. Bradberry dba Bradberry Water Supply;** DOCKET NUMBER: 1998-1076-PWS-E; IDENTIFIER: Certificate of Convenience and Necessity Number 11950; LOCATION: Boyd, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(iv), (C)(iv), (B)(ii), (C)(ii), (B)(iii), and (C)(iii), by failing to provide a pressure tank capacity of 20 gallons per connection for systems with fewer than 50 connections with a ground storage tank and for systems with 50 to 250 connections, provide a total storage capacity of 200 gallons per connection for systems with fewer than 50 connections and for systems with 50 to 250 connections, and provide two or more service pumps with a total rated capacity of two gallons per minute per connection; 30 TAC §290.46(p)(1) and (2), (m), and (x), by failing to inspect the ground storage tanks and pressure tanks annually, plug an abandoned well or provide test results proving that the well is in a non-deteriorated condition, and initiate a maintenance program to facilitate cleanliness, improve the general appearance of the facility, and reduce costly repairs due to lack of proper maintenance; 30 TAC §290.43(d)(7) and (2) and (e), by failing to maintain the pressure tank in a water tight condition, provide the ground storage tanks with an intruder-resistant fence, and provide a pressure release device for the pressure tanks; 30 TAC §290.41(c)(3)(O), (N), (B), (K), and (J), by failing to provide the well units with an intruder-resistant fence or enclose the wells in a locked ventilated well house, provide a flow meter on the well pump discharge lines, extend the well casing to a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block, seal the well heads with gaskets or pliable crack-resistant caulking compound, and provide a concrete sealing block extending at least three feet in all directions from the well; and 30 TAC §290.42(e)(2) and (8) and (c)(1)(F), by failing to provide disinfection prior to water storage, properly cover, house, and lock the hypochlorination solution container and pump, and secure a sanitary easement covering all property within 150 feet of each well location; PENALTY: $8,169; ENFORCEMENT COORDINATOR: Sandy VanCleave (512) 239-0667; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4) COMPANY: **City of Brady;** DOCKET NUMBER: 98-1315-MSW-E; IDENTIFIER: Municipal Solid Waste Permit Number 1732; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.281(b) and §330.283(b), by failing to submit the required financial assurance demonstrations for closure and post-closure care of its municipal solid waste landfill; PENALTY: $5,550; ENFORCEMENT COORDINATOR: Tim Haase, (512) 239-6007; REGIONAL OFFICE: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903-6326, (915) 655-9479.

(5) COMPANY: **Cindi Mills dba C & J Trading Post;** DOCKET NUMBER: 98-1278-PST-E; IDENTIFIER: PST Identification Number 0070876; LOCATION: Ennis, Ellis County, Texas; TYPE OF FACILITY: former gasoline service station; RULE VIOLATED: 30 TAC §334.54(d)(1)(B), by failing to permanently remove two USTs from service which have been temporarily out of service in excess of 12 months; PENALTY: $0; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239- 2142; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6) COMPANY: **Champion Technologies Incorporated;** DOCKET NUMBER: 98-1181-IHW-E; IDENTIFIER: Solid Waste Facility Identification Number 31502; LOCATION: Fresno, Fort Bend County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9), 40 Code of Federal Regulations (CFR) §§;262.34(a)(1)(ii), 265.191, and 265.193(a), (b), (c), and (e), by failing to have adequate secondary containment, a written integrity assessment, or a method of leak detection for hazardous waste storage tanks; 30 TAC §335.4(1) and the Code, §26.121, by allowing an unauthorized discharge of industrial solid waste to soil; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct an adequate hazardous waste determinations on plant wastewater and sump sludge; 30 TAC §335.6(b), by failing to adequately update the facility's notice of registration; 30 TAC §335.9(a)(1)(G), by failing to keep records regarding the location of hazardous waste satellite accumulation areas; 30 TAC §335.69(d)(1)(2), 40 CFR §262.34(c)(1)(i) and (ii), and §265.173(a), by failing to label with the words "hazardous waste" and close hazardous waste containers in satellite accumulation areas; and 30 TAC §335.2(b), by causing, allowing, or permitting the disposal of industrial solid waste at an unauthorized facility; PENALTY: $26,100; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: **Darrel Dannen dba Double D Motors;** DOCKET NUMBER: 1999-0097-AIR-E; IDENTIFIER: Account Number DB-3447-D; LOCATION: Balch Springs, Dallas County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the THSC, §382.085(b), by offering for sale a vehicle with missing or inoperable vehicle emission control devices; PENALTY: $625; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8) COMPANY: **FFP Operating Partners, L. P.;** DOCKET NUMBER: 1999-0257-AIR-E; IDENTIFIER: Account Number EE-1115-S; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing site; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by supplying and/or dispensing gasoline for use as a motor vehicle fuel in El Paso County which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(9) COMPANY: **FFP Operating Partners, L.P.;** DOCKET NUMBER: 97-1084-MWD-E; IDENTIFIER: Water Quality Permit Number 13661-001; LOCATION: Anna, Collin County, Texas; TYPE OF FACILITY: truck stop; RULE VIOLATED: 30 TAC §305.125(9) and the Code, §26.042, by failing to provide notification of permit noncompliance to the TNRCC; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(10) COMPANY: **Federal Express Corporation;** DOCKET NUMBER: 98-0998-PST-E; IDENTIFIER: PST Facility Identification Number 0035712; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: air courier services; RULE VIOLATED: 30 TAC §115.244(3) and the Code, §382.085(b), by failing to conduct a monthly inspection of the components listed in 30 TAC §115.242(3)(J); 30 TAC §334.50(a)(1)(A), by failing to have release detection inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Jason Ybarra, (713) 767-3615; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: **Shawn Fuller dba Fuller Mobile Home Park;** DOCKET NUMBER: 98-1016- PWS-E; IDENTIFIER: Public Water Supply Identification Number 1520232; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e) and §290.46(f)(1)(A), by failing to provide chlorination equipment on site and maintain free chlorine residual of 0.2 milligrams per liter (mpl) throughout the system; 30 TAC §290.41(c)(1)(F) and (3)(O), by failing to provide a sanitary easement of 150 feet and intruder- resistant fencing at well number 2 which is located in the northeast portion of the mobile home park; and 30 TAC §290.45(b)(1)(A)(ii), by failing to provide adequate pressure tank capacity of at least 50 gallons per connection; PENALTY: $400; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(12) COMPANY: **Mr. Karim Momin dba Gas N Stuff Food Mart;** DOCKET NUMBER: 98- 1258-PST-E; IDENTIFIER: PST Identification Number 0028584; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1), (3), and (4), and the Act, §382.085(b), by failing to maintain the California Air Resources Board (CARB) Executive Order, a record of maintenance performed on the equipment, and proof of attendance and completion of the Stage II vapor recovery training at the facility; 30 TAC §115.245(2) and the Act, §382.085(b), by failing to conduct annual pressure decay testing on the Stage II vapor recovery equipment; 30 TAC§115.244(1) and the Act, §382.085(b), by failing to conduct daily inspections of the Stage II system; 30 TAC §115.242(3)(C) and the Act, §382.085(b), by failing to repair Stage II equipment; 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; and 30 TAC §334.22(a), by failing to pay outstanding UST fees; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Trina K. Lewison, (713) 767-3607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: **Groendyke Transport, Inc.;** DOCKET NUMBER: 98-1321-IHW-E; IDENTIFIER: Industrial Solid Waste Registration Number 31059; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: tank truck washing terminal; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §265.192(a) and (d), §265.193(b)(2), (c)(3) and (4), and (f), by failing to obtain an adequate design and installation certification by a professional engineer for the waste management unit (WMU) 005 ancillary equipment and perform a tightness test of the ancillary equipment prior to placing it in service and by failing to install an adequate leak detection system for the secondary containment of the ancillary equipment for WMU 005; 30 TAC §335.10(a), §335.9(a)(2), and 40 CFR §262.20, by failing to manifest and report on the facility's 1996 Annual Waste Summary a truckload of hazardous waste sludge generated by the facility in WMU 005; and 30 TAC §335.2(b) and 40 CFR §270.1(c), by sending a truckload of hazardous waste sludge for disposal at an unauthorized disposal facility and by using a transporter that was unauthorized to transport hazardous waste; PENALTY: $18,750; ENFORCEMENT COORDINATOR: Randy Norwood, (512) 239-1879; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: **Jochem Jongsma dba Jochem Jongsma Dairy;** DOCKET NUMBER: 1998- 0826-AGR-E; IDENTIFIER: Permit Number 03431; LOCATION: Winnsboro, Wood County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: Permit Number 03431 and the Code, §26.121, by failing to construct waste control facilities, collect and report any initial or annual soil samples, report any waste/irrigation sampling, perform operation and maintenance regarding waste disposal activities, and pay all of the required waste treatment inspection and water quality regional assessment fees; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: **Laique & Son, Inc.;** DOCKET NUMBER: 98-1300-PST-E; IDENTIFIER: PST Facility Identification Number 0063907; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and the Act, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.244(1) and (3) and the Act, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.245(2) and the Act, §382.085(b), by failing to perform the annual pressure decay test on the Stage II vapor recovery system; 30 TAC §115.246(1) and the Act, §382.085(b), by failing to keep a copy of the appropriate CARB Executive Order for the Stage II vapor recovery system; 30 TAC §115.248(1) and the Act, §382.085(b), by failing to have a facility representative obtain Stage II vapor recovery system training; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to provide proper release detection for UST systems; and 30 TAC §334.7(d)(1)(A) and the Code, §26.346, by failing to provide written notice to the executive director of change in UST ownership or UST ownership information; PENALTY: $9,200; ENFORCEMENT COORDINATOR: Julia McMasters, (512) 239-5839; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(16) COMPANY: **Lawrence Water Supply Corporation;** DOCKET NUMBER: 1999-0101-PWS- E; IDENTIFIER: Public Water Supply Number 1290018; LOCATION: Lawrence, Kaufman County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(f)(1)(B), by failing to submit quarterly water quality parameter reports; PENALTY: $750; ENFORCEMENT COORDINATOR: Jayme Brown, (512) 239-1683; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(17) COMPANY: **Loves Country Store, Incorporated;** DOCKET NUMBER: 1998-1526-AIR-E; IDENTIFIER: Account Number EE-1053-P; LOCATION: El Paso, El Paso County, Texas; TYPE OF FA-

CILITY: convenience store and service station; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by offering for sale gasoline for use as a motor vehicle fuel in El Paso County which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Carol Dye, (512) 239-1504; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(18) COMPANY: **McGown Oil Company and Mark W. Brown;** DOCKET NUMBER: 98-0998- PST-E; IDENTIFIER: PST Facility Identification Number 0047142; LOCATION: Winnie, Chambers County, Texas; TYPE OF FACILITY: PST retail facility; RULE VIOLATED: 30 TAC §115.244(1) and the Act, §382.085(b), by failing to conduct daily inspections for the Stage II vapor recovery system; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Jason Ybarra, (713) 767-3615; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(19) COMPANY: **Merichem-Sasol USA LLC;** DOCKET NUMBER: 98-1314-IHW-E; IDENTIFIER: Solid Waste Facility Identification Number 30595; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: industrial chemical manufacturing; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121, by failing to remediate the tar-like waste oozing from the ground at several locations of the facility; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Tim Haase, (512) 239-6007; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: **Noltex L.L.C.;** DOCKET NUMBER: 98-1467-IHW-E; IDENTIFIER: Solid Waste Registration Number 84348; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: plastic resins manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9), 40 CFR §262.34(a)(1)(ii), §265.193(c)(3), (4), and (e)(1)(iii), by failing to provide secondary containment for a hazardous waste storage tank; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Paul Gibbins, (713) 767-3608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: **The City of Orange;** DOCKET NUMBER: 1998-0214-MWD-E; IDENTIFIER: Water Quality Permit Number 10626-004; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10626-004 and the Code, §26.121, by failing to meet the total suspended solids daily average concentration limit of 20 mpl; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: **Phillips 66 Company dba Turnpike 66 and Phillips Company dba Seminary 66;** DOCKET NUMBER: 98-1493-PST-E; IDENTIFIER: PST Facility Identification Numbers 10981 and 64981; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: motor vehicle fuel dispensing; RULE VIOLATED: 30 TAC §115.245(2) and the Act, §382.085(b), by failing to conduct the annual pressure decay test for the Stage II system; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Mohammed Issa, (512) 239-1445; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(23) COMPANY: **Pioneer Concrete of Texas, Incorporated;** DOCKET NUMBER: 1999-0063- AIR-E; IDENTIFIER: Account Numbers CP-0084-V and DB-0856-D; LOCATION: Frisco and Irving, Collin and Dallas Counties, Texas; TYPE OF FACILITY: ready-mix concrete plants; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.085(b) and §382.0518(a), by continuing to operate the ready-mix concrete plant and cement silo with expired Permit Numbers 8095 and 5358; and 30 TAC §290.51, by failing to pay the required public health service fees; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(24) COMPANY: **Raytheon E-Systems, Inc.;** DOCKET NUMBER: 98-1243-IHW-E; IDENTIFIER: Solid Waste Facility Identification Number 30449; LOCATION: Greenville, Hunt County, Texas; TYPE OF FACILITY: aircraft and electronics manufacturing; RULE VIOLATED: 30 TAC §335.152, by failing to provide 1998 financial assurance documents for post-closure care and corrective action; and 30 TAC §335.331, by failing to pay required voluntary cleanup program fees; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Anne Rhyne, (512) 239-1291; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(25) COMPANY: **Marvin Shead dba Roadrunner-BMX;** DOCKET NUMBER: 1998-0659-PWS- E; IDENTIFIER: Public Water Supply Number 0840223; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.105, by exceeding the maximum contaminant level for total coliform; 30 TAC §290.106(b)(5), by failing to collect and submit the appropriate number of repeat water samples for bacteriological analysis; and 30 TAC §290.103(5), by failing to provide public notification for failure to collect bacteriological samples; PENALTY: $469; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: **Ronnie Smith dba Smith's Diamond C Ranch;** DOCKET NUMBER: 1998- 0061-MLM-E; IDENTIFIER: Enforcement Identification Number 12095; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: cattle farm; RULE VIOLATED: 30 TAC §111.201, the Code, §26.121, and the THSC, §382.085(b), by allowing outdoor burning of copper wire, brush, lumber, tires, and trash; PENALTY: $600; ENFORCEMENT COORDINATOR: Terry Thompson (512) 239-6095; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 469-6750.

(27) COMPANY: **C.L. Thomas Inc. dba Speedy Stop #46;** DOCKET NUMBER: 1999-0102- PWS-E; IDENTIFIER: Public Water Supply Number 2350044; LOCATION: Victoria, Victoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106, Subsection (e), and the Code, §341.033(d), by failing to collect and submit the appropriate number of bacteriological samples and to provide public notice of the failure to sample; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jayme Brown, (512) 239-1683; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(28) COMPANY: **TRI-CON, Inc. dba Exxpress Mart #4;** DOCKET NUMBER: 98-0014-PST-E; IDENTIFIER: PST Facility Identification Number 0039980; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sale of gasoline; RULE VIOLATED: 30 TAC §115.244 and the THSC, §382.085(b), by failing to conduct daily and monthly inspections of Stage II vapor recovery equipment; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Steve Roberts, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: **Technical Coatings, Inc.;** DOCKET NUMBER: 98-0738-IHW-E; IDENTIFIER: Solid Waste Facility Identification Number 33276; LOCATION: Lubbock, Lubbock County, Texas;

TYPE OF FACILITY: paint manufacturing; RULE VIOLATED: 30 TAC §335.69, by failing to store hazardous waste for less than 90 days; 30 TAC §335.474, by failing to submit a source reduction and waste minimization plan; and 30 TAC §335.8 and the Code, §26.121, by failing to remediate an unauthorized hazardous waste tank system in a timely and satisfactory manner; PENALTY: $29,375; ENFORCEMENT COORDINATOR: Tim Haase, (512) 239-6007; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796- 7092.

(30) COMPANY: **Zion Lutheran Church of Helotes;** DOCKET NUMBER: 1998-1045-PWS-E; IDENTIFIER: Public Water Supply Number 0150513; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(10), by failing to properly cover the ground storage tank; 30 TAC §290.46(p)(1) and (2), by failing to conduct annual inspections of the ground storage and pressure tanks; and 30 TAC §290.106(a)(1), by failing to prepare and submit a sample siting plan; PENALTY: $688; ENFORCEMENT COORDINATOR: Jayme Brown, (512) 239-1683; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

TRD-9902479
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 27, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of April 20, 1999 through April 26, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUE DATE OF THE NOTICE.

CITY OF RHOME has applied to the TNRCC for a renewal of TNRCC Permit Number 10701- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located on Quail Ridge Drive approximately 750 feet west and 1,600 feet north of the intersection of the west bound lanes of State highway 114 and the Burlington Northern Railroad in Wise County, Texas.

THOUSAND TRAILS, INC. has applied to the TNRCC for a renewal of TNRCC Permit Number 12861-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The plant site is located approximately one mile west of Farm-to-Market Road 47 and approximately 1.15 miles south of Farm-to-Market Road 35 in Rains County, Texas.

CITY OF TENAHA has applied for a renewal of TNRCC Permit Number 10818-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 190,000 gallons per day. The renewed permit also authorizes a variance from the Texas Surface Water Quality Standards under 30 TAC 307.2(d)(4). The plant site is located adjacent to Hilliard Creek; approximately 2,400 feet south of U.S. Highway 84 and 3,300 feet east of U.S. Highway 96 in Shelby County, Texas.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT Number 6 has applied for a renewal of TNRCC Permit Number 13784-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 0.2 mile east of State Highway 288 and 0.55 mile south of Farm-to-Market Road 518, on the west side of County Road 94 in Brazoria County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TNRCC Permit Number 11959-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The plant site is located along and within the right-of-way of Interstate Highway 35 East, at a point approximately 1.4 miles north of Farm-to- Market Road 329 in Ellis County, Texas.

SANDRA L. GOODWIN has applied for a renewal of TNRCC Permit Number 12617-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located at 1719 Gault Road, approximately 1,200 feet west of the intersection of Gault Road and Aldine-Westfield Road in Harris County, Texas.

FRUITVALE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 12369-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,400 gallons per day. The plant site is located approximately 1,200 feet northeast of the intersection of U.S. Highway 80 and Farm-to-Market Road 1910 and approximately 2.1 miles east of the intersection of U.S. Highway 80 and State Highway 19 in Van Zandt County, Texas.

LEON SPRINGS UTILITY COMPANY has applied for a renewal of TNRCC Permit Number 12557-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation on 146 acres of the Intco-Dominion golf course. The plant site is located in the southwest corner of the Dominion Subdivision, adjacent to Leon Creek and approximately 3.5 miles north of the intersection of Interstate Highway 10 and Loop 1604 in Bexar County, Texas.

CITY OF QUINLAN has applied for a major amendment to TNRCC Permit Number 13725-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 175,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The plant site is located approximately 2,100 feet southwest of the intersection of State Highway 276 and State Business Highway 34 in Hunt County, Texas.

CITY OF ROBINSON has applied for a renewal of TNRCC Permit Number 10780-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located approximately 5,000 feet southwest of the intersection of U.S. Highway 77 and Farm-to-Market Road 3148 in McLennan County, Texas.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS AFTER NEWSPAPER PUBLICATION OF THE NOTICE.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT Number 92 has applied for a renewal of TNRCC Permit Number 10908-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located located at the northeast end of Bell Chase Lane, approximately 2 miles east of the City of Spring in Harris County, Texas.

JAMES WILLIAM HARTMAN has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14001-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The plant site is located 200 feet northeast of the intersection of the northbound frontage road off U.S. Highway 59 and Little York Road north of the City of Houston in Harris County, Texas.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 13609-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The plant site is located approximately 700 feet southeast of the intersection of Frick Road and Ann Louise Road, approximately 1200 feet southeast of Halls Bayou, and approximately 6500 feet southwest of Beltway 8 and Veterans Memorial Drive in Harris County, Texas.

CITY OF HONEY GROVE has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10710-003, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located approximately 2,000 feet west of Farm-to-Market Road 100 and approximately 3,000 feet north of U.S. Highway 56 in Fannin County, Texas.

CITY OF FLORENCE has applied for a renewal of TNRCC Permit Number 10944-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1.25 miles southeast of the intersection of State Highway 195 and Farm-to-Market Road 487 in Williamson County, Texas.

CITY OF LOS FRESNOS has applied for a renewal of TNRCC Permit Number 10590-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 590,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10590-002 will replace the existing NPDES Permit Number TX0091243 issued on May 30, 1997 and TNRCC Permit Number 10590-002. The plant site is located southwest of Los Fresnos, approximately 2,000 feet west of Farm-to-Market Road 1847 and 3,000 feet south of State Highway 100 at the end of Nogal Street in Cameron County, Texas.

CITY OF JASPER has applied for a major amendment to TNRCC Permit Number 10197-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 2,200,000 gallons per day to an annual average flow not to exceed 3,250,000 gallons per day and to relocate the outfall in the final phase, and to meet the buffer zone requirements by restrictive easement and/or nuisance odor prevention according to 30 TAC Section 309.13(e)(2) and/or (3). The plant site is located approximately 0.8 mile east of the intersection of Farm-to-Market Roads 2799 and 777, and approximately 1 mile northeast of the intersection of U.S. Highway 190 and State Highway 63 in Jasper County, Texas.

SAN ANTONIO WATER SYSTEMS, has applied for a major amendment to TNRCC Permit Number 10137-008 to authorize the addition of three new outfalls. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 46,000,000 gallons per day. The draft permit would authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 46,000,000 gallons per day. The plant site is located approximately 1.5 miles south of the intersection of Southton Road and Blue Wing Road in Bexar County, Texas.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT Number 12 has applied for a major amendment to TNRCC Permit Number 12039-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 750,000 gallons per day. The plant site is located approximately 500 feet east of State Highway 146 and approximately 2,500 feet southeast of the intersection of Farm-to-Market Road 518 and State Highway 146 (adjacent to 524 Cien) in Galveston County, Texas.

CITY OF ALPINE has applied for a major amendment to TNRCC Permit Number 10117-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 680,000 gallons per day to an annual average flow not to exceed 1,480,000 gallons per day. The applicant is also authorized to irrigate a golf course and tree farm. The plant site is located approximately 2.5 miles northeast of the city of Alpine, on the west bank of Alpine Creek, in Brewster County, Texas.

CITY OF KENEDY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03913, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The applicant operates a reverse osmosis water treatment unit. The plant site is located approximately 1.6 miles southeast of the intersection of U.S. Highway 181 and State Highway 72 in the City of Kenedy, Karnes County, Texas.

CITY OF TEXARKANA has applied for a major amendment to TNRCC Permit Number 10374- 005 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 16,500,000 gallons per day to an annual average flow not to exceed 18,000,000 gallons per day. The current permit also authorizes the land application of sewage sludge for beneficial use on 210 acres and the marketing and distribution of sewage sludge. The plant site is located along the east bank of Days Creek; adjacent to the west side of State Lane Road, approximately one mile south of the intersection of Phillips Lane and State Line Road in Bowie County, Texas.

UNITED STATES DEPARTMENT OF THE AIR FORCE, SHEPPARD AIR FORCE BASE, has applied for a renewal of TNRCC Permit Number 12512-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,400 gallons per day. The plant site is located approximately 8 miles north of the Town of Sandusky, on the southern shoreline of Lake Texoma in Grayson County, Texas.

N & H JOINT VENTURE, A TEXAS PARTNERSHIP has applied for a renewal of TNRCC Permit Number 12723-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 73,000 gallons per day. The plant site is located approximately 0.5 mile south of the intersection of U.S. Highway 377 and Farm-to-Market Road 1187, approximately 16 miles southwest of the City of Fort Worth central business district in Tarrant County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03881, to authorize the discharge of process wastewater (includes aquaculture pond and raceway effluent) at a daily average flow not to exceed 5,000,000 gallons per day via Outfall 001. The applicant operates the A.E. Wood State Fish Hatchery. The plant site is located adjacent to Farm-to-Market (FM) Road 621 and

approximately one mile east of the intersection of FM Road 621 and State Highway 123 in the City of San Marcos, Hays County, Texas.

CITY OF MAUD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14025-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 192,000 gallons per day. The plant site is located approximately 1,500 feet south of U.S. Highway 67 and St. Louis Southwestern Railroad, and approximately 5,000 feet east of the intersection of U.S. Highway 67 and State Highway 8 in Bowie County, Texas.

CITY OF WELLS, P.O. Box 20, Wells, Texas 75976, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11196-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 900 feet north of U.S. Highway 69 on the west side of Red Bayou, east of the City of Wells in Cherokee County, Texas.

PINE TREE ESTATES Number 2 LANDOWNER ASSOCIATION INC., has applied for a renewal of TNRCC Permit Number 13831-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The plant site is located approximately 1,000 feet north of Golden Triangle Boulevard on Golden Triangle Circle and approximately 4,000 feet west of the intersection of Farm-to-Market Road 1709 and U.S. Highway 377 in Tarrant County, Texas.

CITY OF CALVERT has applied for a renewal of TNRCC Permit Number 10095-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located on the east side of Tidwell Creek immediately adjacent to and on the north side of Farm-to-Market Road 1644, approximately 0.7 mile southwest of the intersection of State Highway 6 and Farm-to-Market Road 1644 in Robertson County, Texas.

FIVE NINE SEVEN LIMITED PARTNERSHIP has applied for a renewal of TNRCC Permit Number 11038-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The plant site is located on the southeast side of Leonard Road (Farm-to-Market Road 1688), approximately two miles southwest of the City of Bryan in Brazos County, Texas.

HEAT TRANSFER RESEARCH INC. AND TEXAS A&M UNIVERSITY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 03242, which authorizes the discharge of steam condensate and storm water via Outfall 001 Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03242. The applicant operates a facility which performs testing of industrial heat exchangers. The plant site is located 0.25 miles southwest of the intersection of Farm-to-Market Road 2818 and Farm-to-Market Road 2347 adjacent to Fish Tank Road in the City of College Station, Brazos County, Texas.

CITY OF THORNDALE has applied for a renewal of TNRCC Permit Number 10302-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The plant site is located on the west side of Farm-to-Market Road 486, approximately 0.5 miles south of the intersection of U.S. Highway 79 and Farm-to- Market Road 486 in Milam County, Texas.

SOUTHERN CLAY PRODUCTS, INC. has applied for a renewal of TNRCC Permit Number 01926 which authorizes the discharge of mine pit water, storm water runoff and groundwater on an intermittent and flow variable basis at a volume that shall not exceed 50,000 gallons during any 24-hour period via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0057282 issued on July 18, 1986 and TNRCC Permit Number 01926 issued February 12, 1993. The applicant operates the Muldoon Operations Clay Mine. The plant site is located adjacent to the east side of a Fayette County road, approximately 4 miles north of the intersection of that road with Farm-to-Market Road 2237, whose intersection is approximately 1.5 miles west of the community of Muldoon, Fayette County, Texas.

SHELDON ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 10541-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The plant site is located approximately 1.25 miles south-southwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County, Texas.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT Number 15 has applied for a renewal of TNRCC Permit Number 12223-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The plant site is located approximately 1.5 miles southeast of the intersection of U.S. Highway 290 and Telge Road in Harris County, Texas.

TIMOTHY BRENT CLAIRBORNE has applied for a renewal of TNRCC Permit Number 13142-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located on the west end of U.S. Highway 287 approximately 4,500 feet southeast of its junction with State Highway 114 in Wise County, Texas.

CITY OF THE COLONY has applied for a renewal of TNRCC Permit Number 13785-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The plant site is located approximately 1.75 miles south of Farm- to-Market Road 720 and approximately 3.0 miles west of Farm-to-Market Road 423 in Denton County, Texas.

CAP*ROCK WINERY, INC. has applied for a renewal of Permit Number 03034, which authorizes the disposal of process wastewater and wash down water at a daily average flow not to exceed 5,500 gallons per day via irrigation of 4 acres. The applicant operates a plant for the production and retail sale of wine. This permit will not authorize a discharge of pollutants into waters in the State. The plant site is located approximately 2.4 miles south of the intersection of .S. Highway 87 and Farm-to-Market 1585, 0.8 miles from this point east of U.S. Highway 87, Lubbock County, Texas.

NIKI HOLDINGS, LTD., Inc. has applied for a renewal of TNRCC Permit Number 12936- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located on north side of State Highway 878, approximately 3,000 feet west of the intersection of State Highway 87 and Monkhouse Road in the City of Crystal Beach in Galveston County, Texas.

MONTGOMERY COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT Number 1, P.O. Box 7690, The Woodlands, Texas 77387, has applied for renewal of the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX002399 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10857-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.42 million gallons per day. Issuance of the pro-

posed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10897-001 will replace the existing NPDES Permit Number TX0025399 issued on March 1, 1994 and TNRCC Permit Number 10857-001. The plant site is located approximately 11 miles south of the City of Conroe, 3 miles west of the Interstate Highway 45 crossing of Spring Creek and at the south end of Glen Loch Drive in the Timber Ridge-Timber Lake subdivision in Montgomery County, Texas. The treated effluent is discharged to Spring Creek in Segment Number 1008 of the San Jacinto River Basin. The designated uses for Segment Number 1008 are high aquatic life uses, public water supply, and contact recreation.

PRESBYTERIAN CHILDREN'S HOME, P.O. Box 100, Itasca, Texas 76055-0100, has applied for renewal of the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0030767 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11276-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.008 million gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11276-001 will replace the existing NPDES Permit Number TX0030767 issued on September 30, 1986 and TNRCC Permit Number 11276-001.The plant site is located southeast of the Children's Home, on the southeast side of Farm-to-Market Road 66, approximately four miles east of the intersection of Interstate Highway 35 and Farm-to-Market Road 66 in Hill County, Texas. The treated effluent is discharged to Valley Branch; thence to South Fork Chambers Creek; thence to Chambers Creek above Richland-Chambers Reservoir in Segment Number 0814 of the Trinity River Basin. The unclassified receiving water has no significant aquatic life uses for Valley Branch. The designated uses for Segment Number 0814 are high aquatic life uses, public water supply, and contact recreation.

LAKEWAY MUNICIPAL UTILITY DISTRICT, INN & MARINA WASTEWATER FACILITY, 1097 Lohmans Crossing , Austin, TX 78734 has applied for renewal of the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0053732 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11495-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average not to exceed 65,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11495-002 will replace the existing NPDES Permit Number TX0053732 issued on June 5, 1992 and TNRCC Permit Number 11495-002. The plant site is located 101 Lakeway Drive, 0.5 miles south of Lake Travis in the Village of Lakeway and approximately 2 miles northwest of the intersection of Ranch Road 620 and Lakeway Boulevard in Travis County, Texas. The treated effluent is discharged to an on-channel pond located on the ninth fairway of Live Oak Golf Course, adjacent to Section 7-A of Lakeway and 500 feet north of the intersection of Lakeway drive and Zephyr Road; thence to an unnamed tributary of lake Travis; thence to lake Travis in Segment Number 1404 of the Colorado River Basin. The unclassified receiving water uses are limited aquatic life uses for the on-channel unnamed pond. The designated uses for Segment Number 1404 are exceptional aquatic life uses, public water supply, and contact recreation.

CITY OF AVINGER, P.O. Box 356, Avinger, Texas 75630, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10646-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10646-001 will replace the existing NPDES Permit Number TX0071803 issued on February 26, 1996 and TNRCC Permit Number 10646-001. The plant site is located approximately 0.4 mile north of the intersection of State Highway 155 and State Highway 49 in the City of Avinger in Cass County, Texas. The treated effluent is discharged to an unnamed tributary; thence to an unnamed stream; thence to Cannon Creek; thence to Black Cypress Creek; thence to Black Cypress Bayou; thence to Big Cypress Creek Below Lake O' the Pines in Segment Number 0402 of the Cypress Creek Basin. The unclassified receiving water uses are no significant aquatic life uses for unnamed tributary and no significant aquatic life uses for the unnamed stream. The designated uses for Segment Number 0402 are high aquatic life uses, public water supply, and contact recreation.

MALEK VASHMEH, P.O. Box 55528, Houston, Texas 77255-5528, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) NumberTX0093505 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12761-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12761-001 will replace the existing NPDES Permit Number TX0093505 issued on August 16, 1986 and TNRCC Permit Number 12761-001. The plant site is located approximately 0.25 mile southeast of the intersection of State Highway 105 and Old State Highway 105, approximately 0.25 mile west of the intersection of State Highway 105 and East Beach Road in Montgomery County, Texas. The treated effluent is discharged to Base Creek; thence to the West Fork San Jacinto River in Segment Number 1004 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Base Creek. The designated uses for Segment Number 1004 are high aquatic life uses, public water supply, and contact recreation.

CITY OF SHINER, P.O. Box 308, Shiner, Texas 77984, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10280-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 850,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10280-001 will replace the existing NPDES Permit Number TX0026042 issued on April 5, 1996 and TNRCC Permit Number 10280-001. The plant site is located approximately one mile southeast of the intersection of the U.S. Highway 90A and State Highway 95 in the City of Shiner in Lavaca County, Texas. The treated effluent is discharged to Rocky Creek; thence to the Lavaca River Above Tidal in Segment Number 1602 of the Lavaca River Basin. The unclassified receiving water uses are high aquatic life uses for Rocky Creek. The designated uses for Segment Number 1602 are high aquatic life uses.

BOB SMITH, 2303 South Main, Stafford, Texas 77477 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0092746 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13509-001. The draft permit authorizes the discharge of treated domestic wastewater based on an average daily flow not to exceed 28,500 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13509-001 will replace the existing NPDES Permit Number TX0092746 issued on October 17, 1990 and TNRCC Permit Number 13509-001. The plant site is located at 9401 Windfern Road approximately 300 feet south of Zaka Road and approximately 3.0 miles north of the intersection of Windfern Road and U.S. Highway 290 in Harris County, Texas. The treated

effluent is discharged to a drainage ditch along Windfern Road; thence to Rolling Fork; thence to Whiteoak Bayou Above Tidal in Segment Number 1017 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic uses for the unnamed drainage ditch and Rolling Fork Creek. The designated uses for Segment Number 1017 are limited aquatic life use and contact recreation.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 189, c/o Fulbright & Jaworski, 1301 McKinney, Suite 5100, Houston Texas 77010-3095, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12237-001, which authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 810,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12237-001 will replace the existing NPDES Permit Number TX0083712 issues on May 19, 1995 and TNRCC Permit Number 12237-001. The plant site is located at 1100 Dunson Glen, approximately 2,400 feet north-northwest of the intersection of Kuykendahl Road and Ella Boulevard in Harris County, Texas. The treated effluent is discharged to Harris County Flood Control Ditch P-145-03-00; thence to the North Fork of Greens Bayou; thence to Greens Bayou above tidal in Segment Number 1016 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Harris County Flood Control Ditch P-145-03- 00 and the North Fork of Greens Bayou. The designated uses for Segment Number 1016 are contact recreation and limited aquatic life uses.

Notice of Concentrated Animal Feeding Operation Applications.

The following notices were issued during the period of April 20, 1999 through April 26, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE NEWSPAPER PUBLICATION

WARREN OWEN AND BOBBY OWEN, 340 Elm Street, Hereford TX 79045 have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit to replace state Permit Number 03641 to authorize the applicant to operate an existing beef cattle facility at a maximum of 4,000 head in Deaf Smith County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. Waste will be disposed of by a contract manure hauler for beneficial use on agricultural land. Wastewater will be disposed of by evaporation. The existing facility is located on Dairy Road approximately one mile east of the intersection of Dairy Road and Progressive Road, this intersection is approximately one-half mile south of the intersection of Progressive Road and U.S. Highway 60 in Deaf Smith County, Texas. The facility is located in the drainage area the Upper Prairie Dog Town Fork of the Red River in Segment Number 0229 of the Red River Basin.

STEVE AND MARTIN DETTLE, P.O. Box 66, Stratford, Texas 79084 have applied to the Texas Natural Resource Conservation Commission (TNRCC)for a new TPDES Permit Number 04079 to authorize the applicant to operate a beef cattle facility at a maximum of 8,000 head in Sherman County, Texas. No discharge of pollutants into the waters of the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The beef cattle feedlot facility is located 2.5 miles southwest of Stratford on Highway 54, then 1.5 miles west on County Road N. The Feedyard is on the north side of County Road N. The facility is located in the drainage area of Coldwater Creek in Segment Number 0100 of the Canadian River Basin.

JUDY AND MIKE LLOYD, Route 3, Box 109, Dublin TX 76446 has applied to the Texas Natural Resource Conservation Commission (TNRCC)for a new TPDES Permit to amend and replace state Permit Number 03497 to authorize the applicant to add an additional waste storage pond at an existing dairy operation. The dairy shall operate at a maximum capacity of 990 head in Erath County, Texas. No discharge of pollutants into the waters of the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the north side of Farm-to-Market Road 8 approximately seven miles west of the intersection of Farm-to- Market Road 8 and Farm-to-Market Road 219 in Erath County, Texas. The facility is located in the drainage area of the Leon River below Leon Reservoir in Segment Number 1223 of the Brazos River Basin.

VALL INC., 911 Texas ST., P.O. Box 426, Texhoma OK 73949 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04081 to authorize the applicant to operate a new Swine Operation at a maximum of 16,200 head in Sherman County, Texas. The facility will generate, collect, and treat animal waste and wastewater on-site. All waste and wastewater will be beneficially used on agricultural land. The proposed facility will be located on the west side of Farm-to-Market Road 2677 approximately 6 miles north of the city of Stratford in Sherman County, Texas. The facility will be located in Segment Number 0100 of the Canadian River Basin.

DAVID LAWRENCE, Rt. 2, Box 167, Sulphur Springs TX 76482 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04064 to authorize the applicant to operate a dairy operation at a maximum capacity of 500 head in Hopkins County, Texas Number discharge of pollutants into waters of the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The dairy facility is located approximately 1.6 miles south on FM 69 from its intersection with IH 30, approximately 5 miles east of Sulphur Springs in Hopkins County, Texas. The facility is located in the drainage area of Sulphur/ South Sulphur River in Segment Number 0303 of the Sulphur River Basin.

GARLAND P. BOURG, Route 1, Box 113, Rio Vista TX 76093 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04055 to authorize the applicant to operate an existing dairy operation at a maximum of 400 head in Johnson County, Texas. No discharge of pollutants into the waters of the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located approximately 2 miles west on County Road 1109A from its intersection with Texas Highway 174 north of Rio Vista. Then approximately 1 miles to CR 1109, then 0.25 miles east on CR 1209 to the entrance of the facility. The facility is located in the drainage area of Nolan River in Segment Number 1227 of the Brazos River Basin.

HALL-CO, P.O. Box 830, Hereford TX 79045 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit to amend Permit Number 01829 to authorize the applicant to expand an existing beef cattle operation from a maximum capacity of 1,000 head to 4,000 head in Deaf Smith County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the southwest corner of the intersection of County Road 1 and County Road 4

approximately one mile west of the intersection of County Road 4 and U.S. Highway60 approximately 2.5 miles to the southwest of the city limits of Hereford, in Deaf Smith County, Texas. The facility is located in the drainage area of Upper Prairie Dog Fork Red River in Segment Number 0229 of the Red River Basin.

WESTERN STOCKYARDS CORPORATION, 100 South Manhattan, Amarillo TX 79120 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit to replace State Permit Number 02523 to authorize the applicant to operate an existing auction barn at a maximum capacity of 6000 head in Potter County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste will be hauled off-site and wastewater will be disposed of by evaporation. The existing facility is located at 100 S. Manhattan Street in the City of Amarillo in Potter County, Texas. The facility is located in the drainage area of the Upper Prairie Dog Town Fork Red River in Segment Number 0229 of the Red River Basin.

TRD-9902505
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 27, 1999

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Texas State Occupational Information Coordinating Committee

Notice of Invitations for Proposals for CARES2000 Multi-Platform Software in Windows, MAC, and Web Based Versions

PROJECT SUMMARY.

The Texas State Occupational Information Coordinating Committee (TSOICC) requests the submission of proposals for the creation of a multi-platform multi-user version of the Texas CARES98 multimedia career information delivery system (CIDS) software system to be called CARES 2000. The existing Texas CARES98 software system is an integrated multi-relational data file system which navigates users through a variety of informational statistics, narrative text, movies, audio, and reports in order to allow for career search and career opportunity scenarios to be promoted. The Texas CARES98 system is a CD-based turnkey system which installs and operates exclusively in a single-user Windows3.x/95/98/NT environment. This project will produce an upgraded simultaneous multi-user version of the CARES98 system on Windows95/98/NT, MAC, & Web platforms with the current video libraries, audio, help system, data files, and exact menu flow design.

TECHNICAL SUMMARY.

The current Texas CARES98 system is designed and produced with Microsoft Visual FoxPro (VFP) version 3.0b, including all screens, reports, tables and the database. The videos in Texas CARES98 are a collection of QuickTime .MOV and .MPG movies which have been edited by TSOICC staff for inclusion in the application. Multiple audio .WAV files are produced by TSOICC and are included in appropriate areas for audio descriptions and user suggestions. Internet activities are launched for informational purposes using the user's default browser. User screens are enhanced and enlivened through the use of color accentuation and .BMP bitmap images.

PROPOSAL SUBMISSION/DEADLINE.

All proposals are due at the TSOICC's offices no later than the close of business at 5:00PM Central Daylight Time, June 4, 1999. The TSOICC's address is:

Texas S.O.I.C.C.

Whitney Jordan Plaza

9001 IH-35 North, Suite 103B

Austin, Texas 78753-5233

Each qualified bidder will be supplied with a temporary license to install CARES98 and explore its existing design format and files within the Windows95/98/NT platform. One bidders meeting will be scheduled three weeks before the closing date of the proposal submission.

Two copies of each proposal should be submitted. All proposals submitted should contain the following information in the order requested:

COVER PAGE. The cover page should include the name of the party submitting the proposal, organization name, contact person, address, phone number, fax number, and email address. The cover page should also bear the original signature of the person authorized to contractually obligate the entity submitting the proposal.

STATEMENT of WORK. The statement of work must address the contractee's plans for accomplishing the following: (a) Extensive review and design schemes for the identification of key choice menus, reports and program flow in the current Texas CARES98; (b) All features of current Texas CARES98 incorporated into CARES2000; (c) Incorporation of most recent data and search tables as applicable; (d) Run-time and execution strategies for video and audio routines to require little- or no end-user technical expertise ; (e) Design and incorporation of online web-based reports (f) Full online help, including "What's this?"- type help for CD-based platforms; (g) Internet launch sessions to connect to specific web sites within all platforms; (h) Graphic displays using videos, images, objects and graphs as appropriate ; (i) Time management chart with explicit deliverables ; (j) Complete source code documentation and final deliverables for all three platforms (WIN/MAC/WEB); (k) Full multi-user access to all modules and features; (l) Beta testing process to assure an error free product.

QUALIFICATIONS. Explain the qualifications of those persons and of the organization that would enable the proposing party to meet its contractual obligations; include references pertaining to the conduct of prior information systems and data base query software with specific reference to user-friendly design and appropriate search dialogue, interactive graphics, reporting review, and help menu performance.

Identify personnel who will provide services outlined in the statement of work. Indicate the qualifications of (that) persons(s) with respect to: (a) prior experience and familiarity with Windows and MAC based informational systems; (b) prior experience with PC and MAC multi-media software; (c) prior experience with standard browser functionalities and Internet Web-based language experience; (d) prior experience with career and labor market information ; (e) prior experience with reporting and multi-user applications ; (f) prior experience with CD-based applications and execution strategies; (g) prior experience with relational databases.

DEBARMENT CERTIFICATE and MISCELLANEOUS DECLARATIONS. Provide assurances that the principals and the organization proposing to implement a multi-user, multi-platform based version of the Texas CARES98 system has not been debarred from

entering into contracts with the State of Texas and/or federal agencies. Provide assurances that there would be no conflict of interest in contracting with the TSOICC, TWC, TEA, TRC, Coordinating Board, and/or TDED.

Optional declarations such as certification as a female-owned, minority-owned, or Texas-owned business may by attached.

CALENDAR. Provide a calendar of activities, services, and submissions of deliverables. Projected final prototype delivery should occur no later than May 1, 2000.

BUDGET. Submit a line item budget indicating proposed expenditures within categories of allowable cost under Carl D. Perkins Act and the Workforce Investment Act. Total budget available under the scope of this contract should not exceed $75,000.

Provide a brief explanation justifying the proposed costs for the following: (a) Developing a multi-user, multi-platform version of the Texas CARES98 system; (b) Additional personnel costs associated with technical development effort, workshops, data maintenance, and report production; (c) Travel and related support costs; and (d) Administrative costs.

Party awarded this contract may anticipate an initial payment to cover start-up costs and periodic payments thereafter upon submission of progress report documenting successful percentage of project completion. Final payment will be withheld pending satisfactory completion of all obligations under terms of the contract awarded.

The Texas SOICC reserves the rights to reject all bids. Incomplete proposals and proposals received after the submission deadline will be declared non-responsive and will be rejected without further evaluation. Award of contract will be based on a competitive evaluation of all proposals submitted by the deadline by parties not debarred from doing business with the federal government or the State of Texas. Award of contract need not be made to the lowest bidder; rather, contract will be awarded to the proposal receiving the highest average score from three persons selected by the TSOICC to read all proposals as long as the proposal falls within the time and budget parameters in this RFP. Award of contract will be dependent upon the evaluation team's determination of the soundness of the proposal, capacity of the proposer to meet contractual obligations, and the reasonableness of the expenditures proposed. A copy of the proposal evaluation instrument is available upon written request from the TSOICC.

The TSOICC reserves the right, contingent upon funding, to negotiate the terms of the final contract with the party submitting the proposal receiving the highest average points during the evaluation process. TSOICC reserves the right to change the extent of the applications dependent on funding changes.

All proposals received before the submission deadline will be evaluated by TSOICC staff and liaison from TWC, TEA, TDED, and the Coordinating Board.

Any questions concerning this request for proposals should be submitted in writing to the TSOICC. Answers provided in response to any questions submitted will be duplicated and distributed to all other persons making inquiries about this RFP.

The party awarded the Texas CARES 2000 multi-platform version contract will be notified in writing no later than June 18, 1999. Notice also will be published in the *Texas Register* no later than ten days after the contract has been awarded.

TRD-9902369
Richard Froeschle
Executive Director
Texas State Occupational Information Coordinating Committee
Filed: April 21, 1999

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Panhandle Regional Planning Commission

Request for Proposal

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from organizations to provide Child Care Management Services (CCMS), Early Childhood Development Resources (ECDR) and Child Care Training (CCT) services in the 26 counties of the Texas Panhandle Workforce Development Area (PWDA).

Contract award(s) will be based primarily on prior experience, demonstrated effectiveness and cost competitiveness.

Proposers must be willing to provide services to the entire area and operate on a cost reimbursement basis. Funds will be available to pay authorized costs for an initial contract period from September 1, 1999 through August 31, 2000.

The Panhandle Regional Planning Commission has the option of renewing the contract annually for up to three additional and consecutive one-year periods without further competitive procurement. Contract renewals will be contingent upon the contractor's acceptable performance, PRPC Board approval and mutual agreement among the parties.

The individual contract awards for CCMS/ECDR and CCT resulting from this solicitation may be made to a single proposer. However, the CCT award may be made to a separate entity.

Organizations interested in submitting a proposal are encouraged to attend a Proposers Conference at 1:30 p.m. on Friday, May 14, 1999, in the PRPC Board Room, 415 West Eighth Avenue, Amarillo, Texas.

DEADLINE. Sealed proposals must be submitted by 3:00 p.m. on Thursday, June 10, 1999, for public opening immediately thereafter.

A copy of the Request for Proposals may be obtained by contacting PRPC's Workforce Development Director at (806) 372-3381 or (800) 477-4562.

TRD-9902535
John Keel
Regional Services Director
Panhandle Regional Planning Commission
Filed: April 28, 1999

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Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 16, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Computer Business Sciences, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20759 before the Public Utility Commission of Texas.

Applicant intends to provide bundled communications packages to customers, including xDSL broadband services, cable TV, interna-

tional and domestic long distance as well as local dial tone and high speed Internet access.

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by Southwestern Bell Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than May 12, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902382
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 22, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Ciera Network Systems, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 20774 before the Public Utility Commission of Texas.

Applicant intends to provide resold local telephone service of incumbent local exchange telephone companies and provide long distance telephone service on an intraLATA, intrastate and interstate basis.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than May 12, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902509
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 20, 1999 to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, 37.054, 37.056, 37.057, and 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Pedernales Electric Cooperative, Inc. and the City of Austin to Amend Certificated Service Area Boundaries within Travis County, Docket Number 20762 before the Public Utility Commission of Texas.

The Application: In Docket Number 20762, Pedernales Electric Cooperative, Inc. (PEC) requests a service area boundary change with the City of Austin, in order to allow the City of Austin to provide electric service to all of the lots in Phase B, Section 20 of the Circle C Ranch subdivision. According to the current boundary, the City of Austin will serve approximately 177 of the 201 residential lots. PEC has would serve approximately 24 of the 201 residential lots. In order for PEC to provide service to these lots, PEC would be required to make borings under Slaughter Lane or a petroleum production pipeline. By transferring the service area to the City of Austin, the borings will be avoided and the City of Austin will be able to efficiently provide service to all of the lots in Phase B, Section 20 of the Circle C Ranch subdivision.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902508
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to Public Utility Commission Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for MHMR Abilene in Abilene, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for MHMR Abilene in Abilene, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20783.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an addition to the existing PLEXAR-Custom service for MHMR Abilene in Abilene, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Abilene exchange, and the geographic market for this specific PLEXAR-Custom service is the Abilene LATA.

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 call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902517
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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Public Notices of Interconnection Agreements

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On April 19, 1999, Southwestern Bell Telephone Company and Advanced Communications Group, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20761. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20761. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 21, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20761.

TRD-9902510
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

On April 22, 1999, Southwestern Bell Telephone Company and InfoCom Services, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20775. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20775. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 25, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20775.

TRD-9902511
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 22, 1999, Central Texas Telephone Cooperative, Inc. and Texas Hometel, Inc. collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20776. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20776. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20776.

TRD-9902512
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 22, 1999, dPI-Teleconnect, L.L.C. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20777. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20777. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding

officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20777.

TRD-9902513
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 22, 1999, Tele-One Communications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20778. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20778. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 25, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20778.

TRD-9902514
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 22, 1999, United Telephone Company d/b/a UTEL and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20779. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20779. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20779.

TRD-9902516
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 22, 1999, Southwestern Bell Telephone Company and IP Communications Corporation, collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20780. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20780. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 25, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20780.

TRD-9902515
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 23, 1999, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and TranStar Communications, LLC, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20782. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of

the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20782. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20782.

TRD-9902519
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 23, 1999, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and Rosebud Cotton Company d/b/a Rosebud Telephone Company, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20786. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20786. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20786.

TRD-9902518
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 26, 1999, Southwestern Bell Telephone Company and Rosebud Cotton Company d/b/a Rosebud Telephone Company, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA)

and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20791. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20791. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20791.

TRD-9902520
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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On April 26, 1999, Central Texas Telephone Cooperative, Inc. and Max-Tel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20792. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20792. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 28, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20792.

TRD-9902521
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 1999

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Texas Department of Transportation

Public Notice

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning proposed approval of: construction services at Beaumont Municipal Airport and Draughon-Miller Municipal Airport in Temple; and an increase in funding for projects at Arlington Municipal Airport, Del Rio International Airport, and Georgetown Municipal Airport.

The public hearing will be held at 9:00 a.m. on Monday, May 17, 1999, at 150 East Riverside, South Tower, 5th Floor Conference Room, Austin, Texas, 78704. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas, 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

For additional information please contact Suetta Murray, Aviation Division, 150 East Riverside, Austin, Texas, 78704, (512) 416-4504.

TRD-9902470
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: April 26, 1999

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Texas Workforce Commission

Requests for Proposals

The Texas Workforce Commission (TWC) invites proposals from Independent School Districts for the Texas School-Linked Child Care Program. The purpose of the grant is to provide funds to school districts for child care services to school-age children before school, after school, during school vacations, and on school holidays. Child care services must be designed to cover full-day, full-year needs of Texas families and to help support working families or those in training programs with child care needs.

A. Authorization of Funding The Texas School-Linked Child Care Grant shall be funded under the provisions of the Texas Workforce Commission rules for the School-Linked Child Care Program at 40 TAC Chapter 809, Subchapter J.

B. Scope of Work

Grant funds awarded may be used for planning, developing child care services, including the implementation of research based reading programs, establishing a child care program, expanding existing child care services and improving existing child care services.

A response to a request for proposal issued by the Commission shall include the following information:

1. A description of the services provided;

2. Income level of families to be served;

3. The amount and source of matching funds or in-kind match for funds received;

4. Prior experience of the school district in providing child care services;

5. The school district's plan for coordinating its program with the local workforce development board and written acknowledgement from the chair person or executive committee of the local workforce development board that the board has reviewed and supports the plan;

6. The school district's plan for coordinating its program with other child care resources, both public and private; and

7. A description of the need in the community for school-aged child care and the resources available to meet that need.

A proposal addressing school-age child care shall also include in the narrative a strategy to obtain program information on the following topics:

1. The total number of children served each quarter of the contract;

2. The number of special needs children served each quarter of the contract;

3. The number of families who benefitted because of the program;

4. The number and a brief description of program staff; and

5. The total number of volunteers who provided services each quarter of the contract.

A school-age child is defined as a child enrolled in pre-kindergarten through grade seven. (40 TAC Section 809.202.)

C. Eligible Applicants

Applicants submitting proposals for the Texas School-Linked Child Care Grant must be an Independent School District. No application will be considered unless it is submitted by an Independent School District certified by the Texas Education Agency (TEA).

D. Available Funding

Grant applicants may request funding in two fiscal years and only up to the amounts listed below:

A completed proposal must accompany each request. The funding available for (1) Establishing a new program in an Independent School District is $10,000 in FY 1999 and $25,000 in FY 2000; (2)

Expansion of an existing program to additional campuses is $10,000 in FY1999 and $15,000in FY 2000; and (3) Quality Improvements to existing programs is $10,000in FY 1999 and $10,000 in FY 2000.

Total funds available are $100,000 for the FY 1999 Grant Period from June 1, 1999 to August 31, 1999, and $400,000 for the FY 2000 Grant Period from September 1, 1999 to August 31, 2000.

E. Funding Restrictions

Ninety (90%) percent of grant funds must be for "direct services" program costs. Administrative costs are limited to ten (10%) percent reimbursement under this grant.

Recipients must have an accounting system that can track grant revenues and/or expenditures separately to meet State/Federal monitoring requirements. The applicant's most recent audit and/or financial statements must be submitted with the application.

Applicants may apply for one of the Fiscal Year 1999 and one of the Fiscal 2000 grants up to and including the amounts listed in available funding in section D. A separate application must be submitted for each grant.

F. Matching Funds

Applicants are required to provide twenty (20%) percent in local matching funds for this grant. Matching funds must not be from Federal/State sources that prohibit use of matching and/or any funds that are dedicated to another fund as match. Applicants must also identify and verify the source and type of funds dedicated for match.

G. Grading Criteria

Grant applications will be rated by TWC and perhaps outside readers. Grading criteria will be included in the grant applicant packet. TWC anticipates completing the selection and notifying applicants of the summer grant by May 28, 1999. Notification of the selection for the 1999-2000 grants will be June 5, 1999. TWC will attempt to award grants to both urban and rural areas of the state. Economically depressed areas will receive five points extra. The selection process will be based upon proposal scores as well as geographical distribution of applications. Special consideration will be given to applications proposing to serve special needs children in an inclusive setting. If applicants have received grants from TWC in the past, previous performance will be taken into consideration in the awarding of grants. Negotiations as needed will take place immediately after selection. A designated person authorized by the successful district to make budget and performance decisions must be available to respond to requested revisions between May 21-25 for 1999 grants and June 1-4, 1999 for 2000 grants. Failure to respond to a requested revision in a timely manner may be reason for exclusion from grant funding.

TWC reserves the right to vary all provisions of this Request for Proposals (RFP) prior to the execution of a contract when TWC deems such variances and/or amendments to be in the best interest of the State of Texas. TWC reserves the right not to enter into negotiations with any applicant and may cancel this proposal at any time prior to selection and award.

H. Due Date and Agency Contract

The deadline for receipt and consideration of the Texas School-Linked Child Care Grant proposal is 4:00 P.M., May 21, 1999. For further information and to order a Grant Application Packet, contact:

(Applications) Mailing Address Only:

Workforce Development Division

Program Planning and Development

Ernestine Q. Sunderland

101 E. 15th Street , 342 T.

Austin, Texas 78778-0001

(Applications) Street Address Walk-in Only

Workforce Development Division

Program Planning and Development

Ernestine Q. Sunderland

1117 Trinity Street, Rm. 342T

Austin, Texas 78701

(Information only)

Telephone: 512/936-3222

FAX: 512/936-3420

E-mail ernestine,sunderland @twc.state.us

A list of funded grantees will be published in the *Texas Register* following contract execution.

I. TWC's Obligations

TWC's obligations under this RFP are contingent upon the actual receipt by the Commission of funds from the Texas Legislature. If adequate funds are not available to make payments under this grant, TWC shall terminate this RFP and will not be liable for failure to make payments to applicants under this RFP.

TRD-9902522
J. Randel Hill
General Counsel
Texas Workforce Commission
Filed: April 28, 1999

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A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (Commission) is soliciting proposals to purchase curriculum, software and/or other products that can be used in providing literacy skills training to dislocated workers whose primary language is Spanish. These workers reside in the border regions of Texas and are often illiterate in Spanish, as well as in English. It is the requirement of this Request for Proposal (RFP) that successful bidders be able to provide curriculum or software that can be used to provide literacy training in El Paso, Laredo and/or other cities bordering Mexico, where workers have been laid off due to the exit of the garment industry or similar jobs with few transferable work skills. The Commission is soliciting proposals from bidders who have (1) developed curriculum, software and/or other products that can be used to train individuals in English as a Second Language (ESL), (2) Curriculum, software and/or other products that target training-limited English speakers in skill sets that will lead to employment and re-employment.

B. AUTHORIZATION OF FUNDING

The funds are State General Revenue funds and are authorized under the State Fiscal Year 1998-99 Appropriations Bill.

C. AVAILABLE FUNDING

The total amount of funding available through this grant is $204,934.00. The Commission will consider funding multiple projects with this grant.

D. SERVICES TO BE PROVIDED

The Commission requests that bidders submit innovative and resourceful products that will enhance the employability prospects for persons who lack proficiency in Spanish and/or English. Successful applicants should have a proven record of success in preparing the targeted population for employment by providing work skills or literacy skills, including English as a Second Language, to the targeted population.

The Commission is interested in assisting workers in returning to employment as soon as possible. Curriculum, software and/or other products that include English as a Second Language, basic skills and/or occupational skills taught in a contextual learning approach would also be of particular interest to the Commission and will be highly rated.

The Commission encourages partnerships that will benefit workers and that will build the capacity to deliver services to this population of workers or similarly situated workers, after this project is over, e.g., a curriculum, software or other product that can be used by other groups after this contract expires. All projects must result in products that provide for the replication of successful program efforts.

E. PROJECT SCHEDULE

Application submission deadline	May 18, 1999
Project start date	June 01 , 1999
Project end date	August 31, 1999
Close out report due date	September 30, 1999

F. SCORING CRITERIA

Criteria	**Points**
Demonstrated experience of the bidder	10
Quality and comprehensiveness of proposed program curriculum, software, and\or other products	20
Innovation of proposed products	25
Replicability/transferability of products	10
Timely	5
Feasibility	10
Cost reasonableness	10
Capability	10
Total	**100**
Historically-Underutilized Business (HUB)	5
Maximum Points Available	**105**

G. PAYMENT

The contractor can bill TWC upon the completion of a contract and upon receiving a binding order for curriculum, software and/or other products from TWC. The contractor must maintain records to support the billing.

H. LENGTH OF CONTRACT

The contract period will begin approximately June 1, 1999, or as soon as negotiations can be mutually completed and a contract can be executed. The contract will end August 31, 1999.

I. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

The Commission will use competitive negotiation for the procurement. Proposals will be reviewed and evaluated by both outside staff and Commission staff based upon the criteria noted in Section E above. TWC anticipates completing the selection and notifying applicants of their application status the week of May 19, 1999. The

selection process will be based upon proposal scores. Negotiations may take place immediately after selection. A designated person, authorized by the selected applicant organization to make budget and / or programmatic decision, must be readily available to respond to requested revisions between May 24-25, 1999. If a designated person is not readily available to promptly respond to requested revisions, the grant will not be awarded to the applicant.

Negotiation may be conducted by TWC as deemed necessary. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendment to contracts when TWC deems such variance and/or amendment are in the best interest of the State of Texas.

J. DUE DATE, TIME, LOCATION, AND AGENCY CONTACT

The deadline for receipt and consideration of proposal submissions for this grant is 4:30 PM. Central Daylight Time, May 18, 1999. The Commission must receive all responses, regardless of method of delivery, no later than the specified time. Facsimile copies will not be accepted. For further information and to request an application packet, contact Bill Turner at 512/936-3203, Texas Workforce Commission, 101 E. 15th Street, Rm. 342T, Austin, Texas 78778-0001

K. TWC's OBLIGATIONS

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds. If adequate funds are not available to make payments under this contract, TWC shall terminate this RFP and will not be liable for failure to make payment to applicants under the RFP.

TRD-9902523
J. Randel Hill
General Counsel
Texas Workforce Commission
Filed: April 28, 1999

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Texas Workers' Compensation Commission

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission invites all qualified individuals and representatives of public health care facilities and other entities to apply for openings on the Medical Advisory Committee in accordance with the eligibility requirements of the new Standards and Procedures for the Medical Advisory Committee. Each member must be knowledgeable and qualified regarding work-related injuries and diseases.

The majority of these positions are filled, but the terms of the current members will expire in August of 1999. Current members may be reappointed or new members may be appointed.

Commissioners for the Texas Workers' Compensation appoint the Medical Advisory Committee members, which is composed of 16 primary and 16 alternate members representing health care providers, employees, employers and the public.

The purpose and tasks of the Medical Advisory Commission are outlined in the Texas Workers' Compensation Act, ˘413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies and guidelines.

The Medical Advisory Committee meets approximately once every six weeks. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings for the Medical Advisory Committee, subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Standards and Procedures for the Medical Advisory Committee as adopted by the Commission.

Medical Advisory Committee openings include:

Primary Members

Doctor of Medicine

Public Health Care Facility

Private Health Care Facility

Doctor of Osteopathy

Doctor of Chiropractic

Dentist

Pharmacist

Occupational Therapist

General Public Representative, Rep. 1

Alternate Members

Public Health Care Facility

Private Health Care Facility

Doctor of Osteopathy

Doctor of Chiropractic

Occupational Therapist

Dentist

Employee Representative

For an application, call Juanita Salinas at (512) 707–5888 or Ruth Richardson at (512) 440–3518.

TRD-9902502
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 27, 1999

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Texas Workers Compensation Commission, Title 28

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