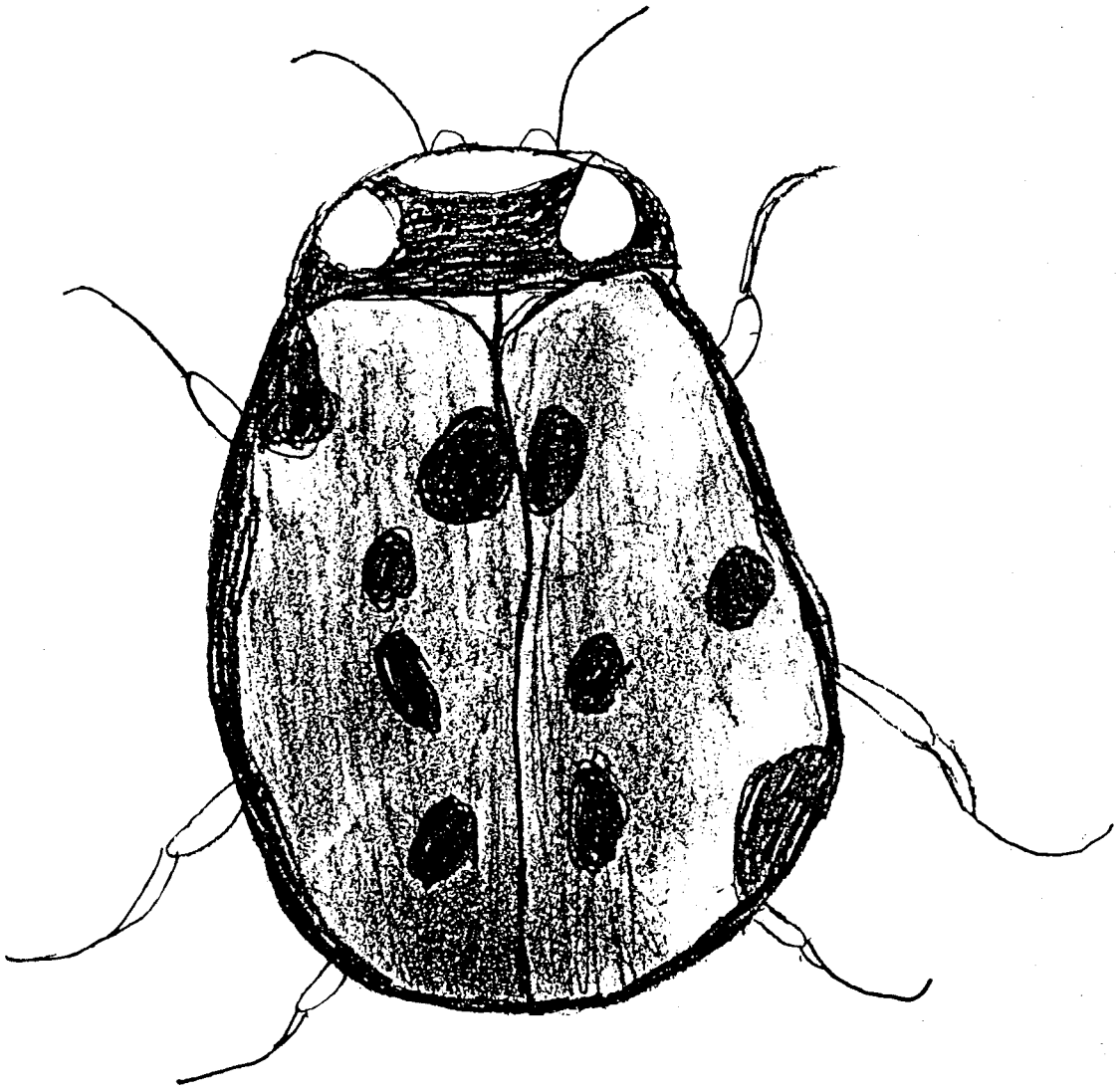
TEXAS REGISTER

Volume 24 Number 23 June 4, 1999 Pages 4079-4320



This month's front cover artwork:

Artist: *Britney Elms*

3rd Grade

Coggin Elementary

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.

Texas Register, **ISSN 0362-4781,** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $150, six month $100. First Class mail subscriptions are available at a cost of $250 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

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

a section of the
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ATTORNEY GENERAL

TEXAS ETHICS COMMISSION

Texas Ethics Commission

PROPOSED RULES

Office of the Governor

Criminal Justice Division

Office of the Secretary of State

Texas Register

Advisory Commission on State Emergency Communications

Regional Plans–Standards

Texas Animal Health Commission

Brucellosis

Texas Historical Commission

Practice and Procedure

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Texas Workers' Compensation Commission

Texas Workforce Commission

OFFICE OF THE ATTORNEY GENERAL

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

Open Records Requests

ORQ-32 (ID# 126255-99). Request from Mr. Thomas G. Ricks, President, University of Texas Investment Management Company, 210 West Sixth Street, 2nd Floor, Austin, Texas 78701, regarding whether the scope of a general request for information submitted to a governmental body includes information not in the possession of the governmental body but created and maintained by private counsel engaged by the governmental body; the scope of a governmental body's responsibilities in requesting clarification or narrowing of a request for information; and related questions.

TRD-9902984
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 21, 1999

♦ ♦ ♦

ORQ-33 (ID# 125658). Request from Dr. Robert Martin, State Director and Librarian, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, regarding whether certain social security number and home addresses in Governor Mark White's appointment files and other archived records are confidential, and related questions.

ORQ-34 (ID#122182). Request from Mr. Eric Bost, Commissioner, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78711-9030, regarding whether "cost reports" the Department of Human Services receives from nursing facilities that participate in the Medicaid program are available to the public.

TRD-9903118
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 26, 1999

♦ ♦ ♦

Requests for Opinions

RQ-0066. Request from the Honorable Chad Cowan, Jones County Attorney, P.O. Box 68, Anson, Texas 79501, regarding whether a tape of an executive session is available for review by an individual who was authorized to attend, but did not attend, that meeting, and related questions. (Request #0066-JC)

RQ-0067. Request from the Honorable William H. Law, Polk County Auditor, 101 West Church Street, Livingston, Texas 77351, regarding whether a county attorney may be awarded vacation pay if he resigns on the day before his anniversary date. (Request #0067-JC)

RQ-0068. Requested from Ms. Raymie Kana, Colorado County Auditor, 400 Spring Street, Third Floor, Columbus, Texas 78934, regarding authority of a county official to close his office for all or part of a day and related questions. (Request #0068-JC)

TRD-9903131
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 26, 1999

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statues: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Texas Ethics Commission

Advisory Opinion Requests

AOR-457 Whether a district judge who ran for a non-judicial office in November 1998 may currently accept campaign contributions to pay expenses in connection with an unsuccessful campaign for a non-judicial office.

AOR-458 Whether an officeholder is required to report a reception in the officeholder's honor as a gift on his personal financial disclosure statement.

TRD-9903096
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: May 25, 1999

♦ ♦ ♦

Opinions

EAO-414 Whether a district judge who ran for a nonjudicial office in November 1998 may currently accept campaign contributions to pay expenses in connection with an unsuccessful campaign for a nonjudicial office. (AOR-457)

Summary The restrictions in Election Code section 253.153 do not apply to contributions made to a candidate to cover expenses in connection with an unsuccessful 1998 race for a nonjudicial office, even if the candidate currently holds one of the judicial offices listed in Election Code section 253.151.

EAO-415 Whether an officeholder is required to report a reception in the officeholder's honor as a gift on his personal financial disclosure statement. (AOR-458)

Summary A reception to honor a state officer is a "gift" for purposes of Government Code section 572.023(b)(7) and is reportable on the state officer's personal financial statement unless an exception provided by section 572.023(b)(7) applies.

TRD-9903112
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: May 26, 1999

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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

Subchapter E. Crime Stoppers Program Certification

Division 1. Crime Stoppers Program Certification

1 TAC §§3.9000, 3.9100, 3.9200

The Office of the Governor proposes new Subchapter E, §§3.9000, 3.9100, 3.9200, concerning Crime Stoppers Program Certification. This subchapter provides guidelines for program certification and decertification requirements.

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

The new rules 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.

§3.9000. Requirements.

(a) In order to obtain certification, a private, non-profit crime stoppers organization must:

(1) be a non-profit organization

(2) be granted tax exempt status by the IRS

(3) have at least one member of the organization's Board of Directors, as well as the Police/Civilian Coordinator of the Crime Stoppers organization attend a complete training conference provided by the Criminal Justice Division of the Governor's office and the Texas Crime Stoppers Advisory Council, or its designee, in the year prior to certification

(4) complete and sign the conditions of certification form;

(b) In order to obtain certification, a public organization must have at least one employee attend a complete training conference provided by the Office of the Governor or its designee in the year prior to certification.

§3.9100. Certification.

(a) In order to obtain certification, a non-profit crime stoppers organization must submit to the Criminal Justice Division of the Governor's Office or its designee:

(1) proof of its non-profit status;

(2) a letter from the Internal Revenue Service verifying the organization's tax exempt status;

(3) a completed and signed conditions of certification form;

(4) annual financial statements for each of the two previous years which include the dollar amount of donations received each year;

(5) a list of all the reward payments made by the organization;

(6) a list of the members of the board of directors of the organization;

(7) a completed and signed community supervision and corrections department form.

(b) The director of the Crime Stoppers Advisory Council may prescribe forms to be used in the certification process.

(c) When all of the documentation required under subsection (a) has been received, the director of the Crime Stoppers Advisory Council will review the documentation and submit a report to the Texas Crime Stoppers Advisory Council for approval.

(d) A certification is valid for a period of two years.

§3.9200. Decertification.

(a) By signing the conditions of certification form, a crime stoppers organization agrees to comply with all of the conditions.

(b) The director of the Crime Stoppers Advisory Council shall submit a report to the Texas Crime Stoppers Advisory Council for action if an organization is not in compliance with the law and/or certification requirements with instruction being made to the staff on the action taken.

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

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

TRD-9902959
James Hines
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 475-2594

♦ ♦ ♦

Part IV. Office of the Secretary of State

Chapter 91. Texas Register

The Office of the Secretary of State, Texas Register, proposes amendments to §91.23 and §91.65, concerning procedures for filing adopted rules. The proposed amendments to §91.23 and §91.65 will require agencies to submit the entire text of a adopted rule. By receiving the full text of an adopted rule the Texas Register anticipates that there will be a reduction in errors within the agencies submission and in the turn around time for updating the *Texas Administrative Code.*

Dan Procter, director of the Texas Register, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local governments as a result of administration or enforcement of the amendments.

Mr. Procter also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated will be that the public will have current access to the *Texas Administrative Code* and that there will be fewer errors in the *Texas Register.* There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing to Dan Procter, Director, Texas Register, Office of the Secretary of State, 1019 Brazos, Room 245, Austin, Texas 78701 or via e-mail, dprocter@sos.state.tx.us.

Subchapter A. Administrative

1 TAC §91.23

The amendment is proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The proposal affects Government Code, Chapter 2002, Subchapter B, §2002.011.

§91.23. Structure and Terminology.

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

(c) When proposing to amend [~~amending~~] an existing rule, you must account for all existing language. Within the rule structure, put new language before obsolete language. Use the codes as described in §91.61(c)(5), (6), and (9) of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents).
Figure: 1 TAC §91.23(c) (No change.)

(d) When you propose to amend a subdivision within a rule, follow the "No change" policy outlined in paragraphs (1)-(3) of this subsection.

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

(e) When you adopt new and amended rules submit the entire text. Do not use the "No change" designation. Submit adopted repealed rules with only the section number and title.

(f) [~~(e)~~] Do not reserve subdivisions within a rule for future expansion.

(g) [~~(f)~~] Follow any reference to another section or chapter in the same title with the phrase "of this title (relating to...)" with the title of the section or chapter inserted in the parenthesis. Follow a reference to a different subchapter in the same chapter with the phrase "of this chapter (relating to...)" with the title of the subchapter inserted in the parenthesis. It is not necessary to reference the same section, subchapter, or chapter name twice within a rule.

(h) [~~(g)~~] Cite any reference to a rule in another title with the title and section number(s) in accordance with §91.25(b) of this title (relating to Form of Citation). For example: 1 TAC §91.21.

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

Filed with the Office of the Secretary of State, on May 21, 1999.

TRD-9902992
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463–5561

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Subchapter B. Filing Procedures

1 TAC §91.65

The amendment is proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The proposal affects Government Code, Chapter 2002, Subchapter B, §2002.011.

§91.65. Procedures for Filing Rules.

(a) (No change.)

(b) Adopted rules. The APA states that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State unless a later date is required by statute, specified in the rule, or required by federal mandate. When adopting rules, comply with the following procedures.

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

(5) Do not use the "No change" designation in adopted rule submissions. If you submit the final version of adopted rules with any level designation as "No change", we will reject the submission.

(6) [~~(5)~~] The proposed and adopted version of a rule must have the same rule number.

(7) [~~(6)~~] Do not withdraw an adopted rule.

(c)-(g) (No change.)

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

Filed with the Office of the Secretary of State, on May 21, 1999.

TRD-9902993
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463–5561

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Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans–Standards

1 TAC §251.1

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.1, concerning Regional Plans for 9-1-1 Service to meet new technology advancements in telecommunications for the protection and reliability of 9-1-1 systems and to be consistent with changes in Commission policy.

This section is part of the agency's rule review of Chapter 251 (concerning Regional Plans-Standards), pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

The amendment provides updated language and clarifies requirements; adds language consistent with newer rules, such as wireless; incorporates contractor reference, such as memorandum of understanding; and sets minimum standards for performance and reporting.

James D. Goerke, executive director, ACSEC, 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. Goerke 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 improved effectiveness and reliability of 9-1-1 call delivery systems in 9-1-1 regions throughout the state. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, and 771.059; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Advisory Commission on State Emergency Communications with the authority to plan for and implement emergency communication systems that meet set standards and in accordance with approved agency strategic plan.

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

§251.1. Regional Strategic Plans for 9-1-1 Service.

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

(1) 9-1-1 Equipment and Services - Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate Public Safety Answering Point (PSAP).

(2) 9-1-1 Funds - Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(3) Automatic Location Identification (ALI) - The automatic display at the PSAP of the caller's telephone number, the address/location of the telephone and supplementary emergency services information.

(4) Automatic Number Identification (ANI) - Telephone number associated with the access line from which a 9-1-1 call originates.

(5) Public Safety Answering Point (PSAP) - A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law Texas Health and Safety Code, Chapters 771 and 772.

(6) Regional Planning Commission - A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments.

(7) TDD - The acronym for Telecommunication Device for the Deaf. Other interchangeable acronyms accepted are TTY (Teletypewriter) or TT (Text Telephone).

(b) [~~(a)~~] All regional strategic plans (regional plans), or amendments to those regional plans, for 9-1-1 Service [~~plans~~] must be submitted to the Advisory Commission on State Emergency Communications ([~~the~~] Commission) by a Regional Planning Commission [~~Council of Government (RCOG)~~] (RPC) as specified by Health and Safety Code, Chapter 771.056. The RPC shall comply with all applicable federal and state laws (applicable law) in carrying out its approved regional plan.

(c) [~~(b)~~] All regional plans for 9-1-1 service [~~plans~~] submitted for approval must address the entire geographic area within the boundaries of a RPC [~~an RCOG~~]. The regional plan must identify all public safety agencies as participating or nonparticipating. All counties with a population greater than 120,000, according to the latest federal census, must have 9-1-1 service by September 1, 1995. In counties with less than 120,000 in population, resolutions supporting the regional plan must be included for all participating cities

and counties. Because the definition of Public Agency in Health and Safety Code, Chapter 771.001(6) creates a possibility of overlapping jurisdictions, the city or county government of that area should submit the resolution to support the regional plan.

(d) [~~(c)~~] A regional plan may be amended according to procedure established by the [~~Advisory~~] Commission [~~on State Emergency Communications~~].

(e) [~~(d)~~] All regional plans submitted for approval must describe how the 9-1-1 service is to be administered, include a description of how money allocated to the region is to be allocated in the region, include projected financial operating information for the two state fiscal years following the submission of the regional plan and include strategic planning information for the five state fiscal years following the submission of the regional plan. [~~complete description of the proposed system and its operation.~~]

(f) [~~(e)~~] All regional plans for 9-1-1 service must include at least the following.

(1) Automatic Number Identification (ANI) of all single-party telephone lines.

(2) There must be at least one Primary Public Safety Answering Point (P-PSAP) with the ability to extend, transfer, or relay 9-1-1 calls to the appropriate public safety response agencies. The P-PSAP must be in service 24 hours per day, seven days per week, 365 days per year [~~every day~~]. If there is more than one Public Safety Answering Point (PSAP), the system may be arranged for two or more PSAPs to share the 24-hour duty requirement.

(3) In compliance with the ADA, each call taking position must be equipped with a TDD/TTY or TDD/TTY compatible equipment.

(4) A P-PSAP should be equipped with a standby power supply for the telephone equipment, or it must be equipped with circuit transfer equipment that will connect each incoming circuit to a telephone set that does not require external power to operate.

(5) A P-PSAP must have the forced disconnect feature that will allow the PSAP attendants to clear incoming circuits of calls when necessary.

(6) A P-PSAP must have redundant (a minimum of two each) crucial service items, performing comparable functions independently of one another, such as incoming telephone circuits (two from each telephone central office or tandem), telephone sets, integrated workstations, ANI and/or ALI incoming circuits, ANI and/or ALI display units and stand-alone TDD units (when applicable).

[~~(6) A P-PSAP must have a minimum of two each of all crucial service items such as incoming telephone circuits (two from each telephone central office or tandem), telephone sets, ANI incoming circuits, and ANI display units.~~]

(7) There must be redundant network connections [~~at least two trunks~~] between each telephone central office and the 9-1-1 tandem office if a tandem is used.

(8) In addition to the 9-1-1 service number, all public safety agencies must maintain a published seven-digit emergency telephone number that can accept emergency calls.

(9) If a telephone switching office is equipped to provide 9-1-1 service, all lines must receive a positive response when 9-1-1 is dialed. The following is considered a positive response:

(A) An audible ringing tone when the call is connected to a circuit to a PSAP.

(B) In offices using direct trunking to a PSAP, the PSAP attendant must be able to extend, transfer, or relay emergency calls for all telephone lines served by that office.

(C) If selective routing, [~~class marking,~~] or an equivalent method of routing of calls is used, calls from telephone lines used by customers in an area not using 9-1-1 as an emergency number must be routed to a recorded announcement that directs the customer to call their local public safety agency.

(D) All calls delivered directly [~~directed~~] to a PSAP by selective routing must be extended, transferred, or relayed to the proper public safety agencies.

(10) All 9-1-1 service systems must accept emergency calls from wireless telephone systems operating within the 9-1-1 service area as 9-1-1 calls over 9-1-1 circuits only [~~(e.g., no seven or ten digit screening numbers)~~]. Upon direction by the Commission, all [~~All~~] 9-1-1 service systems must immediately request from service providers in the 9-1-1 entity's geographic area that Phase I wireless service (a wireless caller's ANI and the location of the base station or cell site receiving a 9-1-1 call) be provided to the appropriate PSAP. [~~through the use of Pseudo ANI and ANI by no later than the eighteen month deadline specified by the Federal Communications Commission in 47 CFR §20.18(d). The terms ANI and Pseudo ANI have the same meanings as in 47 CFR §20.18. All 9-1-1 service systems must be capable of receiving the data elements associated with this service by no later than the 18-month deadline specified in 47 CFR §20.18(d).~~] Implementation timelines and associated cost recovery plans shall be provided to the Commission prior to service activation. All wireless service shall be implemented in accordance with Commission Rule §251.10 of this title (relating to Guidelines for Implementing Wireless E9-1-1 Service).

(g) [~~(f)~~] The regional plan must include a description of how the service is to be administered as required by Health and Safety Code, Chapter 771.055(b).

(h) [~~(g)~~] The regional plan must include a description of how money is to be allocated to the region [~~RCOG~~] as required by [~~under the~~] Health and Safety Code, Chapter 771.055(c) [~~is to be allocated within the region as required by the Health and Safety Code, Chapter 771.055(c)~~].

(i) [~~(h)~~] The regional plan must include detailed descriptions of the cost of equipment, [~~and~~] the operating expenses for the proposed 9-1-1 Service and any other associated costs that are to be funded by fees or surcharges collected in accordance with the Health and Safety Code, Chapter 771.055(c). [~~771, Subchapter D.~~]

(j) The RPC shall recognize that the Commission reserves the right to perform on-site monitoring of the RPC and/or it's performing local governments or PSAPs for compliance with applicable law.

(k) The RPC shall execute interlocal agreements between itself and its local governments responsible for PSAPs relating to the planning, development, operation and provision of 9-1-1 service, the use of 9-1-1 funds and adherence to applicable law.

(l) The RPC shall use competitive procurement practices and procedures similar to those required by state law for cities or counties, as well as any additional Commission policies, in conjunction with the procurement of 9-1-1 Customer Premises Equipment, 9-1-1 Network, and 9-1-1 Database services and any other items to be obtained with 9-1-1 funds.

(m) The RPC shall adhere to all Commission requirements for testing related to 9-1-1 Customer Premises Equipment, 9-1-1 Network, and 9-1-1 Database services. Testing shall occur at such

time that new service or equipment is installed, service or equipment is modified and on a regular basis to ensure system reliability. A schedule for ongoing testing shall be developed by the RPC and shall be available to the Commission for monitoring.

(n) The RPC shall plan and implement a contingency routing scheme to provide for the provision of uninterrupted 9-1-1 service in the event of an incident that requires the temporary rerouting of 9-1-1 calls due to man-made or natural disasters.

(o) Should there be a need to increase the number of 9-1-1 calltaking positions at an existing PSAP, the RPC shall provide to the Commission, written justification supporting the request for the additional position. Such justification shall include statistical information indicating a minimum of a 20% increase in 9-1-1 call volume for each of the previous two years and a minimum of ten 9-1-1 calls handled per hour by the PSAP.

(p) Should there be a need to add a new PSAP within the region, the RPC shall provide the Commission written justification supporting the request. Appropriate justification shall include any statistical information such as call volume and growth rates, or jurisdictional changes within the region. All requests for a new PSAP must include specific costs for equipment and services, as well as a complete written description and schematic illustrating the proposed PSAP's relationship to the balance of the region's network. Proposed PSAPs shall be defined as one of the following types:

(1) Primary PSAP - a facility equipped and staffed to receive 9-1-1 calls 24 hours per day which meets all criteria as defined in subsection (f)(1)-(10) of this section.

(2) Secondary PSAP - a PSAP to which 9-1-1 calls are transferred or relayed from a Primary PSAP, and which may operate less than 24 hours per day but, which also meets the criteria as defined in subsection (f)(1)-(10) of this section.

(3) Remote - equipment located at an emergency service responder's facility that is capable of conveying call information via printer, fax or telephone and used as a means of call delivery.

(q) Each PSAP shall provide performance data to the RPC, or other 9-1-1 entity, for purposes of providing information to the Commission on a quarterly basis. Such information to be reported shall include, if applicable and available, PSAP call statistics such as monthly call volume, average call duration, abandoned 9-1-1 calls (wireline and wireless), non-9-1-1 calls and equipment/database failures.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903052
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.2

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.2, concerning Guidelines for Changing or Extending 9-1-1 Service Arrangements. The section provides the guidelines so that 9-1-1 service in the competitive and fast-changing telecommunications environment does not degrade the provision of the highest level of service.

The amendment incorporates language consistent with new agency rule on wireless solution and provides consistency with the changes in Commission policy.

This section is part of the agency's rule review of Chapter 251 (concerning Regional Plans-Standards), pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

James D. Goerke, executive director, ACSEC, 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. Goerke 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 and more orderly implementation of changes and extensions of service arrangements in the telecommunications environment. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, and 771.059; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Advisory Commission on State Emergency Communications with the authority to administer and implement 9-1-1 emergency communications.

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

§251.2. Guidelines for Changing or Extending 9-1-1 Service Arrangements.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in paragraphs (1)-(5) of this subsection, unless the context of the word or term clearly indicates otherwise.

(1) Automatic Number Identification (ANI) - A system which permits the identification of the caller's telephone number. For purposes of this rule, the term has the same meaning as in 47 CFR §20.18.

(2) Emergency Communications District - A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapters B, C, D, or E.

(3) Pseudo Automatic Number Identification (Pseudo ANI) - A system which identifies the location of the base station or cell site through which a mobile call originates. For purposes of this rule, the term has the same meaning as in 47 CFR §20.18.

(4) Regional Strategic Plan - A plan for the establishment and operation of 9-1-1 service throughout the region that regional planning commission serves. The plan must meet the standards established by and be amended in accordance with the standards established by the Advisory Commission on State Emergency Communications.

(5) Regional Planning Commission (RPC) - A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG).

(b) Policy and Procedures. As authorized by Health and Safety Code, Chapter 771, the Advisory Commission on State Emergency Communications (Commission) [~~(ACSEC)~~] may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The Commission [~~ACSEC~~] is responsible for administering the implementation of statewide 9-1-1 service. The Commission [~~ACSEC~~] is also responsible for minimum performance standards for the operation of 9-1-1 service to be followed in developing regional plans. One of the most fundamental components of any 9-1-1 service operation and any regional strategic plan is how the 9-1-1 service will be provided by the telecommunications service provider(s) directly connecting to the Public Safety Answering Point (PSAP). Changing the tandem and/or database service arrangements for direct connection to the PSAP, adding additional tandem, wireless, private switch and/or database service providers, or extending current service arrangements for a fixed period may potentially adversely affect [~~effect~~] the level, quality, and costs of 9-1-1 service and [~~Changing the tandem and/or database service arrangements for direct connection to the PSAP, adding additional tandem and/or database service providers, or extending current service arrangements for a fixed period~~] may also potentially adversely effect other service providers that rely on another service provider for interconnection to the PSAP (e.g., other service providers need to know which provider to send Automatic Number Identification (ANI) information and Automatic Location Information (ALI) records, the format for ALI records, the procedures for modifying 9-1-1 database information, and how 9-1-1 service will be provided to their end-user customers). It is the policy of the Commission [~~ACSEC~~] that the highest level of 9-1-1 emergency service continues to be provided notwithstanding the new competitive telecommunications environment. Therefore, any agreement by a regional planning commission with a service provider to change or to extend 9-1-1 service arrangements for a fixed period must be made contingent upon final approval of a regional strategic plan amendment. For emergency communication districts requesting 9-1-1 funds in accordance with established rules and procedures for 9-1-1 service arrangements, the extent to which the guidelines below are satisfied may be considered in allocating equalization surcharges.

(c) Guidelines.

(1) Changes or extensions of 9-1-1 service arrangements must include the following:

(A) The service provider making the proposal to the regional planning commission or emergency communications district verifies in writing, as part of the proposed agreement, that:

(i) Reasonable notice of the proposal (i.e., at least ten days before a joint planning meeting) has been provided to the current service provider (if a change in service providers is involved) and to other potentially affected service providers.

(ii) The service provider also verifies that at least one joint planning meeting occurred with at least ten days notice to all affected service providers that they may participate in the joint planning meeting;

(iii) [~~(ii)~~] As a result of the joint planning meeting either each technical issue or objection by other service providers has fully been resolved or an impartial statement of each unresolved issue or objection has been provided. (A joint planning meeting is open to evaluate all alternatives and is not limited to a discussion of one service provider's proposal.)

(iv) [~~(iii)~~] An inventory of each affected exchange, central office, [~~and~~] tandem, private switch, PBX, or Mobile Telephone Switching Office (MTSO) has been provided to all affected service providers and the RPC/District that is involved.

(v) [~~(iv)~~] Cost verification [~~An itemization~~] of all costs under the proposal and an itemized comparison with all costs under current rates (e.g., itemized list and comparison of all charges for each level of service, for all database service, etc.)

[~~(v)~~] Any and all changes in E9-1-1 or 9-1-1 service features (i.e., all additional service features or reductions in service features that may result from the proposal) must be clearly specified. The service provider must also explain the justifications for any and all changes and why those changes do not degrade the level of 9-1-1 service and are consistent with providing the highest level of 9-1-1 service to all customers.

(vi) The service provider shall take [~~takes~~] full responsibility to professionally and timely coordinate all 9-1-1 service changes and modifications with all wireline, [~~service providers~~], wireless, database and private switch service providers involved in the geographic area.

(vii) The service provider shall verify/certify [~~and~~] that any necessary new or modified interconnection agreements relating to 9-1-1 service will be approved by the Public Utility Commission of Texas before the effective date of the proposed agreement and as necessary thereafter.

(viii) [~~(vii)~~] The proposal includes a statement of work to be performed that includes:

(I) an implementation schedule;

(II) diagrams of all proposed changes;

(III) how testing will [~~occur and~~] be conducted and documented [~~coordinated~~];

(IV) contingency plans and physical diversity;

(V) [~~(IV)~~] how interfaces with other service providers will be accomplished and coordinated;

(VI) [~~(V)~~] a comprehensive list of all components and processes [~~an explanation of everything~~] necessary for implementation;

(VII) [~~(VI)~~] a comprehensive list of all components and processes [~~schedule of everything~~] necessary for database service implementation, including Emergency Service Number (ESNs) assignments, [~~and~~] Master Street Address Guide (MSAG) revisions, selective routing tables, Emergency Service Routing Digit (ESRD), wireless cell site locations and distribution to other service providers; [~~and~~]

(VIII) an outline of all associated costs; and

(IX) [~~(VII)~~] an explanation of any potential Customer Premises Equipment (CPE) impacts, or necessary modifications.

~~*[(viii)* The proposal provides for service providers that are wireless carriers to be able to pass ANI and Pseudo ANI or that on request any modifications necessary to pass ANI and Pseudo ANI by the Federal Communications Commission's 18-month deadline in 47 CFR §20.18(d) will be specified.]~~

(ix) The proposal provides for service providers that are wireless carriers to be able to pass Phase I callback and Phase II geographic location information. On request, any modifications necessary to pass callback and location information before the Federal Communications Commission's eighteen month deadline in 47 CFR §20.18(d) will be specified.

(x) [~~(ix)~~] The proposal provides for and enables long-term number portability or that any modifications necessary for long-term number portability will be specified.

(xi) [~~(x)~~] The proposal specifies any additional costs to any PSAP or 9-1-1 entity for any modifications necessary during the period of the agreement because of Number Plan Area (NPA) splits and/or existing tandem or other network limitations.

(xii) [~~(xi)~~] The proposal provides that there will be no additional costs to any PSAP or 9-1-1 entity to maintain the current level of E9-1-1 service, except as specifically set forth in an itemized list that is part of the proposed agreement.

(xiii) [~~(xii)~~] No further agreement by the regional planning commission is necessary to implement the proposal (e.g., the service provider and not the regional planning commission is responsible for any and all coordination with other parties or service providers that may be necessary to implement the proposal).

(xiv) [~~(xiii)~~] A most favored nation provision (i.e., a provision that requires the best price provided to any other similarly situated entity in Texas for comparable service) is included in the agreement and the service provider will automatically reduce the rates and charges in the agreement if comparable service is offered in Texas at a lower rate or charge by that service provider to any similarly situated other PSAP or 9-1-1 entity.

(xv) [~~(xiv)~~] The service provider will comply with all applicable law, Commission [~~ACSEC~~] and Public Utility Commission of Texas rules or regulations relating to 9-1-1 service.

(B) The regional planning commission requesting the plan amendment verifies in writing, as part of the proposed plan amendment, that:

(i) Competitive procurement procedures were used or an explanation of the applicability of an exception to competitive procurement requirements;

(ii) All neighboring or adjacent 9-1-1 entities that could potentially be affected by the requested plan amendment have been provided a copy of the plan amendment either before or concurrently with the filing of the plan amendment with the Commission [~~ACSEC~~];

(iii) All appropriate modifications are made to current interlocal agreements; and

(iv) All changes are reflected in the current regional strategic plan including narrative descriptions of the changes and schematics of affected equipment and network components.

(2) Emergency communication districts requesting 9-1-1 funds in accordance with established rules and procedures for 9-1-1 service arrangements shall ensure that any changes or extensions of service arrangements meet or exceed the guidelines for regional planning commissions in this section.

(3) Annual budgeted costs associated with 9-1-1 service arrangements shall be monitored by [~~the~~] Commission [~~ACSEC~~] staff for consistency with this section. Such costs that are determined by [~~the~~] Commission [~~ACSEC~~] staff to not be consistent with this section shall be reviewed by the Commission.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903051
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.4

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.4, concerning Guidelines for the Provisioning of Accessibility Equipment. The guidelines are used to evaluate requests for equipment and services considered to be essential to 9-1-1 system functions and clarify the provisioning of equipment necessary for 9-1-1 call delivery.

The proposed amendment includes restructuring the layout of the rule to provide reference to statutory requirements of the Americans with Disabilities Act (ADA) at the beginning of this section; clarifies section as a rule and not a "standard" pertaining to accessibility equipment and requires such to meet ADA requirements and standards set forth by the National Emergency Number Association; deletes agency historical information; expands the definition of "TDD"; adds "TTY" to all references made to "TDD" for clarification; and delineates funding for one TDD/TTY per position in accordance with federal mandate The amendment provides consistency with the changes in Commission policy.

This section is part of the agency's rule review of Chapter 251 (concerning Regional Plans-Standards), pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

James D. Goerke, executive director, ACSEC, 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. Goerke 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 improved effectiveness and reliability of 9-1-1 call delivery systems in 9-1-1 regions throughout the state. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.055, 771.056, 771.057, and 771.072; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which authorize the Advisory Commission on State Emergency Communications to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.4. Guidelines for the Provisioning of Accessibility Equipment.

(a) The Americans with Disabilities Act (P.L. 101-336), commonly referred to as the ADA, impacts telephone emergency services by mandating direct access to TDD and computer modem users. Although the ADA does not mandate TDD detection equipment, the Department of Justice addresses the issue of a "silent call" in their Technical Assistance Manual by stating that "operators must be trained to recognize that silent calls may be TDD or computer modem calls and to respond appropriately." Installation of detection equipment will assist the telecommunicator in call-handling efficiency.

(b) [~~(a)~~]The Commission has established rules and policies [~~standards~~] that must be implemented [~~met~~] in a 9-1-1 Regional Strategic Plan (Chapter 251 of this title (relating to Regional Plans-Standards).

[~~(b)~~] The Commission will consider as part of the regional plan, [~~look favorably on~~] accessibility equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems. This may include the following when the equipment is for 9-1-1 call delivery: surge protection devices, uninterrupted power source (UPS), power backup, voice recorders, paging systems for 9-1-1 call delivery, security devices, and back-up communication services.

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

(1) "TDD" - the acronym for Telecommunication Device for the Deaf. Other interchangeable acronyms accepted are TTY (Teletypewriter) or TT (Text Telephone).

(2) TDD Detectors - monitor incoming trunks for TDD tones. Upon detection, a response sequence begins. A built-in recording provides a repeating voice announcement, "TDD Call," to the telecommunicator. A message is sent to the TDD caller (such as "9-1-1 Please Hold"). The telecommunicator then utilizes a TDD to communicate.

~~[(c) The Commission will be guided by the basic consideration that it is responsible for the provision of 9-1-1 call delivery and not for the provision of emergency services. Therefore, the Commission will normally approve expenditures related only to call delivery and will continue to expect local governments to fund all activities related to the provision of emergency services.]~~

(d) [~~The following guidelines will be used in evaluating accessibility equipment.~~]

[~~(1)~~] TDD Accessibility Equipment.

(1) The program provided for a statewide 9-1-1 placement program coupled with related training and public education through an interagency contract with the Texas Commission for the Deaf and Hearing Impaired (TCDHI), beginning September 1, 1990. The administration of the TDD Distribution Program was transferred to the Advisory Commission on State Emergency Communications (Commission) [~~(ACSEC)~~] effective April 1, 1991.

(2) [~~(A)~~] The program is utilized by Texas regional [~~councils~~] planning commissions, as well as 9-1-1 emergency Communications Districts. After the program was moved to the Commission [~~(ACSEC)~~], the TCDHI's TDD program closed and those units loaned from their agency were recalled. An agreement was arranged for the Commission [~~(ACSEC)~~] to purchase those units already placed in emergency response centers.

~~[(B) The Americans with Disabilities Act (P.L. 101-336), commonly referred to as the ADA, impacts telephone emergency services by mandating direct access to TDD and computer modem users. Although the ADA does not mandate TDD detection equipment, the Department of Justice addresses the issue of a "silent call" in their Technical Assistance Manual by stating that "operators must be trained to recognize that silent calls may be TDD or computer modem calls and to respond appropriately." Installation of detection equipment will assist the telecommunicator in call-handling efficiency.]~~

~~[(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:]~~

~~[(A) "TDD" - the acronym for Telecommunication Device for the Deaf. Other interchangeable acronyms accepted are TTY (Teletypewriter) or TT (Text Telephone).]~~

~~[(B) TDD Detectors - monitor incoming trunks for TDD tones. Upon detection, a response sequence begins. A built-in recording provides a repeating voice announcement, "TDD Call," to the telecommunicator. A message is sent to the TDD caller (such as "9-1-1 Please Hold"). The telecommunicator then utilizes a TDD to communicate.]~~

(3) Funding. The following are funding parameters for accessibility equipment.

(A) The Commission will fund TDD equipment in accordance with The Americans with Disabilities Act (P.L. 101-336), commonly referred to as the ADA.

(B) The Commission will fund TDD Detectors through the plan amendment process (§251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation)) with an allocation policy of one TDD Detector per position.

(C) The Commission will review and consider exceptions to the above policies on a case-by-case basis.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903050
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.5

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.5, concerning the use of 9-1-1 funds for capital recovery and equipment maintenance by providing uniform guidelines and expectations.

The amendment proposes to allow for improved methods of equipment management, disposition, and replacement planning and to meet the recommendations of the State Auditor's Report Number 98-054 received July 29, 1998.

This section is part of the agency's rule review of Chapter 251 (concerning Regional Plans-Standards), pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

Elsewhere in this issue of the *Texas Register*, the ACSEC is contemporaneously withdrawing the amendment of §251.5, which was previously proposed in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2546)

James D. Goerke, executive director, ACSEC, 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, however, it will serve to monitor financial resources ensuring fiscal accountability related to capital assets.

Mr. Goerke 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 improved mechanism for assuring equipment is well maintained or replaced to provide maximum performance and that adequate resources are available and accounted for. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the amendment may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

No other statutes, articles or codes are effected by the proposed amendment.

§251.5. Guidelines for [~~the Maintenance and Replacement of~~] 9-1-1 Equipment Management, Disposition and Capital Recovery.

(a) As authorized by the Texas Health and Safety Code, Chapter 771, the Advisory Commission on State Emergency Communications (ACSEC) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with Texas Health and Safety Code, Chapter 771, §771.055, such service implementation shall be consistent with regional plans developed by regional planning commissions. Each regional planning commission shall develop a plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the Advisory Commission.

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

(1) 9-1-1 Equipment - Equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate Public Safety Answering Point (PSAP)s and as defined in §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation).

(2) [~~(1)~~] 9-1-1 Funds - Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

[~~(2) 9-1-1 equipment Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.~~]

[~~(3) Capital reinvestment cost The nonrecurring cost of replacing 9-1-1 equipment amortized over a selected period of time.~~]

[~~(4) Emergency communications district A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, or D.~~]

[~~(5) Maintenance The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.~~]

[~~(6) Maintenance plan A plan that identifies a cost effective program for the maintenance of 9-1-1 equipment. For regional planning commissions, this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771. ~~]

[~~(7) Regional planning commission A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG).~~]

[~~(8) Replacement The timely replacement of old 9-1-1 equipment for new 9-1-1 equipment in order to insure the appropriate and acceptable continued operation of 9-1-1 services.~~]

[~~(9) Replacement plan A plan that identifies a cost-effective program for the replacement of 9-1-1 equipment. For regional planning commissions, this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.~~]

[~~(10) Useful life The period of time that a piece of capital equipment can consistently and acceptably fulfill its service or functional assignment.~~]

(3) 9-1-1 Program Assets - 9-1-1 and Addressing Capital Equipment purchased with 9-1-1 Funds.

(4) Addressing Equipment - Equipment acquired partially or in whole with 9-1-1 funds, and/or Addressing Pool funds, designed to support and/or facilitate the work associated with addressing completion and/or addressing maintenance activities, as defined in §251.3 of this title (relating to Guidelines for Addressing Funds).

(5) Addressing Activities - The work associated with the addressing of a county as defined in ACSEC §251.3 of this title.

(6) Addressing Pool Funds - Funds directed to statewide addressing use including, but not limited to federal or state grants, contributions, donations, and telephone rate case settlement distributions; but, which exclude 9-1-1 Service Fee, either restricted or unrestricted in use.

(7) Advisory Commission on State Emergency Communications. ACSEC.

(8) Applicable Law - Includes, but is not limited to, the State Administration of Emergency Communications Act, Texas Health and Safety Code, Chapter 771; Commission rules implementing the Act contained in Title 1, Part XII, Texas Administrative Code; the Uniform Grant management Standards, Title 1, §§5.151 - 5.165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules. Also referred to as "applicable law and rules".

(9) Capital Equipment - Items and components that comprise the technology used to answer and deliver 9-1-1 calls whose cost is over $1,000 and have a useful life of at least one year.

(10) Capital Replacement Cost - The cost of a piece of equipment that was originally identified to be amortized (i.e. the original cost for equipment.)

(11) Controlled Equipment - Items and components that comprise the technology used to answer and deliver 9-1-1 calls whose cost is less than $1,000 and have a useful life of at least one year. Used at the discretion of the RPC for items that tracking is deemed necessary.

(12) Emergency Communications District - A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, D.

(13) Intangible Assets - Includes items such as labor for PSAP room prep, electrical wiring costs, labor for the assembly of equipment, or any costs for the delay or transfer of equipment.

(14) Interlocal Agreement - A contract cooperatively executed between local governments or other political subdivisions of the state to perform administrative functions or provide services, relating to 9-1-1 telecommunications.

(15) Local Government - A county, municipality, public agency, or any other political subdivision that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services and/or addressing functions.

(16) Maintenance - The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.

(17) Maintenance Plan - A plan that identifies a cost effective program for the maintenance of 9-1-1 equipment. For regional planning commissions this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.

(18) Memorandum of Understanding (MOU) - A contract executed between the Regional Planning Commission (RPC) and the ACSEC that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.

(19) Non-Recurring Charge - The amount of cost identified as the entire lump sum, or one time, cost for 9-1-1 equipment replacement. The charge may be inclusive of an out right purchase of equipment or the primary cost for the implementation of leased equipment through a major telephone provider.

(20) Public Safety Answering Point - A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law, Texas Health and Safety Code, Chapter 771.

(21) Recorders - Devices that capture and retain sound, including but not limited to the following:

(A) Voice Loggers - A device that records sound on a permanent source for later review.

(B) Instant Recall Recorders - A device that records and temporarily stores calls for immediate review.

(22) Regional Planning Commission - A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments.

(23) Strategic Plan - As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support plan levels of 9-1-1 service within a defined area of the state. The strategic plan normally covers at least a three year planning period, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.

(24) Tangible Assets - Only those items that are tangible may be considered for capital recovery costs. Tangible assets items include, but is not limited to any capital equipment such as the ANI/ALI Controllers, answering position units, integrated workstations, addressing computers, GIS workstations, plotters, or any other technical piece of equipment.

(25) Uniform Grant Management Standards (UGMS) - As developed by the Governor's Office of Budget and Planning, January 1998, under the authority of the Texas Government Code, Chapter 783.

(26) Useful Life - The period of time that a piece of capital equipment can consistently and acceptably fulfill its' service or functional assignment.

~~[(b) Policy and procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Advisory Commission on State Emergency Communications (ACSEC) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation, and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. It is the policy of the ACSEC that this equipment be well maintained and provide the maximum performance possible within the environment in which it operates.]~~

(c) Management and Disposition of Equipment. Each RPC is responsible and accountable for all 9-1-1 and Addressing Equipment in its region, as approved in its strategic plan, and will contract with each of its participating Local Governments to ensure, at a minimum, that: all issues of equipment ownership, transfer of ownership, control and/or disposition of equipment acquired with 9-1-1 funds shall be identified within interlocal agreements; and, all contract provisions for equipment shall be consistent with Uniform Grant Management Standards (UGMS) as published by the Governor's Office of Budget and Planning, January 1998.

(1) Ownership of equipment acquired with 9-1-1 funds will vest in the RPC upon acquisition, or in the Local Government as agreed to within the applicable interlocal agreement.

(2) Transfer of ownership of equipment acquired with 9-1-1 funds shall be designated and approved in writing by the RPC, and agreed upon within the interlocal agreement.

(A) Before any such transfer of ownership, the RPC should evaluate the adequacy of controls of the prospective receiver to ensure that sufficient controls and security exist by which to protect and safeguard the equipment purchased with 9-1-1 funds;

(B) Transfer of Ownership documents shall be prepared by the RPC and signed by both parties upon transference in accordance with UGMS and the State Comptroller of Public Accounts;

(C) Upon transference of ownership, the receiving party shall assume responsibility for the proper use, maintenance, management, control and safeguarding of the equipment.

(3) Control of equipment shall be the responsibility of the party to whom ownership is assigned.

(A) The owner of the equipment shall have a capital asset management system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment.

(B) Any loss, damage, or theft of equipment shall be investigated. Cases of theft will be pursued to the fullest extent of the law.

(C) Local Government and/or other responsible party shall provide reimbursement to RPC, or owner, for damage to 9-1-1 and Addressing equipment caused by intentional abuse, misuse or negligence by PSAP employees, County/Addressing personnel, or other persons to whom custodial responsibility is assigned. This provision shall not include ordinary wear and tear or ordinary day to day use of equipment.

(4) Disposition of equipment shall take place when original or replacement equipment acquired with 9-1-1 funds is obsolete, failing repeatedly, or scheduled for replacement; or, when the equipment is no longer needed for the original project or program. Methods used to determine per-unit fair market value must be documented, kept on file and made available to the RPC and ACSEC upon request, and as outlined in the remainder of this rule.

(A) Equipment with a current fair-market value of less than $1,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. If sold, the resulting revenue shall be returned to the capital recovery fund. If transferred to another program funded by federal or state funds, the transfer of ownership shall be documented.

(B) Equipment with a current fair-market value of more that $1,000 may be retained or sold. If sold, the resulting revenue shall be returned to the capital recovery fund. Proper sales procedures must be established to ensure the highest possible return.

(C) Equipment may be used for trade-in value to offset the cost of replacement.

(d) [~~(c)~~] Maintenance - Maintenance procedures shall be in place to keep the property in good condition.

(1) Regional planning commissions funding the purchase and/or lease of 9-1-1 equipment shall develop and adopt maintenance plans covering the equipment involved as part of the regional plan within 30 days of purchase.

(2) Emergency communication districts requesting 9-1-1 funds in accordance with established rules and procedures for the maintenance of 9-1-1 equipment shall provide a maintenance plan for the equipment involved within 30 days of purchase.

(3) Maintenance plans shall be provided to the ACSEC in conjunction with equipment plan amendments or district requests submitted to the Commission. For equipment purchased and/or leased prior to the adoption of this rule, maintenance plans for regional planning commissions shall be submitted to the ACSEC for consideration no later than the beginning of the next budget cycle from the date of adoption of this rule.

(4) Annual budgeted costs associated with the maintenance of 9-1-1 equipment shall be monitored by the ACSEC staff for consistency with approved maintenance plans. Such costs that are determined by the ACSEC staff to not be consistent with approved maintenance plans shall be reviewed and approved by the Commission.

[~~(d) Replacement.~~]

[~~(1) Regional planning commissions funding the purchase and/or lease of 9-1-1 equipment shall develop and adopt replacement plans designed to insure the availability of adequate financial and other resources required to timely replace equipment that has reached the end of its useful life.~~]

[~~(2) The initial useful life of 9-1-1 equipment acquired prior to the adoption of this rule shall be the remaining life of the equipment involved, calculated from the date of the adoption of this rule.~~]

[~~(3) Emergency communication districts requesting 9-1-1 funds in accordance with established rules and procedures for the replacement of 9-1-1 equipment shall provide a replacement plan for the equipment involved.~~]

[~~(4) Annual capital reinvestment costs associated with the replacement of 9-1-1 equipment shall be monitored by the ACSEC staff for consistency with approved replacement plans. Such costs that are determined by the ACSEC staff to not be consistent with approved replacement plans shall be reviewed and approved by the commission.~~]

(e) Requirements for Capital Recovery Tracking. A Capital Asset Recovery Schedule that lists 9-1-1 related equipment by recoverable item shall be included in each regional planning commission's strategic plan. Strategic plans are required under the Health and Safety Code, Chapter 771 and §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation). A Capital Asset Recovery Schedule shall be maintained by the regional council in a spreadsheet or database that includes the following information for each item listed.

(1) Date Acquired

(2) Description

(3) Location of the Equipment

(4) Identifying Number (Serial, Asset Tag, etc.)

(5) Percent of State Participation (Cost Sharing)

(6) Original Recovery Value

(7) Life Assigned (In Years)

(8) Annual Recovery Amount by Year (The total for all items recovered should be equal to the annual amount that is identified in the strategic plan for all components for one given year. The total

amount should also correspond to the budget amount identified in the quarterly Financial Status Report)

(9) Responsible Agency (Person in Possession)

(10) Estimated Replacement Date

(11) Addressing Program Asset? (Y/N)

(f) Requirements for Capital Recovery Fund Contributions. Contributions shall be made to the fund at least once a quarter until the full fiscal year contribution budget has been reached. The total deposit to the capital recovery account for a given year shall not exceed the total amount identified in the strategic plan for that same year for all levels. Should funding not be available to fully fund capital recovery in all counties, the RPC shall balance regional priorities with the need to maintain a consistent level of service in all counties.

(g) Requirements for Capital Recovery Fund Expenditures. Expenditures from the capital recovery schedule shall be reported on the following Financial Status Report submitted to the ACSEC as required by §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation).

(1) The RPC shall submit with the FSR a "Capital Recovery Asset Disposal Notice" (as promulgated by the ACSEC) for each item that is replaced using Capital Recovery Funds as follows. Figure: 1 TAC 251.5(g)(1)

(2) Should additional funds be needed, the balance of funds needed for costs above original equipment costs must be identified in the strategic plan in the corresponding county narrative and submitted to ACSEC through an amendment.

(3) Capital recovery funds set aside for replacement of an asset and not expended when purchasing a replacement asset shall be returned to the capital recover fund for future use.

(h) Addressing Capital Recovery. Costs for the replacement of addressing equipment purchased with 9-1-1 funds shall be reflected within the regional planning council strategic plan. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines that meet the definition of Capital Equipment, shall be included in the schedule.

(i) Emergency Communication Districts. Those districts requesting 9-1-1 funds in accordance with established rules and procedures for the replacement of 9-1-1 equipment shall provide a replacement plan for the equipment involved.

(j) Annual Certification. Regional planning commissions shall submit an "Annual Certification of 9-1-1 Assets" (as promulgated by the ACSEC) to the ACSEC at least once each fiscal year. In accordance with UGMS, a physical inventory of the property must be taken and the results reconciled with the property records at least once every year. The RPC shall document and maintain all such inventory records, and will submit copies to the ACSEC upon request. Figure: 1 TAC §251.5(j)

(k) Monitoring - The Commission reserves the right to perform on-site monitoring of the RPC and/or its performing Local Governments or PSAPs for compliance with this rule as well as all applicable law, policies and procedures. All monitoring activities will be conducted in accordance with ACSEC §251.11 of this title (relating to Monitoring Policies and Procedures).

(l) Other Issues.

(1) The management and disposition of equipment shall follow UGMS. Funds acquired from the disposal of assets shall be returned to the 9-1-1 capital recovery fund.

(2) The Texas *State Property Accounting Policies and Procedures Manual* shall be referenced for guidance (Comptroller of Public Accounts, May 1997; Phone number (512) 305-9954) when questions arise to particular questions not covered in this rule.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903053
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.7

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.7, concerning Guidelines and Provisions for Implementing Integrated Services.

The amendment provides clarification on the process prior to integrating and deploying expanded third-party applications and provides consistency with the changes in Commission policy.

This section is part of the agency's rule review of Chapter 251 (concerning Regional Plans-Standards), pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

James D. Goerke, executive director, ACSEC, 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, however, local governments may incur costs dependent upon the applications they choose to incorporate into the 9-1-1 workstation.

Mr. Goerke 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 improved effectiveness and reliability of 9-1-1 call delivery systems in 9-1-1 regions throughout the state. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic costs to individuals, as no individuals have a duty to comply with the rules as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.059; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Advisory Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 service, to develop minimum performance standards for 9-1-1 service to be followed in

developing regional plans, and to allocate money for the operation of 9-1-1 service.

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

§251.7. Guidelines for Implementing Integrated Services.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in paragraphs (1)-(13) of this subsection, unless the context and use of the word or terms clearly indicates otherwise:

(1) 9-1-1 Database Record. A physical record, which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and conforms to NENA adopted database standards.

(2) 9-1-1 Funds. Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(3) 9-1-1 Equipment. Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(4) Address Completion. A county addressing project, based upon the inventory, has corrected address errors, notified all affected residents of address changes by the county addressing authority, provided all new or changed addresses to telephone companies and the post office, and established a maintenance method.

(5) Address Maintenance Plan. A plan that identifies a cost effective program for the maintenance of addressing in a county. For regional planning commissions, [~~also referred to as a council of governments (COG),~~] this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.

(6) Digital Map. A computer generated and stored data set based on a coordinate system which, includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information, data sets related to emergency service provider boundaries, as well as other associated data.

(7) Emergency Communications District (District). A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, or D.

(8) Integrated Services. A level of service which, in an integrated fashion, combines features normally associated with 9-1-1 call delivery, including but not limited to automatic number identification (ANI), automatic location identification (ALI), selective routing capabilities (SR), and utilizes integrated enhancements to facilitate call delivery including, but not limited to digital mapping capabilities. Integrated services for this application is defined as incorporating multiple data signals into a single workstation.

(9) Graphical Display of Location Information. The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call, or inquiry, that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations, and the ability to zoom, pan and show other related geographical information or features.

(10) Geographic Information System (GIS). A system necessary to map emergency service number (ESN) boundaries and reflect annexations and other feature changes; to list emergency service provider translations for ESNs; to provide and maintain master street guide (MSAG) format; validate and resolve database discrepancies; to project new addresses and block ranges as an initial assignment or correction for ongoing issuance of new addresses; and for locator maps for emergency services providers.

(11) Regional Planning Commission (RPC). A commission established under Local Government Code, Chapter 391, also referred to as a council of governments (COG).

(12) Strategic Plans. Regional strategic plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues two [~~at least three~~] years into the future, beginning September 1, 1994. Within the context of §771.056(d), the Advisory Commission on State Emergency Communications (ACSEC) shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(13) Wireless 9-1-1 Call. A call into a 9-1-1 system from an end user of two-way local wireless voice service available to the public from a commercial mobile radio service. The term includes any wireless two-way communication device provided by a mobile service or the functional equivalent of a mobile service.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Advisory Commission on State Emergency Communications (Commission) [~~ACSEC~~] may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the Commission [~~ACSEC~~] has funded addressing projects throughout the state to allow for the implementation of Automatic Location Identification (ALI) level of service and the implementation of a wireless 9-1-1 solution. In the funding of such projects, it has been the policy of the Commission [~~ACSEC~~] to fund geographic information systems and the development of digital maps to support such activities. The Commission [~~ACSEC~~] recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Integration of new technology and 9-1-1 functionality are enhancing and facilitating the delivery of an emergency call. It is the policy of the Commission [~~ACSEC~~] that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of integrated services funded in part or in whole by the 9-1-1 funds referenced in subsection (1)(2) of this section. Prior to money being considered for allocation for implementation of integrated services for a county system, a COG and/or District receiving equalization surcharge funds from the Commission [~~ACSEC~~] shall meet the following requirements listed in paragraphs (1)-(2) [~~(4)~~] of this subsection:

(1) Integrated Services

(A) Personal Computer (PC) based Integrated Workstation (IWS) 9-1-1 call-taking equipment has the capability of expanding the traditional 9-1-1 Automatic Number Identification (ANI) and Automatic Location Identification (ALI) feature functionality to allow for additional third-party public safety software applications. The Commission [~~ACSEC~~] is supportive of such advancement in emergency services call-taking capabilities; however, to ensure that the integrity of 9-1-1 is maintained, only the following features listed in clauses (i)-(x) of this subparagraph are eligible integrated services:

(i)-(x) (No change.)

(B) Integrated services other than the applications listed in clauses (i)-(x) of subparagraph (A) must have a demonstrated applicability to the direct provisions of delivering 9-1-1 and emergency call-taking services. Services not directly related to 9-1-1 call delivery, such as administration, information management, and entertainment will not be authorized for integration into the IWS 9-1-1 call-taking equipment.

(C) Prior to integrating and deploying the expanded third-party applications onto a IWS 9-1-1 call-taking environment, the RPC must notify the Commission of such intentions, in the form of a regional strategic plan amendment. The [~~the~~] following listed in clauses (i)-(iii) of this subparagraph must be demonstrated to the Commission to ensure the stability and reliability of the 9-1-1 system:

(i) Documented [~~"Lab"~~] testing shall be completed by the IWS Vendor and RPC [~~councils of governments~~] demonstrating the successful integration of the authorized third-party applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating together on the IWS workstation.

(ii) Baseline memory usage of the operating system should maintain the "80/20" performance rule, thereby demonstrating that 80% of the total memory is available to the operating system applications, while 20% of the total memory remains unused. The installation and use of third-party software should not, in any way, lead to the degradation of equipment or services subsequent to the installation of the ancillary software [~~A minimum testing period of one week prior to the cut over of the newly integrated system is required~~].

(iii) Documented [~~"Live"~~] testing in a PSAP shall also be completed by the IWS Vendor with cooperation and coordination by the COG or District, demonstrating the successful integration of the authorized third-party applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating on the IWS workstation, as well as a standardized set of basic call-taking functions. A minimum testing period of one week prior to the cut over of the newly integrated system is required [~~The installation and use of third-party software should not, lead to the degradation of equipment or services subsequent to the installation of the ancillary software~~].

(D) Operating procedures should be established by the COG and/or District and security measures taken and demonstrated to ensure that non-Commission [~~ACSEC~~]-approved third-party software applications cannot be integrated into the IWS platform.

(E) Documentation of all testing shall be provided to the Commission [~~ACSEC~~] prior to approval or funding of any integrated services.

(2) Graphical Display.

(A) Prior to the implementation of graphical display of location information for a county system, a RPC [~~COG~~] and/or District shall meet the following requirements listed in clauses (i)-(iii) of this subparagraph [~~subparagraphs (A)-(C) of this paragraph~~] :

(i) [~~(A)~~] Complete the county addressing project.

(ii) [~~(B)~~] Develop a digital map.

(iii) [~~(C)~~] Establish and adopt a maintenance plan of the county digital map, county addressing project, and the associated county 9-1-1 database records.

(B) [~~(3)~~] The maintenance plan shall be provided to the Commission [~~ACSEC~~] in conjunction with strategic plan annual review or district requests submitted to the Commission following the adoption of this rule in accordance with established Commission policy.

(C) [~~(4)~~] Annual budgeted costs associated with authorized integrated services, as outlined in this rule, shall be monitored by the Commission [~~ACSEC~~] staff for consistency with approved maintenance plans and systems costs. Such costs that are determined by Commission [~~ACSEC~~] staff to not be consistent with the approved strategic plan, shall be presented for review and approval by the Commission.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903054
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.8

The Advisory Commission on State Emergency Communications (ACSEC) proposes new §251.8, concerning Guidelines for the Procurement of Equipment Services with 9-1-1 funds. The proposed rule provides guidelines to assist local governments in the procurement of equipment and services with 9-1-1 funds and to ensure that all minimum competitive procurement requirements are met. Additional amendments provide clarification for end-to-end lease arrangements.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

Elsewhere in this issue of the *Texas Register*, the ACSEC is contemporaneously withdrawing new §251.8, which was previously proposed in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1699).

James D. Goerke, Executive Director, ACSEC, 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, although cost savings are possible as a result of established competitive bidding for expenditures of all 9-1-1 funds.

Mr. Goerke 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 an improved mechanism for procurement of equipment and services with 9-1-1 funds and to ensure competitive procurement requirements are met. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas, 78701-3942.

The new rule is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.8. Guidelines for the Procurement of Equipment and Services with 9-1-1 Funds.

(a) Policy and Procedures. As authorized by Chapter 771 of the Texas Health and Safety Code, the Advisory Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation, and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. This rule establishes procurement guidelines and minimum competitive procurement requirements.

(1) This rule applies to any procurement by a 9-1-1 administrative entity, which exceeds $2,000, to be paid with funds from 9-1-1 emergency service fees and 9-1-1 equalization surcharges from the State program.

(2) This rule is not intended to prohibit a 9-1-1 administrative entity's use of more stringent competitive procurement requirements or practices.

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

(1) 9-1-1 Administrative Entity–A municipality, a county, an emergency communication district, a regional planning commission or any other political subdivision that provides 9-1-1 administrative services.

(2) 9-1-1 Equipment and Services–Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate Public Safety Answering Point (PSAP).

(3) 9-1-1 Funds–Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(4) Emergency Communication District–A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service, or a district created under Subchapter B1, C2, or D3, the Texas Health and Safety Code, Chapter 772.

(5) NENA–The National Emergency Number Association, a not-for-profit corporation founded to further the national goal of "One Nation, One Number".

(6) Regional Planning Commission (RPC)–A commission established under Chapter 391, Local Government Code.

(c) Competitive Procurement Required. Except as otherwise specifically provided in this rule, all procurements in excess of $2,000 by a 9-1-1 administrative entity, to be paid with 9-1-1 funds, shall be conducted in accordance with the provisions of Article III, Source Selection and Contract Formation, of the Texas Association of Regional Councils Model Procurement Policy, which are hereby incorporated by reference in this rule and copies of which may be obtained from the Texas Association of Regional Councils, 1305 San Antonio Street, Austin, Texas 78701, or other limits established by locally adopted procurement policy, whichever is more restrictive. In addition, all definitions applicable to Article III which are set forth in the Model Procurement Policy shall apply and are incorporated herein by reference along with any other provision of the Model Procurement Policy cited in Article III.

(1) For purposes of Section 3-202 of the Model Procurement Policy, only subdivisions 1.a., d., e., and f. are incorporated herein.

(2) The provisions of Section 3-204 b. of the Model Procurement Policy, Competitive Telephone or Facsimile Bids (informal competitive bids) shall apply for purchases in excess of $2,000 but less than $10,000 in the aggregate.

(3) The provisions of Section 3-204 c. of the Model Procurement Policy, Competitive Written Bids or Quotations shall apply for purchases in excess of $10,000 but less than $25,000 in the aggregate.

(4) For purposes of Section 3-205 of the Model Procurement Policy, Sole Source Procurement, prior written concurrence from the Commission is required for any sole source procurement expected to exceed $25,000.

(5) Compliance with those provisions in the Model Procurement Policy which apply to specific funding sources or programs, such as JTPA, is not required under this rule.

(d) Record Retention. All procurement-related records must be maintained by a 9-1-1 administrative entity in accordance with the provisions of Article II, Part B: Record Retention, of the Texas Association of Regional Councils Model Procurement Policy, which are hereby incorporated by reference in this rule, except to the extent such provisions apply to specific funding sources or programs.

(e) Procurement of Statewide Services. 9-1-1 administrative entities may procure certain 9-1-1 equipment, database services and network services through contract with the Texas General Services Commission (GSC) or the Commission.

(1) The Commission reserves the right to procure certain 9-1-1 equipment, database services and network services for the State program based on best value and upon determination of which goods or services are in the State program's best interest. In instances of statewide procurement, the Commission will work with the regional planning commissions and local governments to ensure that such purchases of goods or services are consistent with local 9-1-1 systems' infrastructure and best meet the needs of the local governments.

(2) Funds allocated for the procurement of certain 9-1-1 equipment, database services and network services will be subject to Commission funding priorities and policies.

(f) End-to-End Lease Arrangements. 9-1-1 administrative entities shall have the option of procuring 9-1-1 customer premises equipment (CPE), database and network services through end-to-end lease arrangements, only when proper procurement procedures and guidelines are utilized and documented. The RPC must demonstrate, through proper procurement procedures and documentation, that the tariffed services are economically advantageous to the 9-1-1 administrative entity.

(1) All such CPE lease arrangements shall identify features and equipment subject to the terms and conditions set forth in the RPC's Local Exchange Carrier's (LEC) Texas Public Utility Commission (PUC) Approved Tariff. Tariffed services are provided solely for the use and benefit of the 9-1-1 administrative entity.

(2) Additions, modifications or the removal of features from the leased CPE, with a total value below the $2,000 threshold set forth in this rule, may be made by the LEC at the 9-1-1 administrative entity's request.

(3) Subsequent to the initial contract period, the tariffed services may be automatically renewed annually for an additional 12 month period unless:

(A) either party notifies the other of its intent to terminate the lease arrangement at least 90 days prior to the contract anniversary date;

(B) CPE, valued in excess of $2,000, is to be completely removed and replaced by new equipment; or

(C) the necessity for additions and/or modifications to the CPE becomes excessive, for any 12 month contract period.

(g) NENA Standards. All procurement of 9-1-1 equipment, database services and network services must adhere to the National Emergency Number Association (NENA) Recommended Standards for network, data and PSAP/Customer Premises Equipment (CPE), as developed by the NENA Technical Committee and as approved by the NENA Executive Board.

(h) Year 2000 Compliance. Year 2000 performance warranties shall be included for products to be delivered and/or installed to accurately process valid date data when used in accordance with the product documentation provided by the vendor and require no extraordinary actions on the part of the 9-1-1 administrative entity. Products will possess general integrity, date integrity, explicit century capabilities and implicit century capabilities.

(i) Code of Ethics. Employees of 9-1-1 administrative entities or employees of entities receiving 9-1-1 emergency service fees and 9-1-1 equalization surcharges shall adhere to the following ethical standards, listed in paragraphs (1)-(4) of this subsection. An administrative entity employee may not:

(1) Participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment;

(2) Solicit or accept anything of value from an actual potential vendor;

(3) Be employed by, or agree to work for, a vendor or potential vendor; or

(4) Knowingly disclose confidential information for personal gain. Regional planning commissions shall establish policies to ensure that the above Code of Ethics is addressed in the procurement of all 9-1-1 equipment and services. The administrative entity may have future 9-1-1 funds withheld and/or be required to reimburse the Commission the amount of the misappropriated funds.

(j) Compliance. If a 9-1-1 administrative entity fails to comply with the provisions of this rule, the Commission may consider the 9-1-1 administrative entity's lack of compliance in fixing the rate of the 9-1-1 emergency service fees, in determining the allocation of 9-1-1 equalization surcharges, or in taking any other action that is consistent with Section ___.43 (relating to Enforcement) of the Texas Uniform Grant Management Standards, as adopted by reference in §5.144 of this title (relating to Adoption by Reference) .

(k) Applicability of State Procurement Statutes. To the extent of any conflict between this rule and applicable state statutes prescribing procurement methods, such statutes shall be followed.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903056
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.9

The Advisory Commission on State Emergency Communications (ACSEC) proposes an amendment to §251.9, concerning the use and distribution of 9-1-1 funds and other related funds for street addressing, which provide for the proper maintenance of maps and records associated with an addressing system for the proper operation of an E9-1-1 system and the delivery of a caller's location.

The amendment changes the strategic planning period from three to two years and proposes to provide consistency with the changes in Commission policy.

This section is part of the agency's rule review of Chapter 251 (concerning Regional Plans-Standards), pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

James D. Goerke, Executive Director, ACSEC, has determined that for the first five-year period the section is in effect there may be limited fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Goerke also has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be the proper maintenance of maps and records associated with an addressing system for the proper operation of an E9-1-1 system and the delivery of a caller's location. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed amendment may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas, 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.057; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provides the Advisory Commission on

State Emergency Communications with the authority to develop and amend a regional plan that meets standards set for the operation of prompt and efficient 9-1-1 service throughout a region. The maintenance of street addresses is essential to E9-1-1 systems utilizing the Automatic Location Identification feature which displays the locations of 9-1-1 callers.

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

§251.9. Guidelines for Addressing Maintenance Funds.

The Advisory Commission on State Emergency Communications (Commission) [~~(ACSEC)~~] has adopted a policy regarding rural addressing maintenance and the use of state funds. These guidelines address the use and distribution of 9-1-1 Funds and other related funds. The maintenance of street addresses is essential to E9-1-1 systems utilizing the Automatic Location Identification (ALI) feature, which displays the locations of 9-1-1 callers.

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

(A) 9-1-1 Database Record–A physical record, which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and also conforms to NENA adopted database standards.

(B) 9-1-1 Funds–Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(C) Addressing Completion–A county addressing project, based upon the inventory, has corrected address errors, assigned street address, provided all new or changed addresses to telephone companies, and established a maintenance method.

(D) Capital Replacement Cost–The non-recurring cost of replacing equipment purchased with 9-1-1 funds amortized over a selected period of time.

(E) Digital Map–A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information; data sets related emergency service provider boundaries, as well as other associated data.

(F) Emergency Communications District–A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, D, or E.

(G) Graphical Display of Location Information–The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call or inquiry that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations and the ability to zoom, pan, and show other related geographical information or features.

(H) Geographic Information System (GIS)–A system necessary to map emergency service number (ESN) boundaries and reflect annexations and other feature changes; to list emergency service provider translations for ESNs; to provide and maintain master street address guide (MSAG) format; to validate and resolve database discrepancies; to project new addresses and block ranges as an initial assignment or correction; for ongoing issuance of new addresses; and for locator maps for emergency services providers.

(I) Regional Planning Council (RPC)–A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG).

(J) Strategic Plan–As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support planned levels of 9-1-1 service within a defined area of the state. The strategic plan shall [~~normally~~] cover [~~covers at least~~] a two [~~three~~] year planning period and specifically projects 9-1-1 costs and revenues associated with this section including equalization surcharge requirements.

(i) Strategic Plan Component. Within a 9-1-1 implementation priority level, a category of 9-1-1 activity and/or equipment generally associated with 9-1-1 implementation cost.

(ii) Strategic Plan Level. A [~~An~~] Commission [~~ACSEC~~] established statewide implementation priority generally associated with a level of 9-1-1 service–e.g., Automatic Number Identification (ANI).

(K) Unaddressed County. A county in Texas which has not completely assigned new addresses and provided all new or changed addresses to telephone companies under a county addressing process.

(2) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Commission [~~ACSEC~~] may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation, and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the Commission [~~ACSEC~~] has funded addressing projects throughout the state to allow for the implementation of Automatic Location Identification (ALI) level of service. In the funding of such projects, it has been the policy of the Commission [~~ACSEC~~] to fund geographic information systems and the development of digital maps to support such activities. The Commission [~~ACSEC~~] recognizes that the maintenance of addressing systems is essential to the proper operation of an E9-1-1 system and the delivery of a caller's location. If not properly maintained, the maps and records associated with an addressing system will soon become unreliable and problematic.

(A) A regional planning council or emergency communication district applying on behalf of a county which is operating 9-1-1 service and has completed a county addressing project is considered eligible.

(B) [~~In accordance with state law, interlocal~~] Interlocalagreements shall be executed between the regional planning council and the county. The agreement shall identify the responsibilities of all parties and provide for the reporting of performance measures.

(C) An addressing maintenance plan shall be submitted by the regional planning council in conjunction with the approved strategic plan. The maintenance plan shall provide an overview of all projected activities, identify all parties involved and their associated responsibilities.

(D) Budgets shall be developed by the local governments each fiscal year, identifying all projected addressing maintenance expenditures. These budgets will be reviewed [~~annually~~] during the strategic plan review process. Activities performed by the regional planning council shall be identified within its administrative budget.

(E) Addressing maintenance funds will be allocated based on need as justified by the local government and approved by the Commission. If equalization surcharge funds are required for addressing maintenance, they shall be allocated first to eligible recipients requiring such funds for administrative budgetary purposes, followed by Level I, II and III activities, in that order.

(F) [~~Annual budgeted~~] Budgeted costs associated with addressing maintenance shall be monitored by the Commission [~~ACSEC~~] staff for consistency with approved strategic plans.

(3) Requesting addressing maintenance funds. A strategic plan amendment from a regional planning council or a request from an emergency communication district is required as a means of requesting funds under this program.

(A) A strategic plan amendment from a regional planning council or a request from an emergency communication district must contain the following:

(i) A fully executed interlocal agreement between the regional planning council and the county;

(ii) An addressing maintenance plan identifying all activities and responsible parties involved; and

(iii) An approved budget outlining addressing maintenance components and projected expenditures.

(B) Funds requested by a regional planning council or an emergency communication district shall be reflected as an expenditure on the Commission [~~ACSEC~~] Financial Status Report.

(4) Budget components. A regional planning council or an emergency communication district must submit an addressing maintenance budget to the Commission [~~ACSEC~~] for approval. Addressing maintenance budgets may include the following cost components listed in subparagraphs (A)-(K) of this paragraph:

(A) Personnel–Unless otherwise justified, 0.5 FTE will be the maximum allowable for each county. For each staff position, the following must be provided:

(i) position title;

(ii) duties related to addressing maintenance;

(iii) total salary for the budget period;

(iv) chargeable salary (total salary less release time);

(v) percentage of time to be charged to addressing maintenance; and

(vi) total salary chargeable to addressing maintenance.

(B) Travel–Total local travel estimated for the budget period multiplied by the current reimbursement rate for use of personally owned vehicles as defined by the State of Texas. List the cost rate for county owned vehicles.

(C) Supplies–Total costs associated with consumable office supplies to be purchased during the budget period. Also, total costs associated with the reproduction of maps for use by local emergency service agencies may be reflected as part of this item.

(D) Rent–Total square feet of space devoted to addressing maintenance times the rental rate to be charged during the budget period.

(E) Maintenance and repairs–Total maintenance costs for addressing maintenance equipment during the budget period. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines may be included.

(F) Communications–Total costs for communications including telephone, fax, courier, etc., during the budget period.

(G) Postage and Mailing–Total costs for postage and mailing services expected during the budget period.

(H) Utilities–Total costs for utilities such as electricity, gas, water, etc., expected during the budget period.

(I) Training–Total costs for training associated with addressing maintenance functions expected during the budget period.

(J) Other–Total costs for other items not identified in Subparagraphs (A)-(I) of this paragraph.

(K) Street Sign Replacement–Cost share of the replacement of existing street signs located in the unincorporated areas of the county. This item shall not include the purchase of new signs in the county subsequent to the completion of rural addressing.

(5) Capital replacement. Costs for the replacement of equipment purchased with 9-1-1 funds shall be reflected within the regional planning council strategic plan Capital Recovery (Addressing) component. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines may be included. A capital replacement schedule will be submitted to the Commission [~~ACSEC~~] by the regional planning council.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903057
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.10

The Advisory Commission on State Emergency Communications (ACSEC) proposes new §251.10, concerning Guidelines for Implementing Wireless E9-1-1 Services Funded with 9-1-1 Funds. The proposed rule would provide guidance and standards for the implementation of wireless 9-1-1 solutions. It proposes to assist local governments in the procurement, installation, and implementation of wireless E9-1-1 services to support or facilitate the delivery of a wireless emergency call to an appropriate emergency response agency. Additional amendments incorporate a Hybrid CAS/NCAS solution to Phase I for call delivery.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

Elsewhere in this issue of the *Texas Register*, the ACSEC is contemporaneously withdrawing the amendment of §251.10, which was previously proposed in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2549)

James D. Goerke, Executive Director, ACSEC, 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. Goerke 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 improved services in facilitating the delivery of a wireless emergency call through automatic number and location information data. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas, 78701-3942.

The new rule is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.10. Guidelines for Implementing Wireless E9-1-1 Service.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified below, unless the context and use of the word or terms clearly indicates otherwise:

(1) 9-1-1 Database Record–A physical record, which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and conforms to NENA adopted database standards.

(2) 9-1-1 Funds–Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(3) 9-1-1 Equipment–Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(4) 9-1-1 Governmental Entity–An RPC or District, as defined in Texas Health and Safety Code Chapter 771.055, and Chapter 772, Subchapter B, C, or D, that administers the provisioning of 9-1-1 service.

(5) 9-1-1 Governmental Entity Jurisdiction–As defined in applicable law, Texas Health and Safety Code Chapters 771 and 772, the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(6) 9-1-1 Operator–The PSAP operator receiving 9-1-1 calls.

(7) 9-1-1 Network Provider–The current operator of the selective router/switching that provides the interface to the PSAP for 9-1-1 service.

(8) Automatic Location Identification (ALI) Database–A computer database used to update the Call Back Number information of wireless end users and the Cell Site/Sector information for Phase I call delivery, as well as the X, Y coordinates for longitude and latitude for Phase II call delivery.

(9) Call Associated Signaling (CAS)–A method for delivery of the mobile directory number (MDN) of the calling party plus the emergency service routing digits (ESRD) from the wireless network through the 9-1-1 selective router to the PSAP. The 20 digits of data delivered are sent either over Feature Group D (FG-D) or ISUP from the wireless switch to the 9-1-1 router. From the router to the PSAP, the 20-digit stream is delivered using either Enhanced Multi-Frequency (EMF) or ISDN connections.

(10) Call Back Number–The mobile directory number (MDN) of a Wireless End User who has made a 9-1-1 call, which usually can be used by the PSAP to call back the Wireless End User if a 9-1-1 call is disconnected. In certain situations, the MDN forwarded to the PSAPs may not provide the PSAP with information necessary to call back the Wireless End User making the 9-1-1 call, including, but not limited to, situations affected by illegal use of Service (such as fraud, cloning, and tumbling) and uninitialized handsets and non-authenticated handsets.

(11) Cell Site–A radio base station in the WSP Wireless Network that receives and transmits wireless communications initiated by or terminated to a wireless handset, and links such telecommunications to the WSP's network.

(12) Cell Sector–An area, geographically defined by WSP (according to WSP's own radio frequency coverage data), and consisting of a certain portion of all of the total coverage area of a Cell Site.

(13) Cell Site/Sector Information–Information that indicates, to the receiver of the information, the location of the Cell Site receiving a 9-1-1 call initiated by a Wireless End User, and which may also include additional information regarding a Cell Sector.

(14) Cell Sector Identifier–The unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.

(15) Class of Service–A standard acronym, code or abbreviation of the classification of telephone service of the Wireless End User, such as WRLS (wireless), that is delivered to the PSAP CPE.

(16) Digital Map–A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information, data sets related to emergency service provider boundaries, as well as other associated data.

(17) Emergency Communication District (District)–A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, or D.

(18) Emergency Service Number (ESN)–A number stored by the selective router/switch used to route a call to a particular PSAP.

(19) Emergency Service Routing Digits (ESRD)–As defined in J-Std-034, an ESRD is a digit string that uniquely identifies a base station, cell sector, or sector. This number may also be a network routable number (but not necessarily a dialable number.

(20) FCC–The Federal Communications Commission.

(21) FCC Order–The Federal Communications Commission Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94-102, released July 26, 1996, and as amended by subsequent decisions.

(22) Host ALI Records–Templates from the ALI Database that identify the Cell Site location and the Call Back Number of the Wireless End User making a 9-1-1 call.

(23) Hybrid CAS/NCAS–This method for wireless E9-1-1 call delivery uses a combination of CAS and NCAS techniques to deliver the location and call back numbers to a PSAP. The MSC sends the location and call back information to a selective router using the standard CAS interface defined in J-Std-034. The selective router then uses an NCAS approach to deliver the information to a PSAP. That is, the selective router sends the location and call back information to the wireline emergency services database and the caller's call back number, or MDN, to the PSAP. The MDN is then used as a key to retrieve the cell/tower information for PSAP display.

(24) J-Std-034–A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), to provide the delta changes necessary to various existing standards to accommodate the Phase I requirements. This standard identifies that the interconnection between the mobile switching center (MSC) and the 9-1-1 selective router/switch is via

(A) an adaptation of the Feature Group-D Multi Frequency (FG-D protocol), or

(B) the use of an enhancement to the Integrated Services Digital Network User Part (ISUP) Initial Address Message (IAM) protocol. In this protocol, the caller's location is provided as a ten-digit number referred to as the emergency services routing digits (ESRDs). The protocol NENA-03-002, Recommendation for the Implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP, is the corollary of J-Std-034 FG-D protocol.

(25) Mobile Directory Number (MDN)–A 10-digit dialable directory number used to call a Wireless Handset.

(26) Mobile Switching Center (MSC)–A switch that provides stored program control for wireless call processing.

(27) National Emergency Number Association (NENA).

(28) NENA 02-001–A standard set of protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems, developed by the NENA Data Standards Subcommittee (June 1998 revision).

(29) NENA 03-002–A standard, or technical reference, developed by the NENA Network Technical Committee, to provide recommendations for the implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP. The J-Std-034 FG-D protocol, referenced in definition 22, is the corollary protocol of NENA 03-002.

(30) Non-Callpath Associated Signaling (NCAS)–This method for wireless E9-1-1 call delivery delivers routing digits over existing signaling protocol, including commonly applied CAMA trunking into and out of selective routers. The voice call is set up using the existing interconnection method that the wireline company uses from an end office to the router and from the router to the PSAP. The ANI delivered with the voice call is an emergency service routing digit (ESRD), not a MDN. All data, including the (MDN) and cell sector that receives the call, is delivered to the PSAP via the data path within the ALI record.

(31) Phase I E9-1-1 Service–The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number and Cell Site/Sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 Governmental agency.

(32) Phase II E9-1-1 Service–The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number, cell site/sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.

(33) Phase I E9-1-1 Service Area(s)–Those geographic portions of a 9-1-1 Governmental Entity Jurisdiction in which WSP is licensed to provide Service. Collectively, all such geographic portions of the 9-1-1 Governmental Entity's Jurisdiction subject to this rule shall be referred to herein as the "Phase I E9-1-1 Service Areas".

(34) Regional Planning Commission–A commission established under Local Government Code, Chapter 391, also referred to as a council of governments (COG).

(35) Regional Strategic Plans–Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least five years into the future, beginning September 1, 1994. Within the context of Section 771.056(d), the Advisory Commission on State Emergency Communications (ACSEC) shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(36) Public Safety Answering Point (PSAP)–A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law Texas Health and Safety Code Chapters 771 and 772.

(37) Service Control Point (SCP)–A centralized database system used for, among other things, wireless Phase I E9-1-1 Service applications. It specifies the routing of 9-1-1 calls from the Cell Site to the PSAP. This hardware device contains special software and data that includes all relevant Cell Site locations and Cell Sector Identifiers.

(38) Selective Router–A switching office placed in front of a set of PSAPs that allows the networking of 9-1-1 calls based on the ESRD assigned to the call.

(39) Uninitialized Call–Any wireless E9-1-1 call from a wireless handset which, for any reason, has either not had service initiated or authenticated with a legitimate WSP.

(40) Vendor–A third party used by either the 9-1-1 Governmental Entity or WSP to provide services.

(41) WSP–The named wireless service provider and all its affiliates (collectively referred to as "WSP").

(42) WSP Subscribers–Wireless telephone customers who subscribe to the Service of WSP and have a billing address within a 9-1-1 Governmental Entity Jurisdiction.

(43) Wireless 9-1-1 call–A call made by a wireless end user utilizing a WSP wireless network, initiated by dialing "9-1-1" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

(44) Wireless End User–Any person or entity receiving service on a WSP Wireless System.

(45) WSP Wireless System–Those mobile switching facilities, Cell Sites, and other facilities that are used to provide wireless Phase I & II E9-1-1 service.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771.051, the Advisory Commission on State Emergency Communications (Commission) shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation and operation of equipment, database and network services and facilities designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. As mandated by FCC Order, and as authorized by Chapter 771, §.0711, of the Texas Health and Safety Code, the ACSEC shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee to provide for the automatic number identification and automatic location identification of wireless E9-1-1 calls. Furthermore, the Commission recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Automatic number and location information is crucial data in facilitating the delivery of an emergency call. It is the policy of the Commission that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of wireless E9-1-1 services funded in part or in whole by the 9-1-1 funds referenced above. Prior to the Commission considering allocation and expenditure of 9-1-1 funds for implementation of wireless Phase I and/or Phase II wireless E9-1-1 services, a COG and/or District receiving 9-1-1 fees and/or equalization surcharge funds from the Commission shall meet the following requirements:

(1) Commission Survey and Review–Prior to any wireless E9-1-1 Service implementation in any regional council (COG) area, the Commission shall solicit in writing from all WSPs within the State of Texas a detailed description of its technical approach to implementing Phase I and/or Phase II (where applicable); and, the cost associated with that implementation. The Commission will review and evaluate this information and consider its appropriateness for implementation. Upon completion of this process, the Commission will communicate these WSP evaluations to the regional councils (COGs), and notify the COGs that they may request and implement wireless E9-1-1 service as described in paragraphs (2)-(15) of this subsection.

(2) Phase I E9-1-1 Implementation–The provisioning for delivery of a caller's mobile directory number and the location of a cell site receiving a 9-1-1 call to the designated PSAP. Implementation of Phase I service must be accomplished within 6-months of written request according to the FCC Order. Prior to implementing Phase I wireless E9-1-1 service, the following conditions must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) sufficient funding mechanism for the recovery of all reasonable costs relating to the provisioning of such service is in place;

(B) the PSAPs administered by the 9-1-1 entity are capable of receiving and using the data associated with such service;

(C) 9-1-1 entity requests such service in writing from the service provider;

(D) an executed contract between 9-1-1 entity and WSP for such service, and which includes a wireless service work plan, fee schedule and standards.

(3) Phase II E9-1-1 Implementation–provisioning for delivery of a caller's mobile directory number and the caller's location, within 125 meters RMS level of accuracy, to the designated PSAP. Implementation of Phase II service will be consistent with the FCC Order. Prior to implementing Phase II wireless E9-1-1 service, the following conditions, in addition to those listed in paragraph (2) of this subsection must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) provision for digital base map and graphical display, in conjunction with approved Strategic Plan and Commission §251.7 of this title (relating to Guidelines for Implementing Integrated Services);

(B) demonstrate, and provide in writing, that the location determination technology and digital base map are capable of identifying the caller's location within 125 meters in at least 67% of calls delivered, or the degree of accuracy as required by FCC Order;

(C) a revised executed contract between 9-1-1 entity and WSP for such service and which includes a wireless service work plan, fee schedule and standards.

(4) Responsibilities–It shall be the responsibility of the 9-1-1 entity, the WSP and any necessary third party (including, but not limited to, 9-1-1 Network Provider/Local Exchange Carrier, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers) to fully cooperate for the successful implementation and provision of Phase I and Phase II E9-1-1 service. These same parties are also responsible for ensuring that the deployment and implementation of their wireless E9-1-1 solution is thoroughly interoperable with other wireless E9-1-1 solutions, including permitting the proper and seamless transfer of wireless E9-1-1 emergency call information to PSAPs between differing wireless E9-1-1 solutions. The Commission acknowledges that the successful and timely provision of such service is dependent upon the timely and effective performance and cooperative efforts of all of the parties listed above. All parties shall comply with FCC Order, Texas laws and Commission Rules.

(5) Deployment–Unless otherwise approved by the Commission, the 9-1-1 entity and the WSP will agree upon one of the following methods of wireless call delivery:

(A) Call Associated Signaling (CAS)

(B) Non-Callpath Associated Signaling (NCAS)

(C) Hybrid CAS/NCAS Architecture

(D) Exceptions to CAS, NCAS, or Hybrid CAS/NCAS, as in the case of standalone ALI environments-specific solution should be illustrated and demonstrated prior to execution of contract.

(6) Data Delivery–Unless otherwise approved by the Commission, the 9-1-1 entity and the WSP will agree upon one of the following methods for the delivery of data elements necessary for Phase I E9-1-1 service. The 9-1-1 entity and WSP shall provision for redundancy within all methods.

(A) SS7/ISUP–WSP will deliver the twenty digits of information necessary for Phase I services by sending SS7 signaling messages in ISUP format to the 9-1-1 selective router;

(B) Feature Group D–WSP will deliver the twenty digits of information necessary for completion of Phase I services to the 9-1-1 selective router in the standard format required;

(C) Service Control Point (SCP)–WSP will route all necessary information directly to the 9-1-1 entity's ALI database through an independent service control point.

(7) Standards–Unless an exception is approved by the Commission, the 9-1-1 entity, the WSP and any third party/vendor, will ensure that all appropriate and applicable industry standards be adhered to in provisioning E9-1-1 wireless service. These standards shall include, but not be limited to:

(A) J-Std 34 and NENA 03-002 for CAS and Hybrid CAS/NCAS deployments;

(B) NENA 02-001 as benchmark data standards. All parties shall cooperate fully in the development and maintenance of all wireless data, such as cell site locations, Emergency Service Routing Digits, selective routing databases, and timely updates of any such data;

(C) Any and all modifications to these standards, currently under development by appropriate standards bodies, for CAS, NCAS, Hybrid CAS/NCAS, and Phase II/LDT deployments. Any such pending standard should be adhered to upon adoption;

(D) The Commission hereby establishes a standard Class of Service (COS) to be used by the 9-1-1 entity's PSAPs and the WSPs to identify calls delivered to the PSAP as WRLS (wireless), or until a standard is established by NENA;

(E) Commission §251.4 of this title (relating to Guidelines for the Provisioning of Accessibility Equipment) for provisioning of TTY/TDD equal access consistent with FCC rules and orders;

(F) All applicable standards shall be agreed upon by both parties to the wireless service contract.

(G) The Commission may approve exceptions to the above standards upon demonstration by the WSP and PSAP of valid reasons and comparable efficiency and cost.

(8) Reasonable Cost Elements–The Commission will consider that the reasonable costs incurred by the WSP to be reimbursed by the 9-1-1 entity may include the following:

(A) Trunking–To provide network connectivity between the necessary network elements, the following costs shall be allowed:

(i) From mobile switching center (MSC) to selective router;

(ii) From selective router to PSAP;

(iii) From PSAP to ALI Database;

(iv) From mobile switching center (MSC) to service control point (SCP);

(v) From service control point (SCP) to ALI Database;

(vi) From ALI Database to PSAP.

(B) Network–To provision the transference of necessary digits from the selective router to the PSAP in a CAS deployment, an upgrade or modification to the selective router will be necessary. The Commission will not consider this as an allowable cost.

(C) Database–To provision and deliver the necessary data through the network and to the PSAP for Phase I compliance, the following costs will be allowed:

(i) Non-recurring costs associated with initial emergency service routing digits (ESRD) load into selective router or SCP;

(ii) Monthly recurring costs associated with maintaining ESRD data in the selective router or SCP.

(D) CPE–To provision the 9-1-1 entity's PSAP equipment to have the capability to receive and display information necessary to comply with Phase I call delivery requirements, the Commission has previously funded software upgrades to CPE for 20-digit and two 10-digit capability. These costs should be accommodated within the regional council's currently, or previously, approved strategic plan.

(E) Map Display–The cost to provision the 9-1-1 entity's PSAP equipment to have the capability to receive and graphically display caller's cell site/sector location information, as well as the X, Y (longitude, latitude coordinates).

(F) Training–The cost to train COG and/or PSAP personnel to efficiently and effectively receive and process Phase I & Phase II wireless E9-1-1 calls. This training shall be conducted by the COG, WSP, local service provider, and/or third party, as necessary, upon initial deployment of wireless service and at regularly scheduled intervals. Training plans and any associated costs shall be proposed to COG within WSP written proposal of service, submitted to the Commission for approval via the strategic plan amendment review process as outlined in §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation) for and included in an executed standardized contract for wireless E9-1-1 service.

(9) Testing–The COG, WSP, local service provider and any third party shall conduct initial and regularly scheduled network, database and equipment testing to ensure the integrity of the existent and proposed wireline/wireless 9-1-1 system operated by the COG, for any Phase I and/or Phase II wireless E9-1-1 service deployment. These tests shall include, at a minimum:

(A) network connectivity;

(B) call setup times;

(C) equipment capabilities of receiving and displaying callback number and cell site/sector information;

(D) ability to transfer the wireless E9-1-1 call. The COG shall submit the initial testing documentation and findings to the Commission within the strategic plan amendment approval process as referenced above in paragraph (8) of this subsection (relating to Reasonable Cost Elements). The COG shall maintain documentation of regularly scheduled testing and notify the Commission of any ongoing, negative outcomes.

(10) Fair and Equitable Provisioning of Wireless E9-1-1 Service–The COG shall establish the level of wireless E9-1-1 service required within its region, and shall ensure that each WSP operating within its region provides comparable levels of wireless E9-1-1 service to all wireless subscribers within the region, within reasonable implementation parameters. In determining the reasonableness of costs, the Commission may compare the costs being submitted for recovery by one provider to the costs of other, similarly situated providers. No single WSP shall be reimbursed for costs above the comparable costs of the other WSP within the COG region.

(11) Uninitialized Calls–Must be passed through the wireless 9-1-1 network, and uniformly identified to the PSAP.

(12) Third Party Contracts–Any and all subcontracts between WSP and third party vendors, for the deployment of Phase I & II wireless E9-1-1 service deployments, shall adhere to the primary contract as executed between COG and WSP.

(13) Proposals for Wireless E9-1-1 Service–All proposals by WSPs for wireless 9-1-1 service should be presented to the COG in writing and shall include a complete description of network, database, equipment display requirements, training and accessibility elements. Such proposals should include detailed cost information, as well as technical solutions, network diagrams, documented wireless 9-1-1 call set-up times, deployment plans and timelines, specific work plans, WSP network contingency and disaster recovery plans, escalation lists, trouble call response times, as well as any other information required by the COG. Unless otherwise confidential by law, all information provided to the COG becomes a matter of public record and is subject to the Texas Public Information Act.

(14) Strategic Plan Amendment Review and Approval Process–Upon demonstration of compliance with subsection (b)(2)(A) and (b)(3)(A) of this section, and prior to executing a standardized contract for wireless 9-1-1 service, the COG shall submit such proposals, as described in paragraph (13) of this subsection, to the Commission for approval, via the strategic plan review and/or amendment process described in §251.6 of this title. Strategic Plan amendment requests should include all of the information provided by WSP to COG, as well as complete information regarding the geographic areas as well as the tandems, exchanges and PSAPs effected by the proposed deployment.

(15) Standardized Contract–Upon review and approval by ACSEC, COG and WSP shall enter into a standardized Wireless E9-1-1 Service Agreement. The standard contract shall be provided by the Commission, and shall include all of the information contained in the proposal and amendments reviewed and approved by the Commission. Commission staff shall review all such contracts before they are executed. COG shall provide the Commission a copy of all fully executed contracts.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903059
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.11

The Advisory Commission on State Emergency Communications (ACSEC) proposes new §251.11, concerning Monitoring Policies and Procedures, to ensure compliance with applicable law, rules, polices and procedures. The new section is proposed to allow for improved methods of program monitoring and compliance with Commission policy and to meet the recommendations made by the State Auditor's Office in July 1998 that the ACSEC establish a formal monitoring process for service providers and that comprehensive contract monitoring standards, guidance, and training to the regional councils be developed.

The ACSEC is contemporaneously proposing the rule review of Chapter 251 elsewhere in this issue of the *Texas Register*.

James D. Goerke, Executive Director, ACSEC has determined that for the first five-year period the section is in effect there may be limited fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Goerke also has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be improved methods for program monitoring through established comprehensive contract monitoring standards to be used statewide. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas, 78701-3942.

The new section is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, and 771.059; and the Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards.

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

§251.11. Monitoring Policies and Procedures.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified below, unless the context and use of the word or terms clearly indicates otherwise:

(1) 9-1-1 Funds–Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(2) 9-1-1 Equipment–Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(3) 9-1-1 Governmental Entity–The 9-1-1 provider as defined in Texas Health and Safety Code Chapter 771.

(4) 9-1-1 Governmental Entity Jurisdiction–As defined in applicable law, Texas Health and Safety Code Chapters 771 and 772, the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(5) Advisory Commission on State Emergency Communications (ACSEC)–Also referred to as the Commission.

(6) Applicable Law–As defined in the Memorandum of Understanding (MOU), Article 2: Compliance with Applicable Law. Includes, but is not limited to, the State Administration of Emergency Communications Act, chapter 771, Texas Health and Safety Code; Commission rules implementing the Act contained in Title 1, Part XII, Texas Administrative Code; the Uniform Grant Management Standards, Title 1, §§5.151-5.165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules. Also referred to as "applicable law and rules".

(7) Interlocal Agreement–A contract executed between local governments, Regional Planning Commissions, or other state political subdivisions, to perform administrative functions or provide services, such as 9-1-1 telecommunications, cooperatively among themselves.

(8) Local Government–A county, municipality, public agency, or any other political subdivision that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services and/or addressing functions.

(9) Memorandum of Understanding (MOU)–An agreement executed between the Regional Planning Commission (RPC) and the ACSEC that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.

(10) Public Safety Answering Point (PSAP)–A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law, Texas Health and Safety Code, Chapter 771.

(11) Regional Planning Commission (RPC)–A commission established under Local Government Code, Chapter 391, also referred to as a council of governments (COG).

(12) Strategic Plans–Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least five years into the future, beginning September 1, 1994. Within the context of §771.056(d), the ACSEC shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(b) Policy and Procedures. As authorized by §771.051 of the Texas Health and Safety Code, the ACSEC shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The ACSEC shall examine and approve or disapprove regional plans submitted by the state's 24 regional planning commissions (RPCs) as provided by §771.056. Per the MOU, the Commission reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or PSAPs for compliance with applicable law, rules, policies and procedures. Monitoring activities shall provide ACSEC with the information and data necessary to best assist RPCs and Local Government in implementing and strengthening the 9-1-1 system in Texas.

(1) Monitoring Activity–The ACSEC shall monitor, at least annually, each RPC to assess the agency's administrative, fiscal, contractual, procurement, inventory, local monitoring, and program activities for compliance with applicable laws, rules, policies and procedures; and, effectiveness in implementing E9-1-1 service in its jurisdiction. The ACSEC shall develop procedures and guidelines by which to conduct all monitoring activities. State monitoring shall include the following:

(A) Evaluation of RPC policies and procedures for program quality and outcomes to ensure compliance with the (MOU), as well as the objectives and standards set forth in all ACSEC Rules, Policies and Procedures, and especially relating to the rules contained in Chapter 251 of this title (relating to Regional Plans-Standards);

(B) Determination of whether the RPC has demonstrated substantial compliance with oversight requirements, including:

(i) compliance with applicable provisions of the state's Uniform Grant Management Standards (UGMS);

(ii) competitive procurement procedures and documentation;

(iii) contract administration systems to ensure receipt of contracted deliverables;

(iv) ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 funds;

(v) maintenance of a current inventory of all 9-1-1 equipment;

(vi) maintenance of adequate and accurate fiscal records and documentation;

(vii) execution of interlocal agreements between RPC and participating local governments relating to the planning, development, operation, and provision of 9-1-1 service and the use of 9-1-1 funds, per the MOU, Article 4, *Standard Interlocal Agreements with Local Governments*.

(C) Examination of RPC 9-1-1 funds expended against the strategic plan component budgets and any limitations therein according to applicable law and rules.

(2) Monitoring Report & Response–The ACSEC will prepare a written report that describes the findings, and any possible violations, discovered during a monitoring review. ACSEC will complete a written monitoring report within 30 days of the conclusion of the initial monitoring activities, and will provide the RPC a copy of the report upon completion. The RPC will have opportunity to respond as outlined below:

(A) The RPC shall provide written response to the monitoring report within 30 days of receipt of the report. The response should be provided or approved by the RPC Executive Director and/or the Executive Committee.

(B) The report and response will be presented to the Commission at its next regularly scheduled meeting. ACSEC Executive Director will also provide the Commission with written determinations and recommendations as to suggested corrective actions or disallowed costs that are established by precedent, policy or rule. If Executive Director concurs with RPC's response, he shall state his concurrence in the report to the Commission.

(C) The Commission may act to accept the Executive Director's recommendation and/or RPC response. The Commission will convey its acceptance of responses, resolutions or recommendations in writing to the RPC within five working days of any such action.

(D) The Commission may delay action pending requests for additional information or investigation, and any follow up actions deemed necessary for resolution. Any such requests shall be made in writing to the RPC within five working days. The RPC shall have 15 working days in which to provide additional information requested by the Commission. ACSEC Executive Director will present any additional information to the Commission at its next regularly scheduled meeting in conjunction with appropriate staff review and determination. Final resolution of monitoring findings shall be communicated to the RPC within five working days.

(E) The Commission may disallow specific expenditures of 9-1-1 funds, and may direct the RPC to repay the 9-1-1 fund of any disallowed expenditure. The ACSEC shall communicate any

such disallowance to the RPC within five working days of Commission action.

(3) Disallowance & Repayment–The RPC shall reimburse the 9-1-1 fund for any 9-1-1 surcharge funds and service fees (9-1-1 funds) expended by the RPC in noncompliance with applicable law and rules. Such reimbursement shall be made in accordance with the procedure established in subparagraphs (A)-(G) of this paragraph.

(A) The RPC shall provide a written proposal to the Commission for repayment within 30 days of notification of disallowance of any 9-1-1 fund expenditures. Repayment to the 9-1-1 fund shall be completed within a reasonable length of time as established by the Commission, not to exceed five years.

(B) The RPC shall provide detail, in writing, of its efforts to recover 9-1-1 funds from its participating local governments and/or vendors, in compliance with the MOU, Section 2.4.

(C) The repayment plan shall be reviewed and approved by the RPC Executive Committee, or Board, prior to being submitted to the ACSEC.

(D) Upon receipt of the RPC repayment plan, ACSEC staff shall present the plan and staff recommendations to the Commission at its next regularly scheduled meeting.

(E) The Commission may accept or reject any repayment plan proposal. In either case, the RPC shall be notified of the Commission's action with five working days. In the case of rejection, Subparagraphs (A)-(E) of this paragraph shall be repeated until resolution is accomplished.

(F) Monitoring of Repayment–ACSEC staff shall closely monitor repayment of any disallowed fees through review of Financial Status Reports, submitted quarterly, to the ACSEC. Any discrepancies or irregularities shall be reported to the ACSEC internal auditor and reported to the Commission.

(G) Repeated Problems or Findings & Sanctions–If subsequent annual monitoring review reveals repeated findings that have not been corrected from a prior year's monitoring report, the RPC shall be deemed to be in continued violation. In accordance with State law, the Commission may consider designating another administrative entity if it is determined that a continued violation by an RPC constitutes willful disregard of applicable law and rules, gross negligence, or failure to observe accepted standards of administration.

(c) RPC Monitoring of Interlocal Agreements & Performance–Per MOU, Article 4. *Standard Interlocal Agreement with Local Governments*, each RPC shall execute an agreement between itself and each of its participating local governments and/or PSAPs in order to establish responsibilities for implementation of 9-1-1 service, the use of 9-1-1 funds, and adherence to applicable law and rules. The RPC shall monitor, at least annually, the performance on these agreements with each of its local governmental entities.

(1) Local Monitoring Plan Development–Each RPC shall develop its own local-level monitoring plan that shall be incorporated into its 9-1-1 Strategic Plan. Local monitoring plans shall include, but are not limited to, the following:

(A) A schedule or timetable for monitoring all interlocal contracts, 9-1-1 funded activities, equipment, PSAPs and subcontractors;

(B) Annual reviews of all subcontracts, especially addressing and/or addressing maintenance contracts;

(2) Compliance with MOU Stipulations–The RPC shall monitor each interlocal contract for performance of contract deliverables, which shall include the stipulations contained in the MOU, Article 4, *Standard Interlocal Agreements with Local Governments*.

(3) Documentation–Local monitoring activities, findings, recommendations and responses shall be documented in writing and retained for at least five years.

(4) Reporting Procedures–The RPC shall establish reporting procedures to convey the monitoring data to the RPC Executive Director, Executive Committee and the ACSEC.

(5) Reports to the ACSEC–The ACSEC shall require, at a minimum, the following documentation and information:

(A) Certification or other assurance that interlocal agreements have been executed between the RPC and each of its performing Local Governments. Such certification shall be communicated to the ACSEC within the RPC's biannual strategic plan submission, or upon the Commission's request.

(B) Local Monitoring Plans shall be submitted to the ACSEC in conjunction with the regularly scheduled biannual 9-1-1 Strategic Plan submission. Revisions to any such document shall be submitted to the ACSEC in writing as they occur.

(C) Local monitoring findings shall be submitted to the ACSEC as they are completed and approved by the RPC Executive Director, according to the local schedule, and shall be submitted in conjunction to regular ACSEC performance reporting schedules. ACSEC shall exercise its right to conduct monitoring activities as a result of the local monitoring reports.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903060
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6933

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TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter D. Eradication of Brucellosis in Cervidae

4 TAC §§35.80, 35.81, 35.82

The Texas Animal Health Commission proposes a new subchapter D in 4 TAC, Chapter 35, concerning Eradication of Brucellosis in Cervidae. This proposal creates new §§35.80, 35.81 and 35.82. Section 35.80 provides definitions for terms contained in the new sections. Section 35.81 is general requirements and provides for testing procedures and the designation of official test. Section 35.82 is requirements for certified brucellosis free cervidae herds and establishes the procedures and standards in order to make this determination.

The cervid industry supported a resolution during the 1992 meeting of the United States Animal Health Association (USAHA) which initiated the development of program standards for the eradication of brucellosis in cervidae. The Brucellosis in Cervidae: Uniform Methods and Rules (UM&R) was adopted by the USAHA and approved by the USDA, Animal and Plant Health Inspection Service, Veterinary Services effective September 30, 1998. In response we are proposing regulations that describe general requirements for the collection and submission of blood samples to approved laboratories for testing, recognition of official tests, and the interpretation standards for official tests which are necessary to recognize herds which have voluntarily conducted whole herd testing in order to achieve Certified Brucellosis Free Cervidae Herd status. Herds which have achieved this status have distinct advantages in the marketability and interstate movement of animals.

Suzy Whittenton, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Whittenton also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations as well as orderly commerce and improved marketability of Texas-origin cervidae which are certified as brucellosis free. There will be no effect on small businesses. The additional cost for such operations would only apply to those that voluntarily elect to attain Certified Herd status. Their expense would be limited to paying a private veterinarian for collection and submission of blood samples to the state/federal lab.

Comments regarding the proposed new rules may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The new rules are proposed under the Texas Agriculture Code, Chapter 161, §§161.041(a) and (b), and 161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. The Commission relies upon §161.081 to address interstate movement of these herds. Also the Commission relies upon Texas Agriculture Code, Chapter 163, §163.064 to insure that the brucellosis control eradication work is performed by approved personnel. The brucellosis program for cervidae is focused on eradication of the same organism that causes brucellosis in cattle. This form of brucellosis has been documented to spread to cattle from cervidae and in order for Texas to achieve the goal of eradication of brucellosis in bovine it is necessary to property test for brucellosis in cervidae. Therefore in order to carry out proper diagnosis and testing in accordance with regulatory standards to prevent the spread of brucellosis to cattle herds it is necessary to require that the testing be performed by approved personnel in accordance with current regulatory requirements for brucellosis in bovine.

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

§35.80. Definitions.

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

(1) Approved laboratory - A State or Federal veterinary diagnostic laboratory for brucellosis testing that must be approved by USDA, APHIS, VS and State animal health authorities.

(2) Approved personnel - Texas Animal Health Commission inspectors and veterinarians; Federal Animal Health technicians and veterinarians; accredited Texas veterinarians; and others who have been approved to do those assigned duties as described in these regulations for brucellosis control and eradication.

(3) Area Veterinarian-In-Charge (AVIC) - The official of USDA-APHIS-VS, who is assigned by the VS Deputy Administrator to supervise and perform the official animal health work of APHIS in the State or States concerned.

(4) Brucellosis - An infectious disease of animals and humans caused by bacteria of the genus *Brucella.*

(5) Brucellosis negative animal - An animal for which laboratory tests fail to disclose evidence of *Brucella* infection.

(6) Brucellosis reactor - An animal diagnosed with *Brucella* based on laboratory results, clinical signs, and/or epidemiologic investigation.

(7) Brucellosis suspect - An animal for which laboratory test results are inconclusive but suggest *Brucella* infection.

(8) Certified Brucellosis-Free Cervid Herd - A herd of cervidae that has qualified for and has been issued a certified brucellosis free cervid herd certificate signed by both the State animal health official and the APHIS AVIC.

(9) Cervidae - Deer, elk, moose, caribou and related species in the Cervidae family, raised under confinement or agricultural conditions for the production of meat or other agricultural products or for sport or exhibition, and free-ranging cervidae when they are captured for any purpose.

(10) Cervid herd - A herd that contains one or more animals of any cervid species.

(11) Herd Test - An official brucellosis blood test of all test-eligible animals in a herd.

(12) Official cervid identification - A VS approved eartag or other VS-approved identification device that conforms to the alphanumeric Uniform Eartagging System, and uniquely and permanently identifies the animal. All official identification is to be placed in the right ear unless otherwise specified.

(13) Official test - An approved brucellosis blood test conducted a an approved laboratory to support the classification of cervidae as brucellosis negative, suspect or reactor.

(14) Test-eligible animal - All cervidae one year of age or older.

§35.81. General Requirements.

(a) Testing

(1) All tests shall be made by approved personnel only as the basis for compliance with these regulations.

(2) All tests must be confirmed by an approved laboratory as the basis for compliance with these regulations.

(3) Samples for all retest purposes will be collected by Commission or APHIS personnel and submitted to the approved laboratory for testing. An epidemiologist may designate those animals that do not require a test. The herd of origin, as well as the herd in which the animal(s) is presently located, will be affected by

the test results of the approved laboratory. The approved laboratory initial test result will prevail if the traced animal cannot be positively identified or if it has been slaughtered or died and cannot be retested.

(4) When the approved laboratory is unable to confirm results of a test because of insufficient serum, hemolyzed blood or broken tubes, the Commission may require a trace and retest of the animal(s) not confirmed.

(b) The following tests have been designated as official brucellosis laboratory tests in Cervidae:

(1) Card test

(2) Standard plate agglutination test (SPT)

(3) Complement-fixation test (CF)

(4) Rivanol test

(5) PCFIA

(c) Serologic Classification.

(1) Card test. Test results are recorded as either negative or Positive. An animal is considered a reactor when the card test is the only test conducted and the test is positive. An animal is considered a suspect when the card test is positive but supplemental tests or an epidemiologist's review support a suspect classification.

(2) Standard plate agglutination (BPI) test. The blood titers of Cervidae tested by the SPT method are interpreted in the following table.
Figure: 4 TAC §35.81(c)(2)

(3) Manual complement fixation (CF) test. The manual CF test is interpreted in the following table.
Figure: 4 TAC §35.81(c)(3)

(4) Rivanol test. Test results are interpreted in the following table.
Figure: 4 TAC §35.81(c)(4)

(5) PCFIA. Test results are interpreted in the following table.
Figure: 4 TAC 35.81(c)(5)

§35.82. Requirements for Certified Brucellosis Free Cervidae Herd.

(a) Complete and sign a herd plan agreement with the Texas Animal Health Commission and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.

(b) Testing will be on a herd basis. For initial certification, all sexually intact cervids in the herd that are 12 months of age or older must have three consecutive negative tests 9 to 15 months apart. Once certified status of the herd has been attained, the herd is certified for 24 months. All Previously tested animals must be accounted for on a following test.

(c) Recertification.

(1) For continuous certification, the herd must have a negative test of all animals required to be tested conducted within 90 days before the certification anniversary date. If the certification test is conducted within 90 days after the anniversary date, the certification period will be 24 months from the anniversary and not 24 months from the recertifying test. During the interval between the anniversary date and the recertifying test, certification will be suspended. If a herd blood test for recertification is not conducted within 90 days after the anniversary date, the certification requirements are the same as for initial certification.

(2) If suspects or reactors are found on recertification testing, certification status will be suspended and a herd investigation will be initiated.

(d) Movement into a certified brucellosis-free cervid herd

(1) From other certified brucellosis-free cervid herds. Animals originating from other certified brucellosis-free cervid herds do not need to be tested prior to movement.

(2) From other herds. Animals purchased from cervid herds not certified brucellosis-free cannot be considered part of the certified herd until the following three serologic tests have been conducted:

(A) Within 30 days prior to movement from the herd of origin;

(B) Between 60 and 180 days after addition to the certified brucellosis-free cervid herd; and

(C) As part of the herd test on the recertification test following the second test above.

(e) Recognition of certified brucellosis-free cervid herds. The Texas Animal Health Commission and the APHIS AVIC will issue a certified brucellosis-free cervid herd certificate when the herd first qualifies. Recertification will be done by renewal certificate showing only the certified free herd number, number of animals, and owner.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903048
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 719-0714

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TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 26. Practice and Procedure

13 TAC §26.6

The Texas Historical Commission (THC) proposes amendments to §26.6 concerning the Antiquities Advisory Board. These changes are needed to clarify the responsibilities, conflicts of interest, and term limitations of Antiquities Advisory Board members. They also provide a new structure for the Antiquities Advisory Board that will assist the THC by expanding the board's membership to include more expertise in the fields of history and historic architecture on the board.

F. Lawerence Oaks, Executive Director of the THC, has determined that for the first five-year period the rule is in effect there should be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule amendments.

Mr. Oaks has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of administering the proposed rule amendments will

assist the Antiquities Advisory Board due to fewer turnovers in the membership of the board, and by insuring broader diversity of concerns on the board. There should be no effect on small businesses, and there should also be no fiscal implications for private citizens, due to these amendments.

Comments on the proposal may be submitted to Dr. James E. Bruseth, of the Texas Historical Commission, Archeology Division, P. O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*. Any questions regarding these proposed amendments should be directed to Mark H. Denton, at the same address, or by calling (512) 463-5711.

The amendments are proposed under §442.005(q), Title 13 Part II of the Texas Government Code, and §191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statues, articles, or codes are affected by these amendments.

These rule amendments implement §442.005(b) of the Texas Government Code and §191.051 of the Texas Natural Resources Code.

§26.6. Antiquities Advisory Board.

As provided for by the 74th Texas Legislature, within Section 442.005(r) of the Government Code of Texas (relating to the statutes of the Texas Historical Commission), the committee is authorized to create an Antiquities Advisory Board (hereafter referred to as the board). The board will make recommendations to the committee on issues related to the Antiquities Code of Texas, and the chairman of the board will be appointed by the Chairman of the committee, from either [~~will be chaired by~~] the Governor-appointed professional archeologist, historian, or architect members [~~member~~] of the Texas Historical Commission [~~,and will make recommendations to the committee on issues related to the Antiquities Code of Texas~~]. The Vice Chair will be elected each year by the board from within their membership. The board will also be composed of the following nine [~~six~~] membership positions: a [~~the~~] representative of the Texas Archeological Society who is nominated in consultation between TAS and the committee, a representative [~~,the president~~] of the Council of Texas Archeologists who is nominated in consultation between CTA and the committee, a state agency archeologist who is nominated in consultation between state agencies that employ archeologists and the committee, two historians nominated by the committee from the disciplines of Texas history, two historic architects nominated by the committee from the disciplines of historic architecture, [~~a contract archeologist,~~] the Governor-appointed professional archeologist, historian, and architect members [~~member~~] of the [~~Texas Historical Commission, and the Governor-appointed professional historian member of the~~] Texas Historical Commission. [~~The contract archeologist, will be appointed by the committee, and will serve one three year term that expires on February 1. The board will provide nominations to the committee for the selection of the contract archeologist position.~~] The non-governor appointed archeologists, historians, and historic architects, [~~state agency archeologist,~~] will all serve [~~a~~] two [~~one~~] year terms [~~term~~] that expire [~~expires~~] on February 1, of either odd or even numbered years as determined by the committee [~~and the appointment must rotate between the state agencies that have staff archeologists~~]. If the Governor does not appoint a professional archeologist, architect, or [~~and~~] historian to the Texas Historical Commission, the committee will appoint such individuals to the board and they will serve for a term of two years or until replaced by a Governor-appointee(s). Specific duties of the board include providing recommendations on proposed State Archeological Landmark designations, and in resolving disputes regarding the issuance of Texas Antiquities Permits. The board shall convene immediately prior to each quarterly meeting of the committee unless otherwise requested by the board chair, and board meetings shall conform to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code and the Administrative Procedure Act, Texas Government Code 2001. The recommendations of the board will be brought to the committee by the board chair and/or one of the other committee members who serves on the board and whose area of expertise is related to the subject under consideration. The board will accomplish their specific duties in the following manner.

(1) Consider and discuss all proposed State Archeological Landmark designations, and any non-adjudicative issues or dispute related to Antiquities Permit issuance that are brought before them by the committee, Archeology Division [~~Department of Antiquities Protection~~] or Division of Architecture staff, members of the board, or the public.

(2) Function as preliminary mediators for the committee unless otherwise directed by the committee, or refused by a complainant(s).

(3) Vote on final recommendations related to appropriate issues of concern, and present those recommendations to the committee.

(4) Conflicts of interest.

(A) Any member of the board who [~~that~~] has a conflict of interest related to an issue that comes before the board shall recuse himself/herself from voting and participating in the discussion on that issue. [~~A member of the Board who has a conflict of interest may respond to questions directed to them by seated members of the Board.~~] Prior to any deliberations concerning the issue in which a member of the Board has a conflict of interest, the member with a conflict shall announce, for the record, that such a conflict exists and physically absent and recuse himself/herself from the decision-making process and not [~~neither~~] vote on [~~directly, in absentia, nor by proxy in~~] that matter. Board minutes must indicate which member recused himself/herself and the reason(s) for the recusal.

(B) For the purpose of these rules a conflict of interest would result if a vote by a member of the Board is likely to result in a financial benefit or personal gain for the following individuals:

(i) the member of the board;

(ii) any person of the member's immediate family, which includes spouse and any minor children; or

(iii) a business partner of the member; or

(iv) any organization for profit in which the member, or any person of clauses (ii) and (iii) of this subparagraph, that is serving or is about to serve as an officer, director, trustee, partner, or employee. A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other things of real or potential value.

(5) The Board shall follow parliamentary authority according to Robert's Rules of Order, Newly Revised, except where specifically provided for otherwise in these rules.

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

Filed with the Office of the Secretary of State, on May 17, 1999.

TRD-9902857
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463–5711

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TITLE 16. ECONOMIC REGULATION

Part VI. Texas Motor Vehicle Board

Chapter 111. General Distinguishing Numbers

The Motor Vehicle Board of the Texas Department of Transportation proposes amendments to §§111.1-111.3, 111.5-111.11 and 111.14-111.16, General Distinguishing Numbers. The Board also proposes the simultaneous repeal and adoption of new §111.12. The sections set guidelines for holding a license and operating as an independent motor vehicle dealer in Texas.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider readoption of each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The Board conducted a review of Title 16, Chapter 111, relating to General Distinguishing Numbers, at its March 4, 1999 meeting. As a result of its review, the Board proposes these changes to Chapter 111.

General changes to rule language.

The Motor Vehicle Board acquired jurisdiction over Chapter 503 of the Transportation Code in 1995. The amendments clarify that these rules are issued under the authority of the Board and delete inappropriate references to the Department of Transportation. The proposals also delete cross-references to sections of the Texas Revised Civil Statutes that are now codified in the Transportation Code, correct incorrect citations and eliminate unnecessary references to obsolete statutes. Other proposals correct grammar.

Other changes specific to each section:

Proposed changes to §111.2, Definitions, clarify the definition of a barrier, clarify that a sale is any transfer of possession of a vehicle for consideration, and incorporate the statutory definition of a supplemental buyer tag in the definition of Temporary Cardboard Tag. The proposed change to §111.3(c)(1) eliminates an assignment of security and letter of credit as acceptable forms of security. The proposed change to §111.3(c)(7) is intended to improve identification of persons operating a dealership. Amendments to §111.3(h) delete transitional language authorizing staggered renewal dates of general distinguishing number (GDN) licenses. This has been accomplished and the transitional language is no longer necessary. Other proposed changes to §111.3(h) conform the section to statutory language contained in §503.033 of the Transportation Code.

Proposed changes to §§111.5(b), (c) and (d) clarify the notice and licensing requirements upon the establishment, closing or relocation of a dealership. The proposed change to §111.6 makes it clear that a dealer can sell only from a location for which it has a GDN.

The proposed change to §111.7 makes it clear that a dealer must have a bond at the beginning and must maintain it throughout the licensing year. Proposed amendments to §111.7(3) eliminate an assignment of security or an irrevocable letter of credit as acceptable forms of security and add provisions for notice to the Board if actions are taken against a security.

The proposed changes to the appendices to the General Distinguishing Number Rules referenced in §111.8 correct minor errors in the formation of numerals and standardize the instructions for temporary tag use.

The proposed change to §111.9(a) states that a copy of the receipt for a metal dealer's plate should be carried in the vehicle and presented to law enforcement personnel upon request. The proposed change to §111.9(c) is intended to describes the uses of dealer's black temporary cardboard tag and clarifies that the restrictions do not apply to buyer's tags. Proposed new §§111.9(m) and 111.9(n) clarify the use of dealer's and buyer's temporary cardboard tags by wholesale motor vehicle auctions.

The proposed changes to §111.10(1)(B) clarify the number of dealers located in a structure, the definition of a structure and require an answered telephone as office equipment. Amendments to §111.10(1)(F) state that wholesale and retail dealers may not occupy the same structure, but allow that combination if the dealerships were established prior to September 1, 1999. The proposed change to §111.10.(2) allows for a variance in a dealer's sign lettering height. Proposed changes to §111.10.(3)(B) establish the requirement that a dealer's display area must be separate from those of other dealers.

The proposed change to §111.11(a) allows for imposition of civil penalties as an alternative to license denial, revocation or suspension for certain rule violations. Proposed changes to §111.11(a)(3) clarify a dealer's record-keeping requirements and permit a representatives of the Board to request copies of records by mail. Amendments to §111.11(a)(6) clarify notification requirements to the Board when a dealer changes address or telephone number. The proposed change to §111.11(a)(17) conforms the rules to current language contained in an application for a certified copy of a title. Proposed additions to §111.11(a)(23) enumerate the factors to be considered in assessing civil penalties.

Existing §111.12, Notice and Appeal is repealed and new §111.12, GDN Sanction and Qualification Hearing, is simultaneously proposed to clarify the administrative hearing procedure to determine if a dealer has violated Chapter 111 or the Transportation Code. New §111.12 will provide guidance to the agency and those who allegedly violate dealer operating rules by providing a procedure for an administrative hearing by referring to the procedures provided by Chapter 101 (relating to Practice and Procedure) and eliminate redundant language.

The proposed change to §111.14(b) simplifies the requirements regarding use of manufacturer's license plates. Proposed changes to §111.15(a) clarify a how longer dealers must keep sales records and where they must be stored. It adds a requirement to provide records upon a mailed request from the director or designee. Proposed amendments to §111.15(b)(7) will require a dealer retain a copy of the Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax. The proposed changes to §111.15(b)(8) and new §111.15(b)(9)

clarify a dealer's record-keeping requirements. The proposed change to §111.15(d) corrects the identification of the out-of-state sales tax exemption form to be retained by a dealer.

Proposed changes to §111.16(c) eliminate language duplicating §111.5(d) regarding notice of a change of status and add language allowing for continuing dealership operations upon the death of a sole proprietor licensee, without application for new license by the surviving spouse.

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

Mr. Bray has also determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit of the amendments to Chapter 111 will be to provide a clearer understanding of the motor vehicle dealer license operating rules and conserve the time and resources of the agency and entities appearing before it. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the sections as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the sections.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P. O. Box 2293, Austin, Texas 78768, (512) 416-4910. The Motor Vehicle Board will consider adoption of the proposals at its meeting on July 22, 1999. The deadline for receipt of comments on the proposed amendments is 5:00 p.m. on July 5, 1999.

16 TAC §§111.1-111.3, 111.5-111.11, 111.14-111.16

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §§1.03, 3.08, and 4.01 and Transportation Code §§503.001, 503.006, 503.021-503.038, 503.061, 503.062-503.071, 503.093 and 503.095 are affected by the proposed amendments.

§111.1. Objective.

The objective of these rules is to implement the intent of the legislature as declared in the Transportation Code §503.001 *et seq.* [~~(formerly Texas Civil Statutes, Article 6686)~~] and Texas Revised Civil Statutes Annotated, Article 4413 (Texas Motor Vehicle Commission Code), by prescribing rules to regulate businesses requiring General Distinguishing Numbers.

§111.2. Definitions.

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

(1) Barrier - A material object or set of objects that separates or demarcates.

(2) Board - The Motor Vehicle Board of the Texas Department of Transportation.

(3) Charitable Organization - An organization that is established and exists for the purpose of relieving poverty, the advancement of education, religion, or science, the promotion of health, governmental, or municipal purposes, or other purposes beneficial to the community without financial gain.

(4) Commission - Texas Transportation Commission.

(5) Consignment Sale - The sale of a vehicle by a person other than the owner, under the terms of a written authorization from the owner.

(6) Dealer - Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, motor homes, house trailers, or trailers or semitrailers as defined in the Transportation Code §501.001 [~~§502.001~~] *et seq.* [~~(formerly the Registration Law, Texas Civil Statutes, Article 6675a-1)~~], or the Transportation Code §502.001, [~~§502.002,~~] *et seq.* [~~(formerly the Certificate of Title Law, Texas Civil Statutes, Article 6687-1)~~], at either wholesale or retail, either directly, indirectly, or by consignment.

(7) Department - Texas Department of Transportation.

(8) Director - Director, Motor Vehicle Division, Texas Department of Transportation.

(9) License - A dealer's general distinguishing number assigned by the Motor Vehicle Board of the Texas Department of Transportation for the location from which the person engages in business.

(10) Person - Any individual, firm, partnership, corporation, or other legal entity.

(11) Sale - With regard to a specific vehicle, the transfer of possession of that vehicle [~~from a dealer~~] to a purchaser for consideration.

(12) Temporary Cardboard Tag - A buyer tag, supplemental buyer tag, [~~a~~] dealer tag, or [~~a~~] charitable organization tag.

(13) Wholesale Dealer - A licensed dealer who only sells or exchanges vehicles with other licensed dealers.

§111.3. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the Board [~~department~~] for each location from which the person engages in business. If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the dealer must also hold a general distinguishing number for the consignment location.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer [~~less~~] than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of the Transportation Code, §§503.001 *et seq.* [~~(formerly Texas Civil Statutes, Article 6686)~~], and the sections under this chapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in the Transportation Code, §683.077 [~~(formerly the Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a)~~], if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of the Transportation Code, §§503.001, *et seq.* [~~(formerly Texas Civil Statutes, Article 6686)~~], and sections under this chapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the Board [~~department~~] as provided in §111.5 of this title (relating to More Than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the Board [~~department~~], if the transaction is not intended to avoid the terms of the Transportation Code, §§503.001, *et seq.* [~~(formerly Texas Civil Statutes, Article 6686)~~]; or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of the Transportation Code, §§503.001, *et seq.* [~~(formerly Texas Civil Statutes, Article 6686).~~]

(c) Application for a general distinguishing number shall be on a form prescribed by the director properly completed by the applicant showing all information requested thereon and shall be submitted to the director accompanied by the following:

(1) a $25,000 surety bond as provided in §111.7 of this title (relating to Bond Requirements) [~~, or acceptable security as cited in §111.7 of this title (relating to Assignment of Security and Letter of Credit), in the name of the applicant~~];

(2) a one-year lease as cited in §111.10 of this title (relating to Established and Permanent Place of Business), or deed for the dealer's location in the name of the applicant;

(3) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(4) the fee as prescribed by law for each dealer metal plate requested and the license plate reflectorization fee as prescribed by law;

(5) photographs clearly showing:

(A) the interior of the dealer's office;

(B) the exterior of the dealer's office;

(C) the dealer's sign;

(D) the vehicle display area; and

(6) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk.

(7) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the dealership.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name, as it appears on file with the Secretary of State, shall be recorded on the application. The corporation must provide verification that all corporate franchise taxes required under the Texas Business Corporation Act, Article 2.45, have been paid.

(f) A licensed wholesale dealer who elects to buy, sell to, or exchange vehicles with persons other than licensed dealers, must satisfy the display space requirements of §111.10 of this title (relating to Established and Permanent Place of Business) and exchange the wholesale dealer license for a general distinguishing number which is appropriate for the type of vehicles the dealer wishes to buy, sell, or exchange.

(g) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under the Transportation Code, §§503.001, *et seq.* [~~(formerly Texas Civil Statutes, Article 6686 §(a)(1)(1-A)viii).~~]

(h) [~~All general distinguishing numbers expiring on March 31, 1996, when renewed, will expire on the last day of randomly assigned calendar months of the next calendar year. Thereafter, each~~] Each license will be issued for a period of one year from the date of issuance of the license. The entire yearly license fee will be due at that time.

[~~(1) The license fee for each general distinguishing number issued during 1996 for a period of less than one year shall be prorated and only that portion of the license fee allocable to the number of months for which the license is issued shall be payable by the licensee. The amount of such license fees will be rounded off to the nearest dollar.~~]

(1) [~~(2)~~] The security requirement stated in [~~surety bond or other surety required for dealers by the Department pursuant to~~] the Transportation Code, §§503.033 [~~(formerly Texas Civil Statutes, Article 6686(a)(1-A)(vii))~~] must be effective, at a minimum, for the period for which the general distinguishing number will be valid.

(2) [~~(3)~~] All dealer metal plates issued to a licensed dealer shall expire on the same date as the expiration of the dealer's general distinguishing number.

§111.5. More Than One Location.

(a) A dealer holding a general distinguishing number for a particular type of vehicle may operate from more than one location within the limits of a city, provided each such location is operated by

the same legal entity and meets the requirements of §111.10 of this title (relating to Established and Permanent Place of Business).

(b) Additional locations which are not located within the limits of the same city of the initial dealership are required to obtain a separate license[, and each such location must be bonded] and bond unless the location is exempt by statute.

(c) Dealerships that are relocated from a point outside the limits of a city, or relocated to a point not within the limits of the same city of the initial location are required to obtain a separate license and provide separate security unless the location is exempt from the security requirement by statute.

(d) A dealer shall notify the Board in writing within 10 days of the opening, closing or relocation of any dealership location. Each new location must meet requirements of §111.10 of this title (relating to Established and Permanent Place of Business).

§111.6. Off-site Sales.

Unless otherwise authorized by statute, a dealer is not permitted under the Transportation Code, §§503.001, *et seq.* [(formerly Texas Civil Statutes, Article 6686)] to sell or offer for sale vehicles from a location other than an established and permanent place of business which has been approved by the Board and for which a general distinguishing number has been issued to that dealer. [department.]

§111.7. Security Requirements.

(a) Unless allowed to operate under §503.033(c) of the Transportation Code, a [A] motor vehicle dealer or motorcycle dealer who does not hold a franchised dealer's license issued by the Texas Motor Vehicle Board of the Texas Department of Transportation shall maintain [have] a $25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following:

(1) The bond shall be on a form which is prescribed by the director and approved by the attorney general and issued by a company duly authorized to do business in the state of Texas.

(2) The name of all owners shall be shown on the bond along with the name in which the dealer's license is issued.

(3) A bond executed by an agent who represents a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

[(b) In lieu of a surety bond, the department will accept an assignment of security or an irrevocable letter of credit on forms approved by the attorney general. An assignment of security or an irrevocable letter of credit must be executed by a bank, savings and loan institution, credit union, or other financial institution insured by an agency of the United States government and authorized to do business in the State of Texas.]

(b) [(c)] Recovery against the bond [or acceptable security] may be made by any person who obtains a court judgment assessing damages and/or [and] attorneys fees for an act or omission on which the bond is conditioned. If the person seeking to obtain such a court judgment is a dealer, that dealer shall notify the Board of the claim immediately upon filing suit on the bond.

(c) Payment of any judgment by the bonding company shall be immediately reported to the Board in writing.

(d) Recovery against an alternative surety source, as described in §503.033(c) of the Transportation Code, may be made by any person who obtains a court judgment assessing damages and/or attorneys fees for an act or omission concerning the payment of all valid bank drafts, including checks, drawn by the dealer for the purchase of motor vehicles and transfer of good title to each motor vehicle that the dealer sells. If the person seeking to obtain court judgment is a dealer, that dealer shall notify the Board of the claim immediately upon filing suit.

(e) [(d)] The provisions of subsection [subsections] (a) [and (b)] of this section do not apply to:

(1) a franchised motor vehicle dealer who is licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(2) a franchised motorcycle dealer who is licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(3) a house trailer or travel trailer dealer; or

(4) a trailer/semitrailer dealer.

§111.8. Temporary Cardboard Tags.

(a) Motor vehicle, travel trailer, and trailer/semitrailer tags shall be printed on not less than six-ply cardboard with bolt holes to be horizontally punched on seven-inch centers and vertically punched on 4 1/2-inch centers and the numerals in the expiration date shall not be less than two inches high. Motorcycle tags shall be printed on not less than six-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the numerals in the expiration date shall not be less than one inch high. Homemade cardboard tags or cardboard tags which have buyer's tag information printed on one side and dealer's tag information printed on the other side are not acceptable.

(b) The following appendices indicate the design and the instructions for printing and use of each of the respective temporary tags:

(1) Appendix A-1 - Dealer (design); Appendix A-2 - Dealer (instructions);
Figure 1: 16 TAC 111.8(b)(1)
Figure 2: 16 TAC 111.8(b)(1)

(2) Appendix B-1 - Buyer - Initial (design); Appendix B-2 - Buyer - Initial (instructions);
Figure 3: 16 TAC 111.8(b)(2)
Figure 4: 16 TAC 111.8(b)(2)

(3) Appendix B-3 - Buyer - Supplemental (design); Appendix B-4 - Buyer -Supplemental (instructions);
Figure 5: 16 TAC 111.8(b)(3)
Figure 6: 16 TAC 111.8(b)(3)

(4) Appendix C-1 - Charitable (design); Appendix C-2 - Charitable (instructions).
Figure 7: 16 TAC 111.8(b)(4)
Figure 8: 16 TAC 111.8(b)(4)

(c) The director may designate the number, size, color, and placement of logos to be printed on temporary plates and may enter into licensing agreements with printers for their use.

§111.9. Metal Dealer License Plates and Temporary Cardboard Tags.

(a) Metal dealer license plates shall be attached to the rear license plate holder of vehicles on which such plates are permitted to be displayed pursuant to Transportation Code, §503.061. [are to be displayed.] A copy of the receipt for metal dealer's plate issued by the Motor Vehicle Division should be carried in the vehicle and

presented to law enforcement personnel upon request. If the vehicle on which a metal dealer plate is to be attached displays Texas multi-year plates that have not been validated for the current registration period, such multi-year plates shall be removed and safeguarded. The multi-year plates should be placed back onto the vehicle when it is sold or if the metal dealer plate is removed from the vehicle.

(b) Temporary cardboard tags may be displayed either in the rear window or on the rear license plate holder of unregistered vehicles. When displayed in the rear window, the tag shall be attached in such a manner that it is clearly visible and legible when viewed from the rear of the vehicle. If the vehicle on which a temporary cardboard tag is to be attached displays Texas multi-year license plates that have not been validated for the current registration period, the temporary cardboard tag may be displayed in the rear window as prescribed in this subsection or placed over the rear license plate. The multi-year plates should not be removed from the vehicle.

(c) Metal dealer license plates and dealer's black temporary cardboard tags may not be displayed on laden commercial vehicles being operated or moved upon the public streets or highways or on the dealer's service or work vehicles. This does not apply to buyer tags or supplemental buyer tags.

(1) Examples of vehicles considered as service or work vehicles are:

(A) vehicles used for towing or transporting other vehicles;

(B) vehicles, including light trucks used in connection with the operation of the dealer's shops or parts department;

(C) courtesy cars on which courtesy car signs are displayed;

(D) rental and lease vehicles;

(E) dealer-owned vehicles loaned to schools; and

(F) any boat trailer owned by a dealer or manufacturer which is used to transport more than one boat.

(2) A light truck is not considered to be a laden commercial vehicle:

(A) when mounted with a camper unit; or

(B) when towing a trailer for recreational purposes.

(3) As used in this subsection, light truck shall have the same meaning as defined in the Transportation Code §541.201. [~~Uniform Act Regulating Traffic on Highways, Texas Revised Civil Statutes Annotated, Article 6701d, §2.~~]

(d) Each unregistered vehicle being transported [~~conveyed~~] utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof in accordance with the Transportation Code, §§503.068(d), [~~§§503.029,~~] *et seq.* [(~~formerly Texas Revised Civil Statutes Annotated, Article 6686(a), §6~~)], shall have a dealer's temporary cardboard tag or a buyer's temporary cardboard tag, whichever is applicable, affixed to that vehicle. If the vehicle being transported is of a type which is prohibited from operating upon the public streets and highway (i.e., off-highway vehicle or self-propelled machine) and, thus, cannot qualify for registration, a cardboard tag shall be displayed thereon; and such tag shall be marked in bold letters with the notation "For Off Highway Use Only."

(e) Metal dealer license plates and temporary cardboard tags may be displayed only on the type of vehicle for which the general distinguishing number is issued and for which a dealer is licensed to sell. Non-franchised dealers may not display metal plates on new motor vehicles.

(f) A buyer's temporary cardboard tag or supplemental tag may not be displayed on any vehicle being operated upon the public streets and highways for which a sale has not been consummated.

(g) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove a dealer's temporary cardboard tag. In such instances, the selling dealer may attach a buyer's temporary cardboard tag to the vehicle; or the purchasing dealer may display a dealer's temporary cardboard tag or metal dealer plate on the vehicle. In the event a vehicle is consigned from one dealer to another, the vehicle shall display the temporary cardboard tag of the dealer to which such vehicle was consigned.

(h) A dealer may have printed red initial temporary buyer's cardboard tags, blue supplemental tags and green charitable organization tags according to the specifications of Appendices B-1 through C-2.

(i) A dealer shall maintain a record of all dealer metal plates issued to that dealer and as to each vehicle such record shall consist of:

(1) the assigned metal plate number;

(2) the make;

(3) the vehicle identification number; and

(4) the name of the person in control.

(j) The dealer's record as referenced in subsection (i) of this section, shall be available at the dealer's location during normal working hours for review by a representative of the Board. [~~department.~~] Dealer metal plates which cannot be accounted for shall no longer be valid for use and shall be voided.

(k) At the expiration of an initial red buyer's temporary cardboard tag, a supplemental blue temporary cardboard buyer's tag may be issued as provided for in the Transportation Code, §503.063.

(l) A charitable organization tag is valid for a period of 30 days from the date of issuance.

(m) A person who holds a wholesale motor vehicle auction general distinguishing number may display its dealer's temporary cardboard tags on any vehicles which are transported to or from the licensed auction location by a bona fide employee or agent of the auction.

(n) A wholesale motor vehicle auction licensee may only issue a buyer's temporary cardboard tag in connection with a sale that is made pursuant §503.037(d) of the Transportation Code.

§111.10. Established and Permanent Place of Business.

All dealers must meet the following requirements at each location where vehicles are sold or offered for sale.

(1) Office requirements.

(A) A dealer's office facility must be open to the public during normal working hours. Normal working hours are defined as at least four days per week for a continuous period of time not less than four hours per day between the hours of 8:00 A.M. and 8:00 P.M. The dealer's business hours for each day of the week must be posted at the main entrance of the dealer's office, and the owner or a bona fide employee of the dealer must be at the dealer's location during the posted business hours for the purpose of buying, selling, exchanging, or leasing vehicles. In the event the owner or a bona

fide employee is not available to conduct business during the dealer's posted business hours, a separate sign must be posted indicating the date and time such owner or a bona fide employee will resume dealer operations. In addition, such dealership must notify the division in writing of any subsequent change in the dealer's standard business hours.

(B) With the exception of dealers holding only a wholesale license, no more than four retail dealers may be located in a business or residential structure. A structure is a stand-alone building, has its own exterior walls on all sides, and has been assigned a separate mailing address by the United States Postal Service. The structure must be of sufficient size to accommodate the usual office furniture and equipment, such as a desk, file cabinet, chairs, etc. As a minimum, the office must be equipped with a desk and chairs from which the dealer transacts his business and be equipped with a separate working telephone instrument, number, and listing in the dealer's name with a fixed, land-based telephone company, answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, or an answering service or machine. [~~working telephone instrument listed in the name under which the dealer does business.~~] If a dealer's office is located in a residential structure, the office must be completely separated from and have no direct access into the residential quarters and be in compliance with all applicable local zoning ordinances and deed restrictions. Such an office shall not be used as a part of the living quarters and must be readily accessible to the public without having to pass into or through any part of the living quarters.

(C) Portable-type office structures may qualify, provided they meet the minimum requirements as set forth herein.

(D) If a dealer conducts business in conjunction with another business owned by the same person, the same telephone instrument may be used for both businesses. However, if the name of the dealer differs from that of the other business, a separate telephone listing and a separate sign for the dealer is required.

(E) A dealer may conduct business in conjunction with another business not owned by the same person, however, the same telephone number may not be used by both businesses; the dealer shall have a separate sign, a separate desk, a separate working telephone instrument, and a separate telephone number and listing in the name of the dealer. The dealer must either own the property or have a separate lease agreement from the owner meeting the requirements of paragraph (4) of this section.

(F) Unless otherwise authorized by the Transportation Code, wholesale motor vehicle dealerships established after September 1, 1999, may not occupy the same structure as retail dealers. More than one, but no more than eight dealers who hold only a wholesale license may occupy the same business structure and conduct their respective dealer operations under different names, as long as no retail dealers are located in the same structure; provided, however, each wholesale dealer must, in addition to having a qualifying dealer's sign conspicuously displayed on the premises, have:

(i) a separate desk from which that dealer transacts business;

(ii) a separate working telephone instrument, number, and listing in the dealer's name with a fixed, land-based telephone company, and,

(iii) a separate lease agreement meeting the requirements of paragraph (4) of this section.

(G) Dealers who hold only a wholesale license will not be required to be present during normal working hours if they keep on file with the Motor Vehicle Division, notice of a designated period of time in which the dealer and the dealer's records will be available for inspection by the Motor Vehicle Division at the dealer's licensed location. The period of time will be no less than two consecutive hours, between the hours of 8:00 a.m. and 5:00 p.m., on any one day of the week, except Saturday or Sunday.

(2) Sign requirements.

(A) A dealer shall display a conspicuous sign with letters at least six inches in height showing the name under which the dealer conducts business. Variance of the six-inch lettering size requirement may be considered upon a showing by the applicant dealer of local zoning requirements limiting lettering size to less than six inches.

(B) Such sign must be readable from the address listed on the application for the dealer license.

(3) Display space requirements.

(A) A dealer other than a wholesale dealer shall have an off-street display area sufficient to display at least five vehicles of the type for which the general distinguishing number was issued.

(B) The display area may not be on a public easement, right-of-way, or driveway, unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents to such use; provided, however, that if the easement, right-of-way, or driveway is a part of the state highway system, such use may only be authorized by a lease agreement entered under the Transportation Code, §202.052 [~~(formerly Texas Civil Statutes, Article 6673a-3)~~]. Such area shall be located at the dealer's address or contiguous with the dealer's address. The display area must be owned or leased for the exclusive use by the dealer for a continuous term of not less than one year. If the display area is in conjunction with other parking facilities, such area shall be separated by use of barriers under the control of the dealer so as to prevent its use for any purpose other than a display area. Subject to approval by the Board [~~department~~], the display area may be located within a building. If multiple retail dealers occupy contiguous locations or are located in the same structure, each dealer must group its vehicles on display in the same area, marking the area and/or vehicles to identify the selling dealer.

(4) Lease requirements. If the premises from which a dealer conducts business is not owned by the licensed dealer, such dealer shall maintain a lease continuous for a period of one year, and such lease agreement shall be on a properly executed form containing, but not limited to, the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

§111.11. Sanctions.

(a) Revocation/Denial. The director may deny, revoke or suspend a dealer's license (general distinguishing number) or assess civil penalties if that dealer:

(1) fails to maintain a good and sufficient bond in the amount of $25,000 or to be currently licensed as a franchised dealer by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(2) fails to maintain an established and permanent place of business conforming to the Board's [~~department's~~] regulations pertaining to office, sign, and display space requirements;

(3) refuses to permit or fails to comply with a request by a representative of the Board [department] to examine [, during normal working hours,] the [current and previous year's] sales records required to be kept under §111.15 of this title (relating to Record of Sales and Inventory) and ownership papers for vehicles owned by that dealer or under that dealer's control, and evidence of ownership or lease rights [agreement] on the property upon which the dealer's business is located:

(A) during posted working hours, as required in §111.10(1)(A) of this chapter, at the dealer's licensed location, or

(B) through a certified letter request signed by the director or the director's designee;

(4) holds a wholesale dealer license and, without notifying the Board [department] and meeting the vehicle display space requirements of §111.10 of this title (relating to Established and Permanent Place of Business), is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;

(5) holds a travel trailer dealer license or a trailer/semitrailer dealer license and is found to be selling a motor vehicle or a motorcycle;

(6) fails to notify the Board [department] of a change of physical or mailing address and/or telephone number within 10 days after such change;

(7) fails to notify the Board [department] of a dealer's name change or ownership within 10 days after such change;

(8) except as provided by law, issues more than one buyer's temporary cardboard tag for the purpose of extending the purchaser's operating privileges for more than 21 days;

(9) fails to remove out-of-state license plates from a vehicle which is displayed for sale;

(10) misuses a metal dealer license plate or a temporary cardboard tag;

(11) fails to display dealer license plates or cardboard tags in a manner conforming to the Board's [department's] regulations pertaining to the display of such plates and cardboard tags on unregistered vehicles;

(12) fails to satisfy the notification requirements of §111.15 [of this title (relating to Record of Sales and Inventory)];

(13) holds open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the general distinguishing number is issued;

(15) violates any of the provisions of the Transportation Code, §503.001, *et seq.* [(formerly Texas Civil Statutes, Article 6686)], Texas Revised Civil Statutes Annotated, Article 4413(36) (Texas Motor Vehicle Commission Code), or any rule or regulation of the department, including advertising rules set out in Chapter 105 of this title (relating to Advertising);

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(17) files a false or forged title or tax document, including sales tax statement [affidavit] or [affidavit making] application for a certified copy of a title;

(18) uses or allows use of that dealer's license or location for the purpose of avoiding the provisions of the dealer law or other laws;

(19) makes a material misrepresentation in any application or other information filed with the Board [department];

(20) fails to remit payment for civil penalties assessed by the Board [department];

(21) sells new motor vehicles without a franchised dealer's [franchise] license issued by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(22) utilizes a temporary cardboard tag that fails to meet Board [department] specifications as cited in §111.8 of this title (relating to Temporary Cardboard Tags); or

(23) violates any state or federal law or regulation relating to the sale of a motor vehicle.

(b) Civil penalties. The director may assess a civil penalty of not less than $50 nor more than $1,000 against a person who violates any provision of subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances, including but not limited to the factors enumerated in the Texas Motor Vehicle Commission Code, Texas Revised Civil Statutes Annotated, Article 4413(36), §6.01(b).

(c) Pre-sanction citation. In lieu of imposing sanctions under subsections (a) or (b) of this section, the director may issue a pre-sanction citation to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the director may not utilize this procedure in more than three subsequent violations of the same or similar nature by that person in the same calendar year.

§111.14. Manufacturers License Plates.

(a) Manufacturers that distribute, manufacture, or assemble new vehicles may apply for and secure manufacturers license plates for display on unregistered vehicles.

(b) Manufacturers license plates must be used exclusively for the purpose of testing such vehicles or loaning a vehicle to a consumer in accordance with Texas Motor Vehicle Commission Code, Texas Revised Civil Statutes Annotated, Article 4413 (36), §6.07 [, and may not be used in conjunction with other business activities such as displayed on a vehicle operated by a representative of the manufacturer who uses the vehicle to contact dealers].

§111.15. Record of Sales and Inventory.

(a) Purchase and sales records. A dealer must keep a complete record of all vehicle purchases and sales for a minimum period of 24 [13] months. [, and such record] Records reflecting purchases and sales for at least the preceding 13 months must be available for inspection by a representative of the Board [department] at the dealer's location. Records for prior time periods may be kept off-site at a location within the same county. Upon receipt of a certified letter from the director or the director's designee, a dealer must produce copies of specified records by mailing those copies to the address listed in the request within 15 days.

(b) Content of records. As used in this subsection, a complete record of vehicle purchases and sales shall include the:

(1) date of purchase;

(2) date of sale;

(3) vehicle identification number;

(4) name and address of person selling to the dealer;

(5) name and address of person purchasing from the dealer;

(6) name and address of selling dealer if vehicle is offered for sale by consignment; and

(7) except in a purchase or sale by a wholesale dealer, [~~number and filing date~~] copy of the Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax, Form 31; [~~and~~]

(8) copies of any and all documents, forms, and agreements applicable to a particular sale, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser; and [~~.~~]

(9) dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any.

(c) Title assignments. All certificates of title, manufacturer's certificates, or other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name. A dealer must provide the purchaser with the receipt for application for certificate of the title issued by the county tax assessor-collector within 20 working days of the date of sale of any vehicle to be titled or registered in the state of Texas.

(d) Notification to the department. Notification of vehicle sales, as required by the Transportation Code, §503.005, *et seq.* [~~(formerly Texas Civil Statutes, Article 6686, §d)~~], shall be an application for certificate of title in the name of the retail purchaser filed with the appropriate county tax assessor-collector. When a sales transaction involves a vehicle to be transferred out of state, the dealer may, in lieu of filing the application for certificate of title for the purchaser, deliver the properly assigned evidence of ownership to the purchaser. In such instance, a photocopy [~~of such evidence, including all assignments, shall be documented on a form prescribed by the director, and~~] of the completed sales tax exemption form for out-of-state sales approved by the Comptroller's Office shall be maintained on file at the dealer's business location.

(e) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement for the vehicle or a power of attorney covering the vehicle and shall maintain a record of each such vehicle by vehicle identification number and owner of each such vehicle handled on consignment for a minimum of 13 months.

§111.16. Change of Dealer's Status.

(a) Dealer name change. A dealer's name change shall require a new bond or a rider to the existing bond reflecting the new dealer name. The dealer may retain the same general distinguishing number.

(b) Change of ownership. A dealer shall notify the Board [~~department~~] in writing within ten days if there is any change of ownership. Upon notification of a change of the majority ownership interest, the Board [~~department~~] shall cancel the existing dealer's license and the new owner must qualify for a new general distinguishing number.

[~~(c) Change of operating status of a dealer location. A dealer shall notify the department in writing within 10 days of the opening, closing, or relocation of any dealer location. Each new location must meet the statutory requirements and requirements as specified in the sections of this chapter.~~]

(c) Death of sole proprietor licensee. If a dealership is operated as a sole proprietorship and the sole proprietor dies, the surviving spouse of the deceased dealer, or other individual deemed qualified by the director or the Board, shall submit to the Board a bond rider adding his or her name to the bond for the remainder of the bond and license term. That person may continue dealership operations under the current dealer license until its expiration. In the event the qualifying individual is a surviving spouse, he or she may change the ownership of the dealership upon renewal of the license without applying for a new general distinguishing number by submitting additional information regarding ownership, business background, and financial responsibility as required by the Board for a new 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.

Filed with the Office of the Secretary of State, on May 21, 1999.

TRD-9902997
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: July 22, 1999
For further information, please call: (512) 416–4899

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16 TAC §111.12

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

The repeal is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §§1.03, 3.08, and 4.01 and Transportation Code §§503.038, 503.093 and 503.095 are affected by the proposed repeal.

§111.12. Notice and 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 May 21, 1999.

TRD-9902998
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: July 22, 1999
For further information, please call: (512) 416–4899

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The new section is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code, §§1.03, 3.08, and 4.01 and Transportation Code, §§503.038, 503.093 and 503.095 are affected by the proposed new section.

§111.12. GDN Sanction and Qualification Hearing.

(a) The Board may initiate and conduct a formal administrative hearing pursuant to the Motor Vehicle Commission Code, Texas Revised Civil Statutes Annotated, Article 4413(36), §§3.03(b) and 3.08, and Chapter 101 of this title (relating to Practice and Procedure), concerning contested cases before the Texas Motor Vehicle Board, to determine any of the following matters:

(1) whether a licensee has violated any provision of this chapter or the Transportation Code, §503.001, *et seq.*,

(2) the amount of the civil penalty to be assessed, if any, from not less than $50 up to $1,000 for each alleged violation of the provisions of this chapter or the Transportation Code, §503.001, *et seq.*,

(3) whether the licensee's general distinguishing number should be canceled or suspended, and

(4) whether an application for a new general distinguishing number or the renewal of a general distinguishing number should be denied.

(b) For purposes of assessing civil penalties under this subsection, each act in violation of any provision of this chapter or the Transportation Code, §503.001, *et seq.* is a separate violation, and each day of a continuing violation is a separate violation.

(c) Notice of any hearing initiated under subsection (a) of this section may be waived by any person.

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

Filed with the Office of the Secretary of State, on May 21, 1999.

TRD-9902996
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: July 22, 1999
For further information, please call: (512) 416–4899

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Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter D. Texas Bred Incentive Programs

Division 2. Programs for Horses

16 TAC §303.93

The Texas Racing Commission proposes an amendment to §303.93 concerning the rules for the Texas Bred Incentive Program for quarter horses. The amendment was presented to the commission as a rulemaking petition under 16 Texas Administrative Code §307.33 by the Texas Quarter Horse Association, the officially designated breed registry for quarter horses in Texas. According to the petition, the amendment is necessary to place the preferable responsibility on the association for disbursement of awards. The amendment eliminates redundant provisions and consolidates the payment of all awards into one procedure. In addition, the amendment clarifies that the accredited Texas- bred incentive awards are not a part of the purse, but are an added incentive under the statute.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined, based on the petition, that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Marcus has also determined, based on the petition, that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that there will be the standards and the responsibility for the calculation and distribution of the incentive awards will be clear, concise and in conformance with the Texas Racing Act. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.08, which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program; and §9.01, which authorizes the commission to approve and adopt rules developed by the breed registries.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.93. Quarter Horse Rules.

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

(c) Procedure for the Payment of ATB Awards.

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

(3) Procedures for Payment of [~~Owners~~] Awards. Any accredited Texas-bred quarter horse that finishes first, second, or third in a pari-mutuel horse race in Texas (except stakes race restricted to Texas-breds) shall be entitled to receive an incentive award, as herein set forth [~~a purse supplement. That purse supplement shall be derived from the dedicated Texas bred purse funds described in the Act and the rules of the commission~~].

[~~(A) Owner's awards shall be noted as purse supplements in the condition books and programs of all associations conducting quarter horse racing in Texas. The awards shall be calculated for each association by the TQHA using historic data. The amounts may vary at each association and with each condition book at the discretion of the TQHA so as to reflect as nearly as possible the current level of funds available for disbursement during the time period that the condition book is applicable. Overpayment or underpayment of the award funds relative to earnings from handle shall be remedied~~

during the next race period at the association at which the funds were generated. The purse supplement for each race shall be paid 50% to first place, 30% to second place, and 20% to third place finishers.]

(A) [(B)] Upon the completion of a racing period not to exceed five racing days, all associations currently conducting quarter horse racing shall forward to the TQHA offices via telecopy or other electronic means a copy of the official results from that period of racing. The official results shall include the date, race number, race conditions, name of each horse in the race, official order of finish, the owner of record, and purse earned from the [association] purse account[, purse amount earned from the ATB fund (if any), and the ATB status as recorded by the association].

(B) [(C)] TQHA will verify the ownership registration, and eligibility of all horses that finish first, second, or third in a race at the association during the time period. [Upon completion of the verification process TQHA shall issue a release to the horsemen's bookkeeper that authorizes the transfer of ATB funds to the individual owners' accounts. Simultaneous to the issuance of a release form, TQHA shall cause to be forwarded to the association the total amount of owners' awards earned during that time period. Such funds shall be deposited upon receipt into the quarter horse purse trust account.]

(C) The Act provides that the funds that are accrued to the awards fund will be paid 40% to owners, 40% to breeders, and 20% to stallion owners. Also, 1.0% of all multiple two and multiple three wagers are to be paid to the Texas-bred program and are to be paid as awards.

[(D) Upon discovery of a discrepancy in ownership of an ATB horse, the TQHA shall have the right to withhold the release of ATB funds pending a transfer or other successful resolution of the ownership discrepancy. In the event a horse that is not registered with TQHA as an ATB horse is claimed to be an ATB horse, such owner shall bear the burden of proof prior to receipt of any award. In the event a horse registered with TQHA as an ATB horse finishes first, second or third in a race but is not credited with the ATB earnings by the association, the horsemen's bookkeeper shall credit the owners account at the association prior to releasing funds for that race.]

[(E) Upon discovery that an ATB horse which is eligible to receive an ATB purse supplement has been transferred to an owner different than that of whom TQHA has a record, the association shall cause the transfer fee of $15 to be deducted from the current owners' account prior to the issuance of a release for that race award. The association shall maintain an account into which all transfer fees will be placed pending monthly distribution of those funds to TQHA. Before deducting a transfer fee from a horse owner's account, the association shall ensure the proper written authorization has been obtained to comply with the Act, §6.08(l).]

[(4) Procedures for payment of Breeders and Stallion Owner Awards.]

[(A) The Act provides that the funds that are accrued to the awards fund will be paid 40% to owners, 40% to breeders and 20% to stallion owners. Also, 1.0% of all multiple two and multiple three wagers are paid to the Texas Bred program and are to be paid as awards. The procedure for payment of awards is as follows.]

(D) [(B)] TQHA shall maintain records of all ATB racing stock that earn awards. At the completion of a race period not to exceed four racing weeks, TQHA shall generate awards checks for the breeders and the stallion owners corresponding to those ATB racing stock by apportionment according to the percentages expressed in subparagraph (C) of this subsection [dividing the remaining funds, after payment of owners awards, in the ratio of 2:1, breeders to stallion owners]. The [breeders and stallion] awards for each race shall be divided 50% to first place, 30% to second place, and 20% to third place. Upon receipt of the ATB funds from the commission for the race period, TQHA shall disburse the [breeder and stallion owners] awards by U.S. mail.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903031
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

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Chapter 305. Licenses for Pari-mutuel Racing

Subchapter C. Racetrack Licenses

Division 1. General Provisions

16 TAC §305.68

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

The Texas Racing Commission proposes the repeal of §305.68 concerning Greyhound Racetrack Fees. All license fees are being consolidated into one rule section. Since this section will be made a part of new §309.8 this separate rule section is no longer necessary.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. As a result of this new rule, Ms. Marcus has determined that by reducing the fees, the amount paid will only cover the state's costs of regulating the industry and providing state racing officials at live race meetings. There should be a zero net fiscal implication to the state.

Ms. Marcus has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the associations will have reduced regulatory expenses through the lower fee rates. In addition, because all the fees will be consolidated in one section, the information will be easier to find and to understand the fee calculation. There will be an economic implication for racetrack owners required to comply with the proposal. The exact economic impact to racetrack owners will vary, depending on the amount of live racing and simulcasting each racetrack conducts. With one exception, the Commission anticipates a reduction in total fees to the racetracks of between 11% and 27%. The currently operating Class 3 racetrack will see a slight increase in its total fees. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas

Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §5.01, which authorizes the Commission to impose an annual fee for racetrack licensees; and §6.18, which authorizes the Commission to impose an annual fee for racetrack licenses.

The proposal implements Texas Civil Statutes, Article 179e.

§305.68. Greyhound Racetrack Fees.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903026
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

♦ ♦ ♦

16 TAC §305.70

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

The Texas Racing Commission proposes the repeal of §305.70 concerning Officials' Fees. All fees required to be paid by racing associations are being consolidated into one rule section. Since this section will be made a part of new §309.8 this separate rule section is no longer necessary.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. As a result of this new rule, Ms. Marcus has determined that by reducing the fees, the amount paid will only cover the state's costs of regulating the industry and providing state racing officials at live race meetings. There should be a zero net fiscal implication to the state.

Ms. Marcus has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the associations will have reduced regulatory expenses through the lower fee rates. In addition, because all the fees will be consolidated in one section, the information will be easier to find and to understand the fee calculation. There will be an economic implication for racetrack owners required to comply with the proposal. The exact economic impact to racetrack owners will vary, depending on the amount of live racing and simulcasting each racetrack conducts. With one exception, the Commission anticipates a reduction in total fees to the racetracks of between 11% and 27%. The currently operating Class 3 racetrack will see a slight increase in its total fees. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §3.07, which authorizes the Commission to establish an officials' fee by rule.

The proposal implements Texas Civil Statutes, Article 179e.

§305.70. Officials' Fees.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903027
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

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16 TAC §305.71

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

The Texas Racing Commission proposes the repeal of §305.71 concerning horse racetrack fees. All license fees are being consolidated into one rule section. Since this section will be made a part of new §309.8 this separate rule section is no longer necessary.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. As a result of this new rule, Ms. Marcus has determined that by reducing the fees, the amount paid will only cover the state's costs of regulating the industry and providing state racing officials at live race meetings. There should be a zero net fiscal implication to the state.

Ms. Marcus has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the associations will have reduced regulatory expenses through the lower fee rates. In addition, because all the fees will be consolidated in one section, the information will be easier to find and to understand the fee calculation. There will be an economic implication for racetrack owners required to comply with the proposal. The exact economic impact to racetrack owners will vary, depending on the amount of live racing and simulcasting each racetrack conducts. With one exception, the Commission anticipates a reduction in total fees to the racetracks of between 11% and 27%. The currently operating Class 3 racetrack will see a slight increase in its total fees. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §5.01, which authorizes the Commission to impose an annual fee for racetrack licensees; and §6.18, which authorizes the Commission to impose an annual fee for racetrack licenses.

The proposal implements Texas Civil Statutes, Article 179e.

§305.71. Horse Racetrack Fees.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903028
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

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Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Division 1. General Provisions

16 TAC §309.8

The Texas Racing Commission proposes new §309.8 concerning the racetrack license fees. The Commission recovers its costs to administer and enforce the Texas Racing Act and provide officials at live race meetings by charging the racing association various fees. The proposal consolidates all these fees currently found in several rule sections. In addition, the fees have been recalculated to ensure that the Commission collects only enough fees to cover its regulatory costs. This recalculation has led to a reduction in the fees.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. As a result of this new rule, Ms. Marcus has determined that by reducing the fees, the amount paid will only cover the state's costs of regulating the industry and providing state racing officials at live race meetings. There should be a zero net fiscal implication to the state.

Ms. Marcus has also determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the proposal will be that the associations will have reduced regulatory expenses through the lower fee rates. In addition, because all the fees will be consolidated in one section, the information will be easier to find and to understand the fee calculation. There will be an economic implication for racetrack owners required to comply with the proposal. The exact economic impact to racetrack owners will vary, depending on the amount of live racing and simulcasting each racetrack conducts. With one exception, the Commission anticipates a reduction in total fees to the racetracks of between 11% and 27%. The currently operating Class 3 racetrack will see a slight increase in its total fees. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to establish an officials' fee by rule; §5.01, which authorizes the Commission to impose an annual fee for racetrack licensees; §6.18, which authorizes the Commission to impose an annual fee for racetrack licenses; and §11.011, which authorizes the Commission to adopt rules to regulate simulcasting.

The proposal implements Texas Civil Statutes, Article 179e.

§309.8. Racetrack License Fees.

(a) Purpose of Fees. An association shall pay a license fee to the Commission to pay the Commission's costs to administer and enforce the Act and provide racing officials for the associations live races

(b) Live Racing Fee. An association shall pay a live racing fee for each live race day conducted by the association. The fee is due to the Commission no later than 10:00 a.m. of the day following the race day. The live racing fee for a greyhound racing association is $550 per performance. The live racing fee for a horse racing association is:

(1) for a Class 1 or Class 2 racetrack, $2075 per day; and

(2) for a Class 3 or Class 4 racetrack, $650 per day.

(c) Inactive License Fee. An association that is licensed but is not conducting live racing or simulcasting shall pay an inactive license fee. The fee is due to the Commission on September 1 of each year. The inactive license fee for a greyhound racing association is $25,000. The inactive license fee for a horse racing association is:

(1) for a Class 1 racetrack, $25,000;

(2) for a Class 2 racetrack, $10,000;

(3) for a Class 3 racetrack, $3,500; and

(4) for a Class 4 racetrack, $1,250.

(d) Simulcast Fee. An association shall pay a simulcast fee for each day on which the association offers a simulcast race for wagering. The fee is due to the Commission no later than 10:00 a.m. of the day following the day on which the simulcast is offered. The simulcast fee is $245 per day.

(e) Adjustment of Fees.

(1) After the end of the Commission's fiscal year, the executive secretary shall determine whether the total amount of the fees paid by all associations, together with the revenues received by the Commission from all other sources, excluding occupational license fees, is sufficient to pay the Commission's costs to administer and enforce the Act and to provide racing officials for the associations' live races.

(2) If the executive secretary determines the total revenue from those sources is insufficient to pay those costs, the executive secretary shall recommend a revised fee structure to the Commission that will generate the necessary revenue.

(3) If the executive secretary determines the total revenue from those sources exceeds the amount needed to pay those costs, the executive secretary may order a moratorium on any or all license fees to any or all of the associations. Before entering a moratorium order, the executive secretary shall develop a formula for providing the moratorium in an equitable manner among the associations. In developing the formula, the executive secretary shall consider the amount of excess revenue received by the Commission, the source of the revenue, the Commission's costs associated with regulating each association, the Commission's projected receipts for the next fiscal year, and the Commission's projected expenses during the next fiscal year.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903025
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

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Chapter 321. Pari-mutuel Wagering

Subchapter C. Simulcast Wagering

Division 2. Simulcasting at Horse Racetracks

16 TAC §321.231

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

The Texas Racing Commission proposes the repeal of §321.231 concerning simulcast fees for horse racing associations. All fees that horse racing associations are required to pay are being consolidated into one rule section. Since this section will be made a part of new §309.8 this separate rule section is no longer necessary.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. As a result of this new rule, Ms. Marcus has determined that by reducing the fees, the amount paid will only cover the state's costs of regulating the industry and providing state racing officials at live race meetings. There should be a zero net fiscal implication to the state.

Ms. Marcus has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the associations will have reduced regulatory expenses through the lower fee rates. In addition, because all the fees will be consolidated in one section, the information will be easier to find and to understand the fee calculation. There will be an economic implication for racetrack owners required to comply with the proposal. The exact economic impact to racetrack owners will vary, depending on the amount of live racing and simulcasting each racetrack conducts. With one exception, the Commission anticipates a reduction in total fees to the racetracks of between 11% and 27%. The currently operating Class 3 racetrack will see a slight increase in its total fees. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.18, which authorizes the Commission to impose an annual fee for racetrack licenses; and §11.011, which authorizes the Commission to adopt rules to regulate simulcasting.

The proposal implements Texas Civil Statutes, Article 179e.

§321.231. Simulcasting Fee.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903029
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

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Division 3. Simulcasting at Greyhound Racetracks

16 TAC §321.251

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

The Texas Racing Commission proposes the repeal of §321.251 concerning simulcast fees for greyhound racing associations. All fees that greyhound license association are required to pay are being consolidated into one rule section. Since this section will be made a part of new §309.8§ this separate rule section is no longer necessary.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for local government as a result of enforcing the proposal. As a result of this new rule, Ms. Marcus has determined that by reducing the fees, the amount paid will only cover the state's costs of regulating the industry and providing state racing officials at live race meetings. There should be a zero net fiscal implication to the state.

Ms. Marcus has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the associations will have reduced regulatory expenses through the lower fee rates. In addition, because all the fees will be consolidated in one section, the information will be easier to find and to understand the fee calculation. There will be an economic implication for racetrack owners required to comply with the proposal. The exact economic impact to racetrack owners will vary, depending on the amount of live racing and simulcasting each racetrack conducts. With one exception, the Commission anticipates a reduction in total fees to the racetracks of between 11% and 27%. The currently operating Class 3 racetrack will see a slight increase in its total fees. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 15, 1999, to Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas, 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.18, which authorizes the Commission to impose an annual fee for racetrack licenses; and §11.011, which authorizes the Commission to adopt rules to regulate simulcasting.

The proposal implements Texas Civil Statutes, Article 179e.

§321.251. Simulcasting Fee.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903030
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Proposed date of adoption: July 27, 1999
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 1. Agency Administration

Subchapter A. General Provisions

19 TAC §§1.1, 1.5, 1.6, 1.8

The Texas Higher Education Coordinating Board proposes amendments to §§1.1, 1.5, 1.6, and 1.8 concerning Agency Administration (General Provisions). The proposed amendments are being made as a result of a rule review in accordance with Section 167 of the General Appropriations Act. Amendments to §1.1 and §1.5 were made for clarification. Amendments to §1.6 were made to clarify that an advisory committee is automatically abolished on the fourth anniversary of the date of its creation and to provide the Commissioner to report any new committees at each Board meeting rather than provide written statements to the Board. Amendments to §1.8 regarding minority and female-owned businesses have been made to bring it up to date with Chapter 2161 of the Texas Government Code.

James McWhorter, Assistant Commissioner for Administration has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. McWhorter also has determined that for the first five years the rule is in effect the public benefit will be clarification regarding advisory committees and policies and updating the section on minority and female-owned businesses. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 61.027, and Texas Government Code, Section 2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (General Provisions).

There were no other sections or articles affected by the proposed amendments.

§1.1. Dates for Regular Quarterly Meetings of the Board.

Regular quarterly meetings of the Coordinating Board, hereinafter referred to as the Board, will be held in [~~on the last Friday of~~] January, April, July, and October, with the understanding that the chair [~~chairman~~] may at a regular quarterly meeting, alter the date of a subsequent meeting.

§1.5. Coordinating Board Committees.

(a) The chair [~~chairman~~] of the Board shall appoint committees from the Board's membership as [~~he deems~~] appropriate to conduct the business of the Coordinating Board and shall designate the chair [~~chairman~~] and vice chair [~~chairman~~] of each committee.

(b) A committee meeting [~~Committee meetings shall be held on the day before each Coordinating Board meeting to consider such agenda items as may be designated by the Chairman of the Board and the Commissioner, but special meetings of a committee~~] may be called by the committee chair [~~its chairman~~]. Each committee meeting shall be conducted by the designated committee chair [~~chairman~~], but each member of the Board may participate in all committee meetings and may vote on any committee actions.

(c) Committees will adopt recommendations on the agenda items for consideration by the Coordinating Board [~~the following day~~]. In the event a decision cannot be reached by a committee on any agenda item, the Coordinating Board will consider that agenda item without a recommendation from the committee.

§1.6. Advisory Committees.

(a) (No change.)

(b) The use of advisory committees by the Board or by the Commissioner shall be in compliance with the provisions of Texas Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33, Title 110A and the General Appropriations Act~~] regarding the composition and duration of committees, the reimbursement of

committee member's expenses, the evaluation of committees, and the reporting to the Legislative Budget Board.

(c) An advisory committee is automatically abolished on the fourth anniversary of the date of its creation unless it has a specific duration prescribed by statute. A written statement shall be prepared by the Commissioner or his designee for each advisory committee setting forth the purpose of the committee, the task of the committee, the manner in which the committee will report to the Board or the Commissioner, the date on which the committee is created, and the date on which the committee will automatically be abolished. The written statements shall be maintained on file in the Coordinating Board offices. At each quarterly Board meeting the Commissioner shall report [~~provide~~] to the Board [~~the written statements on~~] any advisory committees created since the previous quarterly meeting.

§1.8. Contracts with Historically Underutilized Businesses (HUBs) [~~Minority and Female-Owned Small Business Assistance~~].

(a) A Historically Underutilized Business (HUB) is a business that meets the definition of Historically Underutilized Business as defined in the rules of the General Services Commission.

(b) The Board shall make a good faith effort to utilize HUBs in contracts for construction, services, including professional and consulting services, and commodities purchases.

(c) The Board shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts awarded by the Board in accordance with the percentage goals established by the General Services Commission. [~~The Texas Higher Education Coordinating Board will be part of the State's program to increase contracting and purchasing opportunities for small, minority and female-owned businesses through such efforts as:~~]

[~~(1) maintaining an updated list of minority vendors through communication with the Texas Department of Commerce, Small Business Division;~~]

[~~(2) consulting Commerce's Texas Small Business Directory Listing for purchases requiring only one bid;~~]

[~~(3) ensuring, whenever possible, that one or more minority vendors are included for purchases requiring three bids; and~~]

[~~(4) using the Texas Register when proposing use of a private consultant in excess of $10,000 as directed by Texas Civil Statutes, Article 6252-11c.~~]

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902850
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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19 TAC §1.10, §1.11

The Texas Higher Education Coordinating Board proposes new §1.10 and §1.11 concerning Agency Administration (General Provisions). The new sections of the rules are being made as a result of a rule review in accordance with Section 167 of the General Appropriations Act. New §1.10 is being proposed to provide policies and procedures for administering the Open Records Act. New §1.11 is being proposed to provide protest procedures for resolving vendor protests relating to purchasing as required by §2155.076 of the Texas Government Code.

James McWhorter, Assistant Commissioner for Administration has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. McWhorter also has determined that for the first five years the rule is in effect the public benefit will be clarification regarding the Open Records Act and procedures will be established regarding vendor protests relating to purchasing. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, Section 61.027, and Texas Government Code, Section 2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (General Provisions).

There were no other sections or articles affected by the proposed new rules.

§1.10. Administration of the Open Records Act.

(a) The agency requires that all public information requests be in writing unless there are special circumstances. The Commissioner or his designee may determine whether a verbal request may be accepted.

(b) The person handling the request for public information shall review the request and determine what records are requested; who is requesting the records; whether inspection or actual copies of the records are requested; and whether the requested records are open, confidential, or partially open and partially confidential. The Office of General Counsel shall provide assistance in making these determinations.

(c) To the extent possible, the agency shall attempt to accommodate a requestor by providing information in the format requested. For example, if a requestor asks that information be provided on a diskette and the requested information is electronically stored, the agency will provide the information on diskette. The agency is not required to acquire software, hardware, or programming capabilities that it does not already possess to accommodate a particular kind of request except in accordance with the Open Records Act, (Texas Government Code, Section 552.231).

(d) Provision of a copy of public information in the requested medium must not violate the terms of any copyright agreement between the agency and a third party.

(e) Charges for public records shall be made in accordance with the rates established in the rules of the General Services Commission with the following exceptions:

(1) The agency, at its discretion, may provide public information without charge or at a reduced charge if the waiver or reduction of the charge is in the public interest, because providing the copies primarily benefits the general public, or if the cost for the collection of a charge will exceed the amount of the charge.

(2) The agency may set the price for publications it publishes for public dissemination or it may disseminate them free of charge. This rule does not limit the costs of agency publications.

(f) The person handling the request for public information must have the records ready for inspection or copies duplicated within 10 business days after the date the agency received the request. If the records cannot be produced for inspection or duplication within 10 business days after the date the agency received the request, the agency shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(1) Prior to the end of the 10 business days or the set date and hour, if applicable, the agency shall notify the requestor of the estimated costs if the costs will be over $100.

(2) The agency may require a cash deposit on requests for copies of public information which are estimated to exceed $100.

(3) All efforts shall be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge.

(4) Full disclosure shall be made to the requesting party as to how the charges were calculated.

(5) All charges for public information must be paid to the agency before the public information is actually provided to the requestor by inspection or duplication. Failure of the requestor to pay the costs of the copies within 30 days of notification of the estimated costs, or a longer period of time, if granted by the agency, shall be considered a withdrawal of the request for information.

(6) If a request for information requires programming or manipulation of data pursuant to Texas Government Code, Section 552.231, the time frame in this subsection shall not apply until the requestor files the written statement described in the Texas Government Code, Section 552.231(d)(1) or (2). Once the written statement is filed, the agency shall comply with this subsection.

§1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Director of Business Services (the director). Such protests must be in writing and received in the director's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the other interested parties. For the purposes of this section, "interested parties" means all vendors who have submitted bids or proposals for the contract involved.

(b) In the event of a timely protest or appeal under this section, the Texas Higher Education Coordinating Board shall not proceed further with the solicitation or with the award of the contract unless the director makes a written determination that the award of contract is necessary to protect substantial interests of the state.

(c) A formal protest must contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the other identifiable interested parties.

(d) The director shall have the authority to settle and resolve the dispute concerning the solicitation or award of a contract. The director may solicit written responses to the protest from other interested parties. The director may consult with the General Services Commission and the office of the General Counsel of the Texas Higher Education Coordinating Board concerning the dispute.

(e) If the protest is not resolved by mutual agreement, the director shall issue a written determination on the protest.

(1) If the director determines that no violation of rules or statutes has occurred, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the director determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the director determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(f) The director's determination on a protest may be appealed by an interested party to the Assistant Commissioner for Administration. An appeal of the director's determination must be in writing and must be received in the Assistant Commissioner for Administration's office no later than 10 working days after the date of the director's determination. The appeal shall be limited to review of the director's determination. Copies of the appeal must be mailed or delivered by the appealing party to the other interested parties and must contain an affidavit that such copies have been provided.

(g) The Assistant Commissioner for Administration shall review the protest, director's determination, and the appeal, and issue a written decision on the protest.

(h) Unless good cause for delay is shown or the Assistant Commissioner for Administration determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(i) A decision issued in writing by the Assistant Commissioner for Administration shall be the final administrative action of the Texas Higher Education Coordinating Board.

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902851
James McWhorter
Assistant Commissioner for Administration

Texas Higher Education Coordinating Board
Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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Subchapter B. Hearings and Appeals

19 TAC §§1.21-1.41

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

The Texas Higher Education Coordinating Board proposes the repeal of §§1.21 - 1.41 concerning Agency Administration (Hearings and Appeals). The rules are being repealed and rewritten as a result of a rule review in accordance with Section 167 of the General Appropriations Act. The repealed rules will reflect the Board's current procedures, including the use of the State Office of Hearings and Appeals.

James McWhorter, Assistant Commissioner for Administration has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. McWhorter also has determined that for the first five years the rule is in effect the public benefit will be clarification regarding the Board's current procedures regarding hearings and appeals. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the repealed rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repealed rules are proposed under Texas Education Code, Section 61.027, and Texas Government Code, Section 2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Hearings and Appeals).

There were no other sections or articles affected by the proposed repeals.

§1.21. Definitions.

§1.22. Scope and Purpose.

§1.23. Hearing Officer.

§1.24. Classification of Parties.

§1.25. Appearance.

§1.26. Petition for Hearing.

§1.27. Answers to Petition for Hearing.

§1.28. Notice of Hearing.

§1.29. Classification of Pleadings.

§1.30. Form and Content of Documents.

§1.31. Filing of Documents.

§1.32. Service of Pleadings.

§1.33. Prehearing Conference.

§1.34. Motions for Continuance.

§1.35. Dismissal or Withdrawal of an Appeal.

§1.36. Procedure at a Hearing.

§1.37. Hearing Officer's Report.

§1.38. Filing of Exceptions to the Hearing Officer's Report.

§1.39. Board Meeting to Consider Hearing Officer's Report.

§1.40. Evidence Before the Board.

§1.41. Motion for Rehearing.

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902852
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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19 TAC §§1.21-1.29

The Texas Higher Education Coordinating Board proposes new §§1.21 - 1.29 concerning Agency Administration (Hearings and Appeals). The new rules are being proposed as a result of a rule review in accordance with Section 167 of the General Appropriations Act. The new rules will reflect the Board's current procedures, including the use of the State Office of Hearings and Appeals.

James McWhorter, Assistant Commissioner for Administration has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. McWhorter also has determined that for the first five years the rule is in effect the public benefit will be clarification regarding the Board's current procedures regarding hearings and appeals. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, Section 61.027, and Texas Government Code, Section 2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Hearings and Appeals).

There were no other sections or articles affected by the proposed repeals.

§1.21. Definitions.

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

(1) Administrative Law Judge–The person appointed by the Chief Administrative Law Judge of the State Office of Hearings

and Appeals (SOAH) under Section 2003.041 of the Texas Government Code.

(2) Board–The Texas Higher Education Coordinating Board.

(3) Commissioner–The Commissioner of Higher Education.

(4) Contested Case–A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(5) Party–Each person or agency named or admitted as a party to a hearing.

§1.22. Scope and Purpose.

(a) This subchapter shall govern all proceedings on contested cases authorized by statute or Coordinating Board rules.

(b) The purpose of this subchapter is to incorporate by reference for all purposes the provisions of the Administrative Procedure Act (Chapter 2001 of the Texas Government Code) and 1 TAC Chapter 155 and to set forth the procedure for the administration of all appeals before the board.

§1.23. State Office of Administrative Hearings.

(a) Formal contested case hearings shall be conducted for the board by the State Office of Administrative Hearings (SOAH), as authorized by Chapters 2001 and 2003.021 of the Texas Government Code. Hearings shall be conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001), the rules and regulations of SOAH (1 TAC Chapter 155), and the rules and regulations of the board.

(b) An administrative law judge (Judge) assigned by SOAH shall perform the duties and responsibilities as described in this chapter.

§1.24. Classification of Parties.

(a) Designations of parties are as follows:

(1) petitioner the party requesting a hearing.

(2) respondent the party named as such by the petitioners.

(3) intervenor a person who shows an administratively cognizable or justifiable interest in the appeal.

(b) Regardless of errors as to designation in the pleadings, parties shall be accorded their true status in the appeal.

§1.25. Petition for Hearing.

(a) The Board, on its own motion or on the petition of a party, may request a hearing. A petition shall be filed with the commissioner within 45 calendar days after the decision, order, ruling, or failure to act complained of is rendered.

(b) A petition for hearing shall contain the following:

(1) A description of the decision, order, ruling, or failure to act complained of;

(2) the date of the decision, order, ruling, or failure to act;

(3) a statement of the facts of which petitioner is aware of which petitioner believes to be true, which would lead to a reasonable conclusion that petitioner is entitled to the relief sought;

(4) a statement of the reason the petitioner is entitled to have the board take the action; and

(5) a description of the action petitioner wants the board to take on petitioner's behalf.

(c) Nothing in this section requires that petitioner plead all evidence relied upon. However, all issues relied upon by petitioner must be raised in the petition, and petitioner will not be allowed the opportunity to present evidence on issues not raised in the petition for hearing.

(d) The petition for hearing shall be filed with the commissioner by personal delivery or by certified mail. A certificate evidencing service shall be included in the petition for hearing.

§1.26. Notice of Hearing.

(a) All parties to the hearing shall be mailed written notice at least 15 calendar days before the date set for the hearing. The notice shall include:

(1) a statement of 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 section of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(b) Service may be made by sending the notice to the party's last known address as shown by the board's records. If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001), the hearing may proceed in that party's absence and a default judgment may be entered.

§1.27. Exceptions to Proposal for Decision.

(a) Pursuant to Chapter 2001 of the Texas Government Code, every party has the right to file exceptions to the Proposal for Decision issued by the Administrative Law Judge and to present a brief with respect to the exceptions.

(b) All exceptions must be filed within 10 working days of the Proposal for Decision, with replies to be filed within ten working days of the filing of exceptions.

§1.28. Board Meeting to Consider Proposal for Decision.

(a) A board meeting shall be held within 60 days after the hearing is finally closed to consider the Proposal of Decision and to issue a final decision or order.

(b) At least 15 days notice shall be given by the commissioner to all parties to a hearing of the time and place of the board meeting at which the Proposal for Decision will be considered by the board.

§1.29. Motion for Rehearing.

A motion for rehearing shall be filed not later than the 20th day on which the party or the party's attorney of record is notified of the final decision or order that may become final under Texas Government Code, Section 2001.144. The procedures for a Motion for Rehearing shall be those procedures under Texas Government Code, Section 2001.146.

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902853
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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Subchapter C. Administration of the Open Records Act

19 TAC §§1.71-1.75

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

The Texas Higher Education Coordinating Board proposes the repeal of §§1.71 - 1.75 concerning Agency Administration (Administration of the Open Records Act). The rules are being repealed and rewritten as a result of a rule review in accordance with Section 167 of the General Appropriations Act. The repealed rules will reflect the Board's current procedures, including the use of the State Office of Hearings and Appeals.

James McWhorter, Assistant Commissioner for Administration has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. McWhorter also has determined that for the first five years the rule is in effect the public benefit will be clarification regarding the Board's current procedures regarding hearings and appeals. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the repealed rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repealed rules are proposed under Texas Education Code, Section 61.027, and Texas Government Code, Section 2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Administration of the Open Records Act).

There were no other sections or articles affected by the proposed repeals.

§1.71. Custodian of Public Records.

§1.72. Availability of Records.

§1.73. Application for Public Information.

§1.74. Compliance with Request.

§1.75. Cost of Copies of Public Records.

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902854
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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Chapter 21. Student Services

Subchapter B. Determining Residence Status

19 TAC §§21.22, 21.23, 21.26, 21.28, 21.30, 21.31, 21.37, 21.41

The Texas Higher Education Coordinating Board proposes amendments to §§21.22, 21.23, 21.26, 21.28, 21.30, 21.31, 21.37, and 21.41 concerning Determining Residence Status. The proposed amendments to the rules are being made to clarify the criteria used in making decisions about a student's residency status.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be there will be more clarification in the criteria used in making decisions about a students residency status. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 54.053 and Section 130.001(b), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

There were no other sections or articles affected by the proposed amendments.

§21.22. Residence of Independent Individuals 18 Years of Age or Older.

(a) Establishment of residence. Independent individuals 18 years of age or over who move into the state and who are gainfully employed within the state for a period of 12 months prior to enrolling in an institution of higher education are entitled to classification as residents. An individual who is self-employed or employed as a homemaker within the home may be considered gainfully employed for tuition purposes. If such 12 months residence, however, can be shown not to have been for the purpose of establishing residence in the state but to have been for some other purpose, the individuals are not entitled to be classified as residents. Students enrolling in an institution of higher education prior to having resided in the state for 12 months immediately preceding time of enrollment shall be classified as nonresidents for tuition purposes.

(b) Establishment of residence for individuals 18 years of age or older whose parents or court-appointed legal guardians no longer claim them as dependents for federal tax purposes. If the parents or legal guardians of an individual 18 years of age or older move out of state and continue to claim the individual as a dependent for tax purposes, the individual continues to have the residence of the parents or guardians. If the individual remains in Texas, he/she may claim residency for tuition purposes as an independent student once twelve months have passed from the end of the last calendar year in which the parents or guardians claimed the student as a dependent.

(c) Retention of residence. If the parents of an individual 18 years of age or older move out of the state and immediately cease claiming the student as a dependent for federal tax purposes, the individual may retain his/her claim to Texas residency for tuition purposes if he/she remains in Texas and begins filing federal income tax returns as an independent student.

§21.23. Reclassification.

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

(e) All of these facts are weighed in the light of the fact that a student's residence while in school is primarily for the purpose of education and not to establish residence, and that decisions of an individual as to residence are generally made after the completion of an education and not before. A person who moves to Texas as the spouse of an individual transferred here by the military (see §21.28 of this title (relating to Military Personnel, Veterans and Commissioned Officers of the Public Health Service)), through the state's plan for economic development and diversification (see §21.26 of this title (relating to Economic Development and Diversification Employees)) or as a part of a household moved to the state to accept employment offered in Texas, is considered not to have come to Texas for the purpose of going to school. Therefore, once he or she has physically resided in Texas for 12 consecutive months, even though the student may have been enrolled full-time, the person may be considered a resident if he or she has otherwise established a domicile in the state.

§21.26. Economic Development and Diversification Employees.

(a) An individual eligible to establish a domicile in Texas, who has come from outside Texas and registered in an educational institution before having resided in Texas for a 12-month period immediately preceding the date of registration, and his dependents are entitled to pay the tuition fee and other fees required of Texas residents if the individual has located in Texas as an employee of a business or organization within five years of the date that such business or organization became established in this state as part of the program of state economic development and diversification authorized by the constitution and laws of this state and if the individual files with the Texas institution of higher education at which he registers a letter of intent to establish residency in Texas.

(b) If the spouse or dependent child of an individual transferred to Texas under conditions qualifying the family for the Economic Development and Diversification waiver of nonresident tuition enrolls in a Texas institution of higher education prior to the physical relocation of the family, the spouse or child may receive the waiver if he/she provides the institution proof from the employer of their intent and expectation of the family's relocation to Texas prior to the end of the semester in which the waiver is granted. Continuation of the waiver for a second term depends on written proof from the employer that the family has moved to the state as expected.

§21.28. Military Personnel, Veterans and Commissioned Officers of the Public Health Service.

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

(d) Establishment of a domicile in Texas requires 12 consecutive months assignment to the state, during which the [~~physical presence in the state. The~~] military member must simultaneously file the appropriate documentation to change his or her military records to reflect Texas as the state of legal residence. Other actions may be considered in determining whether a domicile has been established in Texas. If four of the following actions have been taken by the military member at least 12 consecutive months immediately prior to the date of enrollment and continue to be in effect, the member has established a domicile in Texas.

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

(e)-(g) (No change.)

(h) Waiver of nonresident tuition for [~~Residence classification of~~] veterans or commissioned Public Health Service Officers upon separation from military or Public Health Service. A former member of the Armed Forces of the United States or the former member's spouse or dependent child is entitled to pay the tuition fees and other fees or charges provided for Texas residents for any term or semester at a state institution of higher education that begins before the first anniversary of the member's separation from the Armed Forces if the former member:

(1) has retired or been honorably discharged from the Armed Forces; and

(2) has complied with the requirements of subsection (f)(4) of this section.

(i)-(m) (No change.)

§21.30. Students Employed as Teaching or Research Assistants.

Students employed as teaching or research assistants at least half time by any public institution of higher education in a degree program-related position with an effective date of employment on or before the official census date of the relevant term(s), may pay the same tuition while attending any public institution of higher education [~~the employing institution~~] as a resident of Texas for themselves, their spouses, and their dependent children, regardless of the length of residence in the state. The institution which employs the students shall determine whether or not the students' jobs relate to their degree programs. This provision applies to eligible teaching assistants, research assistants and their dependents no matter which Texas public institution of higher education they may attend. It is the intent of this rule that employment be for the duration of the period of enrollment for which a waiver is awarded.

§21.31. Competitive Scholarship Recipients.

Certain students receiving competitive scholarships may be exempted from paying nonresident tuition rates.

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

(5) A nonresident student who is simultaneously enrolled in two or more institutions of higher education under a program offered jointly by the institutions under a partnership agreement and who pays the fees and charges required of Texas residents at one of the institutions as provided by Section 54.064 because the student holds a competitive scholarship is entitled to pay the fees and charges required of Texas residents at each public institution of higher education in which the student is simultaneously enrolled under the program.

§21.37. Junior College Tuition Waivers for Ad Valorem Taxpayers.

(a) The governing board of a public junior college district may allow a person who resides outside the district and who owns property subject to ad valorem taxation by the district, or a dependent of the person, to pay tuition at the rate applicable to a student who resides in the district.

(b) The governing board of a public junior college district may allow a person who resides outside the district and in the taxing district of a contiguous public junior college district to pay tuition and fees at the rate applicable to a student who resides in the district.

(c) The governing board of a public junior college district may allow a person who resides outside the district to pay tuition and fees at a rate less than the rate applicable to other persons residing outside the district, but not less than the rate applicable to a student who resides in the district, if the person:

(1) resides within the service area of the district;

(2) does not reside in an independent school district that meets the criteria of the coordinating board for the establishment of a junior college district under Section 130.013; and

(3) demonstrates financial need in accordance with rules adopted by the Texas Higher Education Coordinating Board. [~~The governing board of a public junior college district may waive the difference in the rate of tuition for nonresident and resident students for individuals, or their dependents, who own property which is subject to ad valorem taxation by the junior college district. Aliens not domiciled in the United States are not eligible for waiver of the nonresident tuition rate due to payment of ad valorem taxes. Persons, or their dependents, applying for such waiver shall verify property ownership by presentation of an ad valorem tax statement or receipt issued by the tax office of the junior college district; or by presentation of a deed, property closing statement, or other appropriate evidence of ownership of property which is subject to ad valorem taxation by the junior college district. If a sworn affidavit is accepted at the time of enrollment, verification of the student as an ad valorem taxpayer must be provided by the end of the semester of enrollment.~~]

§21.41. Students Enrolled in Radiological Sciences.

United States military [~~Air Force~~] personnel stationed outside the State of Texas who are enrolled in the bachelor of science or master of science degree program in radiological sciences at Midwestern State University by instructional telecommunication will be entitled to pay tuition fees and other fees or charges provided for Texas residents if they began the program while stationed at a military [~~an Air Force~~] base in Texas.

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902856
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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Subchapter II. Educational Aide Exemption Program

19 TAC §21.1083

The Texas Higher Education Coordinating Board proposes amendments to §21.1083 concerning Educational Aide Exemption Program (Definitions). The proposed amendments will increase the adjusted gross income amounts for married independent students and the family income for dependent students from $35,000 to $50,000. The adjusted gross income for a single independent student would remain at $25,000. The changes are being made to improve the equity between the married and single income levels by making more married aides eligible for the exemption.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rule is in effect the fiscal impact of these changes would result in a cost of approximately $30,000 a year for the state.

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that more married students will be eligible for the educational aide exemption program. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 54.214(e), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Educational Aide Exemption Program (Definitions).

There were no other sections or articles affected by the proposed amendments.

§21.1083. Definitions.

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

(1) Board – The Texas Higher Education Coordinating Board.

(2) Commissioner – The commissioner of higher education, the chief executive officer of the board.

(3) Cost of Attendance – A board-approved estimate of the expenses incurred by a typical financial aid student in attending college. Includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(4) Financial need – Based on the federal formula, the cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is entitled, or based on adjusted gross annual income for the most recent tax year as follows:

(A) single independent students must have an adjusted gross income of $25,000 or less,

(B) married independent students must have a combined gross income of $50,000 [~~$35,000~~] or less, and

(C) dependent students must have an adjusted gross income for the family of $50,000 [~~$35,000~~] or less.

(5) Program officer – The individual on a college campus who is designated by the institution's Chief Executive Officer to represent a program described in this subchapter on that campus. Unless otherwise designated by the Chief Executive Officer, the Director of Student Financial Aid shall serve as program officer.

(6) Resident of Texas – A resident of the State of Texas as determined in accordance with Subchapter B of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included.

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

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902855
James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: July 23, 1999
For further information, please call: (512) 483-6162

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TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 75. Rules of Practice

22 TAC §75.1

The Texas Board of Chiropractic Examiners proposes an amendment to §75.1, relating to grossly unprofessional conduct. Section 75.1 currently defines grossly unprofessional conduct to include sexual misconduct. Amendments to §75.1 are made for the purpose of clarifying the types of conduct which the board considers sexual misconduct. The amendments provide specific descriptions of conduct which are considered to be "sexual improprieties" or "sexual intimacies," both of which are sexual misconduct. The prohibited conduct enumerated in the proposed amendments are not exclusive lists. Other types of conduct, based on the totality of circumstances, could also be considered sexual misconduct in violation of this rule and the Chiropractic Act, Texas Civil Statutes, Article 4512b §14a.5. The proposed amendments also provide a defense to the offense of sexual misconduct if the conduct occurred after the patient client relationship and the emotional dependency of the patient ended. The proposed amendments expressly exclude consent, conduct off-premises or outside of treatment sessions as defenses. The proposed amendments are modeled after rules of other occupational licensing agencies, including the board of examiners of psychologists (22 TAC §465.33 (relating to Sexual Intimacies and Sexual Harassment)) and the board of examiners of professional counselors (22 TAC §681.33 (relating to Sexual Misconduct)).

Cindy Palmer, Financial Officer, Texas Board of Chiropractic Examiners, has determined that for the first five-year period the section as amended is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as amended.

Dr. Carolyn Davis-Williams, D.C., Chair, Enforcement Committee, has determined that for each year of the first five years, the section as amended is in effect, the public benefit anticipated as a result of enforcing and administering the section as amended will be better notice to the public and licensees of the types of conduct which may subject a licensee to disciplinary action. A licensee is, therefore, forewarned that certain types of conduct are prohibited and should be guided in his or her relationships with patients accordingly. Likewise, the public has a standard of conduct by which to gauge a licensee's actions. It is also anticipated that the proposed definitions will provide better guidance to the enforcement committee in carrying out its disciplinary responsibilities. There are no probable economic costs to persons required to comply with the rule as proposed.

Comments may be submitted to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4512b, §§4(c), 4a, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, and §8b(d), which the board interprets as requiring the board to identify the key factors for the competent performance by a licensee of the licensee's professional duties.

The following are the statutes, articles, or codes affected by the proposed amendment:

§75.1 – Texas Civil Statutes, Articles 4512b, §§4(c), 4a, 8b(d), 14a

§75.1. Grossly Unprofessional Conduct.

(a) Grossly unprofessional conduct when applied to a licensee or chiropractic facility includes, but is not limited to the following:

(1) maintaining unsanitary or unsafe equipment;

(2) failing to use the word "chiropractor," "Doctor, D.C.," or "Doctor of Chiropractic, D.C." in all advertising medium, including signs and letterheads;

(3) engaging in sexual misconduct with a patient within the chiropractic/patient relationship;

(4) exploiting patients through the fraudulent use of chiropractic services which result in financial gain for a licensee or a third party. The rendering of chiropractic services becomes fraudulent when the services rendered or goods or appliances sold by a chiropractor to a patient are clearly excessive to the justified needs of the patient as determined by accepted standards of the chiropractic profession;

(5) submitting a claim for chiropractic services, goods or appliances to a patient or a third-party payer which contains charges for services not actually rendered or goods or appliances not actually sold;

(6) failing to disclose, upon request by a patient or his or her duly authorized representative, the full amount charged for any service rendered or goods supplied.

(b) Sexual misconduct as used in subsection (a)(3) of this section means:

(1) sexual impropriety which may include:

(A) any behavior, gestures, or expressions which may reasonably be interpreted as in inappropriately seductive or sexually demeaning;

(B) inappropriate sexual comments about and to a patient or former patient including sexual comments about an individual's body;

(C) requesting unnecessary details of sexual history or sexual likes and dislikes;

(D) making a request to date;

(E) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(F) kissing or fondling of a sexual nature; or

(G) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature; or

(2) sexual intimacy which may include engaging in any conduct that is sexual or may be reasonably interpreted as sexual, such as:

(A) sexual intercourse;

(B) genital contact;

(C) oral to genital contact;

(D) genital to anal contact;

(E) oral to anal contact;

(F) oral to oral contact;

(G) touching breasts or genitals;

(H) encouraging another to masturbate in the presence of the licensee;

(I) masturbation by the licensee when another is present; or

(J) any bodily exposure of normally covered body parts.

(c) It is a defense to a disciplinary action under subsection (a)(3) of this section if the patient was no longer emotionally dependent on the licensee when the sexual impropriety or intimacy began, and the licensee terminated his or her professional relationship with the person more than six months before the date the sexual impropriety or intimacy occurred.

(d) It is not a defense under subsection (a)(3) of this section if the sexual impropriety or intimacy with the patient occurred:

(1) with the consent of the patient;

(2) outside professional treatment sessions; or

(3) off the premises regularly used by the licensee for the professional treatment of patients.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903034
Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6709

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22 TAC §75.7

The Texas Board of Chiropractic Examiners proposes an amendment to §75.7(a), relating to board fees. The current fee schedule in §75.7(a) is amended to change the application fee for registering chiropractic radiologic technologists from a $35 yearly fee to $70 every two years. This change is being made in connection with a separate rulemaking published in the May 28, 1999, issue of the *Texas Register* and which proposes amendments to §78.1 and §78.2, changing registration and continuing education compliance to a biennial basis instead of yearly, beginning January 1, 2000. For the remainder of 1999, registration, renewal, related fees and continuing education reporting will remain on an annual basis.

Cindy Palmer, Financial Officer, Texas Board of Chiropractic Examiners, has determined that for the first five-year period the section as amended is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as amended.

Dr. Cynthia Vaughn, D.C., Chair, Technical Standards Committee, has determined that for each year of the first five years, the section, as amended in connection with the proposed changes to §78.1 and §78.2, is in effect, the public benefit anticipated as a result of enforcing and administering the section as amended will be greater uniformity and consistency with the Texas Department of Health's (TDH) registration and continuing education program for radiological technicians. With the same deadlines and reporting periods as TDH, it is anticipated that CRT's will be provided a greater choice of seminars, in number and subject matter, which in turn will provide better training opportunities which will inure to the benefit of the public. There are no probable economic costs to persons required to comply with the rule as proposed. The annual cost of registration will remain the same even though it will be collected on a biennial basis.

Comments may be submitted to Joyce Kershner, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4512b, §§4(c), 4a, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, Texas Civil Statutes, Article 4512m §2.08(c), which the board interprets as authorizing it to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering this CRT program, and Article 4512b §11, which the board interprets as authorizing it to adopt rules to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Chiropractic Act, including this program.

The following are the statutes, articles, or codes affected by the proposed amendment:

§75.7–Texas Civil Statutes, Articles 4512b, §§4(c), 4a, 8b, 11; 4512m §2.08(c)

§75.7. Fees and Charges for Public Information.

(a) Current fees required by the board are listed in the following fee schedule table:
Figure: 22 TAC §75.7(a)

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

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903035
Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-6709

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 31. Nutrition Services

25 TAC §31.2, §31.3

The Texas Department of Health (department) proposes amendments to §31.2 and §31.3 concerning the Farmers' Market Coupon Demonstration Project (FMCDP) and the Register of Mother-Friendly Businesses.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001. The sections have been reviewed and the department has determined that reasons for readopting the sections continue to exist.

The FMCDP supplements the Special Supplemental Food Program for Women, Infants, and Children (WIC) by making fresh fruits and vegetables purchased from authorized farmers' markets in Texas available to WIC clients. Section 31.2 is being amended to rename the program because this activity by the department is no longer a demonstration project. Each year the department updates the state plan of operations for the Farmers' Market Nutrition Program for review and approval by the United States Department of Agriculture (USDA). The date of USDA approval is being added to §31.2(a), which may then be amended annually.

State law authorizes a woman to breast-feed her baby in any location in which the mother is authorized to be. Health and Safety Code, §165.003 states that businesses which support work-site breast-feeding may use the designation "A mother-friendly" in their promotional materials if their policies have been approved by the department. The Register of Mother-Friendly Businesses lists businesses whose policies have been approved and is available for public inspection. Section 31.3, Register of Mother-Friendly Businesses, is being amended to include current references to the division within the department which supports the program.

The department published a Notice of Intention to Review the chapter as required by Rider 167 in the *Texas Register* on February 12, 1999 (24 TexReg 1001). No comments were received by the department on these sections.

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 sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Jack Baum has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing or administering the amendments will be clarification of and increased efficiency in enforcement of the sections. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Linda Brumble, Acting Director of the Client and Contract Division, Bureau of Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7444. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §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, or the commissioner of health; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; Human Resources Code, Chapter 33; the Child Nutrition Act of 1966, 42 USC §1786, as amended; and 7 CFR Part 246.

The amendments affect Health and Safety Code, §165.003; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§31.2. Farmers' Market Nutrition Program [~~Coupon Demonstration Project~~].

(a) The department adopts by reference the state plan for operations for the Farmers' Market Nutrition Program [~~Coupon Demonstration Project~~] in Texas effective March 18, 1999. The state plan is titled "Farmers' Market Nutrition Program State Plan of [~~for Project~~] Operations."

(b) Copies of the state plan described in subsection (a) of this section are filed in the Bureau of Nutrition Services[~~, Women, Infants, and Children (WIC)~~], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

§31.3. Register of Mother-Friendly Businesses.

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

(c) Application for designation as a mother-friendly business. To apply for designation as a mother-friendly business, a business must:

(1) complete a mother-friendly application. Applications are available from the [~~Breast-feeding Promotion Section,~~] Bureau of Nutrition Services (BNS), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and should be completed by the contact person for mother-friendly activities. Completed applications should be returned to the department's Breast-feeding Promotion Section; and

(2) (No change.)

(d) Maintaining designated status. A business designated as mother-friendly must:

(1) (No change.)

(2) keep the staff of the [~~Breast-feeding Promotion Section~~] Bureau of Nutrition Services informed of any changes in the company's mother-friendly policies. If its mother-friendly policies change, a business must submit an amended application; and

(3) (No change.)

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903021
Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 458-7236

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Chapter 61. Chronic Diseases

Subchapter A. Kidney Health Care Program

25 TAC §§61.1-61.9

The Texas Department of Health (department) proposes amendments to §§61.1-61.9 concerning kidney health care benefits. Amendments are required in order to facilitate the consolidation of Kidney Health Care's drug claims processing system with the Vendor Drug Program's drug claims processing system, as mandated by Rider 38 of the General Appropriations Act, 75th Legislative Session, 1997. Amendments are also required to facilitate the implementation of Kidney Health Care's new automated patient and provider enrollment and medical/transportation claims processing system and to clarify existing language.

Phil Walker, Chief, Bureau of Kidney Health Care, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. For the first year, the savings to Kidney Health Care would be $246,000. For each year of the next four years, the savings to Kidney Health Care would be approximately $246,000. There is no anticipated economic effect on local government.

Mr. Walker also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is an improvement in the delivery of services to both recipients and providers by reducing the processing time for eligibility determination and by reducing the processing time for payment of claims. There will be no effect on small business. There is no anticipated economic cost to individuals who may be required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Mr. Phillip W. Walker, Chief, Bureau of Kidney Health Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7796. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §42.003, which provides the Texas Department of Health with the authority to adopt rules to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act; and §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These amendments affect the Health and Safety Code, Chapter 42.

§61.1. General.

(a) Purpose. The purpose of this Chapter is to establish rules for [~~the~~] Kidney Health Care [~~program~~] (KHC). The authority for these rules is granted in the Texas Health and Safety Code, Chapter 42.

(b) (No change.)

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

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

(4) Applicant–An individual whose application for KHC benefits has been submitted through a participating facility and has not received a final determination of eligibility. This includes an individual whose application is submitted by [~~through~~] a representative or person with legal authority to act for the individual.

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

(8) Co-pay liability–The portion of the allowable amount for which a KHC recipient is responsible[~~, based on their adjusted gross income~~].

(9)-(11) (No change.)

(12) EOB–A form , in paper or electronic format, which provides an explanation of benefits. It is used to explain a payment or denial of a claim.

(13)-(18) (No change.)

(19) Participating facility–Any KHC approved or interim approved facility including:

(A) (No change.)

(B) out-of-state outpatient dialysis facilities with whom KHC has contracted;

(C) (No change.)

(D) hospitals located and licensed in Texas that are:

(i) approved [~~certified~~] by Medicare [~~to provide ESRD services~~]; and

(ii) an approved Texas Medicaid provider; [~~and~~]

(E) out-of-state hospitals that are:

(i) approved by Medicare; and

(ii) an approved Texas Medicaid provider;

(F) [~~(E)~~] military or Veterans Administration hospitals located in Texas which have a renal unit approved by the Joint Commission on Accreditation of Healthcare [~~Health Care~~] Organizations (JCAHO) [~~(JCAHCO)~~] or the American Osteopathic Association (AOA).

(20)-(22) (No change.)

[~~(23) Reimbursable Drug List–The list of drugs and drug products approved by the department for payment as a benefit of KHC.~~]

(23) [~~(24)~~] Reconsideration–The administrative review process KHC follows under this chapter.

(24) [~~(25)~~] Suspended benefits–Eligibility for benefits or claims which are denied and/or held pending satisfaction of a KHC request or requirement.

(25) TDCI–Stands for the Texas Drug Code Index. This microfiche list of drugs by National Drug Code includes drugs and drug products approved by the department for payment as a benefit of KHC.

(26) VDP–Stands for the Texas Medicaid Vendor Drug Program.

§61.2. Recipient Requirements.

(a) A person shall meet all of the following requirements to be eligible for Kidney Health Care (KHC) benefits:

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

(3) apply for Medicare Chronic Renal Disease coverage;

(4) be receiving a regular course of chronic renal dialysis treatments or have received a kidney transplant;

(5) [~~(3)~~] be a resident of Texas as determined in §61.3 of this title (relating to Residency and Residency Documentation Requirements), and not be:[~~;~~]

(A) incarcerated in a city, county, state, or federal jail, or prison;

(B) a ward of the state;

(C) a Medicaid-eligible nursing home recipient; or

(D) a Medicaid recipient under the age of 21;

(6) [~~(4)~~] submit an application for benefits through a participating facility; and

(7) [~~(5)~~] have, or the person(s) who has a legal obligation to support the applicant have, an adjusted gross income (AGI) of less than $60,000. Income reported as "joint income" is considered as one income and may not be divided in computing the recipient's co-pay liability. The person or persons who have a legal obligation to support the recipient will be determined by the applicable state law.

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

(f) A recipient who loses eligibility will not be reinstated until all outstanding debts owed to KHC by the recipient are paid or arrangements acceptable to KHC are made for payment.

(g) (No change.)

§61.3. Residency and Residency Documentation Requirements.

(a) The following conditions shall be met by an applicant and maintained by a recipient to satisfy the residency requirements in this section:

(1) physically reside within the State; and

[~~(2) intend to remain in the State for an indefinite period of time;~~]

(2) [~~(3)~~] maintain a home or dwelling within the State[~~; and~~]

[~~(4) not claim residency in any other state or country~~].

(b)-(f) (No change.)

§61.4. Applications.

Persons meeting the eligibility requirements set forth in §61.2(a)(1), (2), (3), (4), [~~and~~] (5) and (7) of this title (relating to Recipient Requirements) must make an application for benefits through a Kidney Health Care (KHC) participating facility.

(1) Complete application. A complete application is required before any eligibility determination will be made. A complete application shall consist of all of the following:

(A)-(D) (No change.)

(E) applicant financial data. Acceptable data to establish the applicant's financial qualifications [~~and co-pay liability~~] shall be submitted with the application. An adult applicant who is currently a Texas Medicaid recipient is not required to provide financial data. Changes in income or financial qualifications which would affect [~~either~~] the applicant's eligibility [~~or co-pay liability~~] shall be reported to KHC. The applicant may attach any of the following documents to verify income:

(i)-(ii) (No change.)

(2) (No change.)

(3) Eligibility date for [~~initial~~] KHC benefits. The KHC eligibility date will be the later of:

(A) 30 [~~90~~] days prior to the date KHC receives a complete application;

(B)-(E) (No change.)

(4) Eligibility date for reinstatement of KHC benefits. If KHC benefits are terminated, the eligibility date for any subsequent benefit period will be the date on which KHC receives a subsequent completed application for KHC benefits. [~~The KHC eligibility date for reinstatement of benefits will be computed as follows:~~]

[~~(A) the date on which KHC receives a complete application;~~]

[~~(B) the date that chronic dialysis is resumed for recipients who had regained function, not to exceed 90 days prior to the date the department receives a complete application for reinstatement; or~~]

[~~(C) the date that chronic dialysis is initiated for recipients who have lost a transplant, not to exceed 90 days prior to the date the department receives a complete application for reinstatement.~~]

[~~(5) Corrected HCFA 2728. If any date of dialysis or transplant surgery date or hospitalization date for transplant surgery is changed or corrected from that shown on the original HCFA 2728, and the change would extend KHC eligibility for benefits, then a copy of the corrected HCFA 2728 must be provided to KHC before any KHC eligibility date can be adjusted.~~]

[~~(6) Request for adjustment. If the recipient or their authorized representative determines that the information provided to determine the KHC eligibility date is in error, they may request an adjustment to an earlier KHC eligibility date. This request, and supporting documentation, must be received by KHC within 180 days of the date of the notice of KHC eligibility in order to be considered.~~]

§61.5. Recipient Co-pay Liability.

[~~The co-pay liability is the portion of the allowable amount for which a Kidney Health Care (KHC) recipient is responsible for paying, based on their adjusted gross income.~~] Kidney Health Care (KHC) [~~KHC~~] may [~~shall~~] establish co-pay liability standards for all KHC recipients.

§61.6. Limitations and Benefits Provided.

(a) Benefits payable by Kidney Health Care (KHC) are as follows:

(1) KHC allowable out-patient drugs and drug products included on the Texas Drug Code Index (TDCI) [~~KHC Reimbursable Drug List~~] (a list of KHC allowable drugs is available upon request from KHC, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756);

(2) (No change.)

[~~(3) immunosuppressive drugs included on the KHC Reimbursable Drug List, except for cyclosporine and tacrolimus (Prograf) for Medicaid-eligible recipients;~~]

(3) [~~(4)~~] access surgery (hospitalization, surgeon's fees, assistant surgeon's fees, anesthesiologist' fees, Certified Registered Nurse Anesthetist fees);

[~~(5) transplant surgery (hospitalization, surgeon's fees, assistant surgeon's fees, anesthesiologist' fees, Certified Registered Nurse Anesthetist fees, kidney acquisition charges);~~]

(4) [~~(6)~~] out-patient chronic maintenance dialysis treatments;

(5) [~~(7)~~] in-patient chronic maintenance dialysis treatments (excluding treatment for emergency/acute dialysis); and

(6) [~~(8)~~] Medicare Part A and B premiums, if qualified. To qualify for this benefit, recipients:

(A) cannot be eligible for:

(i) "premium free" Part A coverage; or

(ii) Medicaid to pay their Medicare premiums;

(B) shall apply and be accepted for Medicare hospital and medical insurance;

(C) shall sign a Medicare agreement which allows KHC to make Medicare premium payments in their behalf; and

(D) shall promptly submit all Medicare premium due notice statements to KHC for payment.

(b) All KHC benefits are limited to services received in Texas except for:

(1) (No change.)

(2) KHC allowable drugs submitted by [~~listed on the KHC reimbursable drug list and purchased from~~] any participating out-of-state pharmacy [~~licensed to operate within the United States and its territories~~].

(c) Depending on the recipient's eligibility status, KHC will pay for covered services up to a maximum allowable amount per recipient based upon:

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

(6) any [~~the~~] co-pay liability rates as established by the department; and

(7) (No change.)

(d) Recipients who are eligible for transportation benefits under the Medicaid Transportation Program (MTP), including those on suspended status under MTP, are not eligible to receive KHC transportation benefits.

(e) Recipients eligible for drug coverage under a private/group health insurance plan are not eligible to receive KHC drug benefits.

(f) [~~(d)~~] Access surgery benefits are payable only if the services were performed on or after the date Texas residency was established and not more than 180 [~~365~~] days prior to the recipient's KHC eligibility effective date. [~~KHC receipt of a completed application or the date Texas residency was established, whichever is later.~~]

(g) [~~(e)~~] KHC medical benefits are payable during the Medicare three-month qualifying period to recipients who do not have Medicare coverage. Benefits are payable for services received on or after the KHC eligibility effective date. The three-month qualifying period shall be calculated from the first day of the month the recipient begins chronic maintenance dialysis. If a recipient becomes eligible for Medicare during the three-month period, KHC medical benefits shall not be payable from the date of Medicare eligibility. [~~Recipients who apply for and are denied Medicare coverage or who receive a transplant during the three-month pre-Medicare qualifying period are not subject to KHC's pre-Medicare benefit maximum.~~]

(h) [~~(f)~~] Limited medical benefits are available beyond the qualifying period for non-Medicaid eligible recipients who have applied for and have been denied Medicare coverage based on ESRD. Recipients shall submit a copy of an official Social Security Administration Medicare denial notification (based on chronic renal disease) to the department. Transplant patients who have been successfully transplanted for three years or more are not eligible for limited medical benefits.

(i) Recipients eligible for hospital and medical benefits from Medicare, Medicaid, the Veterans Administration, the military, or other government programs are not eligible to receive KHC medical benefits.

(j) Recipients eligible for hospital and medical benefits from private/group health insurance may be eligible for KHC medical benefits. If the recipient's third party coverage has a liability equal to or greater than the KHC allowable rates, KHC will not be liable for payment.

(k) [~~(g)~~] KHC is payor of last resort. Benefits are payable only after all third parties or government entities (e.g., private/group insurance, Medicare, Medicaid, or the Veterans Administration) have met their liability. All third parties must be billed prior to KHC. [~~If the recipient's third party coverage has a liability equal to or greater than the KHC allowable rates, KHC will not be liable for payment. Recipients eligible for hospital and medical benefits from Medicare, Medicaid, the Veterans Administration, the military, or other government programs are not eligible to receive KHC medical benefits. The Texas Board of Health (Board) has delegated to the~~] The Commissioner of Health (Commissioner) may [~~the authority to~~] waive this requirement in individually considered cases where its enforcement will deny services to a class of end-stage renal disease (ESRD) patients because of conflicting state or federal laws or regulations, under the Texas Health and Safety Code, Chapter 42, §42.009.

(l) [~~(h)~~] The department may restrict or categorize covered services to meet budgetary limitations. Categories will be prioritized based upon medical necessity, other third party eligibility and projected third party payments for the different treatment modalities, caseloads, and demands for services. Caseloads and demands for services may be based on current and/or projected data. In the event covered services must be reduced, they will be reduced in a manner that takes into consideration medical necessity and other third party coverage. The department may change covered services by adding or deleting specific services, entire categories or by making changes proportionally across a category or categories, or by a combination of these methods.

§61.7. Claims Submission and Payment Rates.

(a) Drug claims [~~Claims~~] shall be submitted electronically to the Vendor Drug Program (VDP) by the participating pharmacy through the VDP electronic claims management system, except when VDP allows or requires paper submissions. [~~Kidney Health Care (KHC) by the provider or by the recipient who has made direct payment to a provider for services. Recipients shall submit claims to KHC for travel reimbursement.~~]

(b) Claims for medical benefits shall be submitted to Kidney Health Care (KHC) by the provider who rendered the service(s) to the KHC recipient.

(c) Recipients who are not eligible for transportation benefits under the Medicaid Medical Transportation Program (MTP) shall submit claims to KHC for transportation reimbursement.

(d) [~~(b)~~] Payments will be made [~~KHC will make payments to the provider or recipient~~] using rates in effect on the date services were rendered.

(e) [~~(c)~~] Claims for medical benefits which are submitted for third party payment and the third party payor has denied the claim without written explanation shall be submitted to KHC with the following information:

(1) written explanation by the provider or recipient of the reason for the denial;

(2) coverage termination dates, if applicable; and

(3) the name and phone number of the third party payor's representative providing the information.

§61.8. Claim Filing Deadlines.

(a) Claims shall be received by Kidney Health Care (KHC) within the claim filing deadlines established in this section. Claims which are incomplete or incorrect will not be paid until they are completed or corrected. Claims which are not received by KHC within the deadlines established in this section shall not be considered for payment.

(b) Hospital claims for in-patient services, other than access surgery, shall be received by KHC the later of:

(1) 95 days from the last day of the month in which services were provided; [~~date of discharge;~~]

(2) 60 days from the date on the third party explanation of benefits (EOB), but not later than 180 days from the date of discharge; or

(3) (No change.)

(c) Claims for out-patient dialysis services from [~~newly~~] contracted facilities shall be received by KHC the later of :

(1) (No change.)

(2) 60 days from the date on the third party EOB, but not later than 180 days from the date of service;

(3) (No change.)

(4) 60 days from the date on the contract approval letter for newly contracted facilities, but not later than 180 days from the date of service.

(d) Claims for physician services, other than access surgery, shall be received by KHC the later of:

(1) 95 days from the last day of the month in which services were provided;

(2) 60 days from the date on the third party EOB, but not later than 180 days from the date of service; or

(3) 60 days from the date on the KHC notice of eligibility.

(e) Claims for travel reimbursement shall be received by KHC the later of:

(1) 95 days from the last day of the month in which services were provided; or

(2) 60 days from the date on the KHC notice of eligibility.

(f) Claims for access surgery charges shall be received by KHC the later of:

(1) 95 days from the last day of the month in which services were provided;

(2) 60 days from the date on the third party EOB, but not later than 180 days from the recipient's KHC eligibility effective date; or

(3) 60 days from the date on the KHC notice of eligibility.

(g) Claims for drug charges shall be submitted to the Vendor Drug Program (VDP) in accordance with VDP drug claim filing deadlines.

[~~(d) All other claims shall be received by KHC the later of:~~]

[~~(1) 95 days from the last day of the month in which services were provided;~~]

[~~(2) 60 days from the date on the third party EOB; or~~]

[~~(3) 60 days from the date on the KHC notice of eligibility.~~]

[~~(e) Claims submitted under subsections (b), (c), and (d) of this section shall be received by KHC no later than 180 days from the date of discharge or the date of service. Claims which are incomplete or incorrect will not be paid until they are completed or corrected.~~]

(h) [~~(f)~~] Resubmitted claims , other than drug claims, shall be received by KHC within the deadlines established under subsections (b), (c), (d), [~~and~~] (e), and (f) of this section, or within 180 days from the date of the KHC return letter or KHC [~~third party~~] EOB, whichever is later[~~, not to exceed 365 days from the date of service~~]. Resubmitted claims shall:

(1) be resubmitted with a copy of the KHC return letter or KHC EOB, if applicable;

(2) be resubmitted on the original claim form, if applicable; and

(3) contain no new or additional charges for service.

[~~(g) Claims which have been denied or reduced in error may be resubmitted to KHC for reconsideration. All resubmitted claims shall be received by KHC within 365 days from the date services were rendered. A copy of the KHC EOB, or other supporting documents, shall be included with the resubmitted claim.~~]

§61.9. Participating Facilities, Participating Pharmacies, and Providers.

(a) The following criteria must be met for a facility, pharmacy, or provider to qualify for participation in Kidney Health Care (KHC).

(1) Outpatient dialysis facilities and licensed Class B home health agencies shall execute a contract with KHC, and shall meet the following criteria:

(A) have Medicare certification and a Medicare [~~an~~] end-stage renal disease (ESRD) provider number;

(B)-(D) (No change.)

(E) not currently be on suspension as a KHC participating facility , as a Texas Medicaid provider, as a Medicare certified ESRD facility, or as a licensed Texas ESRD facility.

(2) KHC may contract with an outpatient dialysis facility located in another state if the out-of-state facility meets all the requirements of paragraph (1)(A), (B), and (D)[~~, and (E)~~] of this subsection, and is licensed by their respective state, if applicable. Outpatient dialysis facilities located in another state may not currently be on suspension as a KHC participating facility, as a Medicaid provider in Texas or their respective state, as a Medicare certified ESRD facility, or by the ESRD licensing authority of their applicable state.

(3) Outpatient dialysis facilities or home health agencies with interim approval for Medicare participation will qualify for interim approval by KHC. Facility claims will not be paid by KHC until the facility receives final Medicare certification and a KHC contract is executed. Recipient applications for KHC eligibility may be submitted by the facility during the period of interim approval. Interim approval will last no longer than six months from the date of the initial KHC contact. If interim approval lapses before a KHC contract is executed, the interim approval will be terminated and claims submitted will not be paid.

[~~(4) The effective date of all outpatient dialysis facility or home health care agency contracts shall be on or after the Medicare ESRD certification date.~~]

(4) [~~(5)~~] Pharmacies, including mail order pharmacies, shall enter into an agreement to participate in KHC through the Vendor Drug Program (VDP). [~~, and shall meet the following criteria:~~]

[~~(A) be licensed to operate within the United States and its territories;~~]

[~~(B) be a current Texas Medicaid Vendor Drug Program provider; and~~]

[~~(C) reimburse KHC for any overpayments made to the pharmacy by KHC upon request. KHC may withhold payment on claims submitted by the pharmacy to recoup any overpayments.~~]

(5) [~~(6)~~] Physicians providing services in the State of Texas shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) be licensed to practice medicine in the State of Texas;

(B) be a current Texas Medicaid provider; [~~and~~]

(C) not currently be on suspension as a KHC participating provider, as a physician licensed to practice medicine in the State of Texas, or as a Texas Medicaid provider; and

(D) [~~(C)~~] reimburse KHC for any overpayments made to the physician by KHC upon request. KHC may withhold payment on claims submitted by the physician to recoup any overpayments.

(6) [~~(7)~~] Physicians providing services outside the State of Texas shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) be associated with a contracted out-of-state facility;

(B) be licensed to practice medicine in the state in which services are to be provided;

(C) be a current Texas Medicaid provider; [~~and~~]

(D) not currently be on suspension as a KHC participating provider, as a physician licensed to practice medicine in the state in which services are to be provided, or as a Medicaid provider in Texas or their respective state; and

(E) [~~(D)~~] reimburse KHC for any overpayments made to the physician by KHC upon request. KHC may withhold payment on claims submitted by the physician to recoup any overpayments.

(7) [~~(8)~~] Hospitals shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) be licensed to provide hospital services in the State of Texas;

(B) be a current Texas Medicaid provider; [~~and~~]

(C) have Medicare approval;

(D) not currently be on suspension as a KHC participating provider, as a hospital licensed to provide hospital services in the State of Texas, as a Texas Medicaid provider, or as a Medicare certified hospital; and

(E) [~~(C)~~] reimburse KHC for any overpayments made to the hospital by KHC upon request. KHC may withhold payment on claims submitted by the hospital to recoup any overpayments.

(8) Out-of-state hospitals shall meet the following criteria to participate in, or enter into an agreement to participate in, KHC:

(A) be licensed to provide hospital services in the state in which services are to be provided;

(B) be a current Texas Medicaid provider;

(C) have Medicare certification;

(D) not currently be on suspension as a KHC participating provider, as a hospital licensed to provide hospital services in the state in which services are to be provided, as a Medicaid provider in Texas or their respective state, or as a Medicare certified hospital; and

(E) reimburse KHC for any overpayments made to the hospital by KHC upon request. KHC may withhold payment on claims submitted by the hospital to recoup any overpayments.

(b) Effective dates for participation in KHC are as follows:

(1) The effective date of all outpatient dialysis facility or home health care agency contracts shall be on or after the Medicare ESRD certification date.

(2) The effective date of all pharmacy agreements shall be determined by VDP.

(c) [~~(b)~~] Reasons for suspension or termination from participation in KHC are as follows.

(1) Any participating facility, participating pharmacy, or provider may be terminated or suspended for:

(A) loss of approval or exclusion from participation in the Medicare program;

(B) exclusion from participation in the Medicaid program;

(C) providing false or misleading information regarding any participation criteria;

(D) a material breach of any contract or agreement with KHC;

(E) filing false or fraudulent information or claims with KHC or VDP; or

(F) failure to maintain the participation criteria contained in subsection (a) of this section.

(2) A participating facility, participating pharmacy, or provider may appeal a termination or suspension through the department's reconsideration and fair hearings process, as contained in §61.10 of this title (relating to Notice of Intent to Take Action and Reconsideration) and §61.11 of this title (relating to Notice and Fair Hearing).

(A) KHC may not terminate KHC participation until a final decision is rendered under the department's reconsideration and fair hearings process.

(B) KHC may withhold payments on claims pending final decision under the department's reconsideration and fair hearings process.

(C) KHC shall release any withheld payments and reinstate participation in KHC if the final determination is in favor of the participating facility, participating pharmacy, or provider.

(D) KHC shall not enter into, extend, or renew a contract or agreement with a participating facility, participating pharmacy, or provider until a final decision is rendered under the department's reconsideration and fair hearings process.

(E) A participating facility, participating pharmacy, or provider may not appeal a termination of a contract which results from limitations in appropriations or funding for covered services or benefits or which terminates under its own terms.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903012
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 458-7236

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 408. Standards and Quality Assurance

Subchapter B. Mental Health Community Services Standards

25 TAC §§408.21-408.25

(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 Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§408.21-408.25 of Chapter 408, Subchapter B, governing mental health community services standards. Proposed new §§412.301-412.322 of Chapter 412, Subchapter G, governing mental health community services standards, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed repeals would allow for the adoption of new rules governing the same matters.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable significant implications relating to cost or revenues of the state or local governments.

Sue Dillard, director, Quality Management, has determined that for each year of the first five years the proposed repeals are in effect the public benefit expected is the ability for the TDMHMR to adopt new rules that promulgate uniform performance requirements for local mental health authorities, Medicaid managed care organizations, and providers of rehabilitative services and service coordination reimbursed by Medicaid regarding the provision of mental health community services funded by or through TDMHMR or funded by Medicaid managed care. Uniform standards ensure mental health community services are delivered to consumers in a consistent manner regardless of where consumers receive those services. It is anticipated that there would be no economic cost to persons required to comply with the new rules.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses because new rules, which would not significantly alter requirements for small business (i.e., providers contracting with local mental health authorities), are proposed to replace the repealed rules.

A public hearing will be held at 9:00 a.m. on Tuesday, June 22, 1999, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposed repeals. Persons requiring an interpreter for the deaf or hearing impaired should contact the Central Office operator at least 72 hours prior to the hearing by calling the TDD phone number, which is (512) 206-5330. Persons requiring any other accommodation should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Written comments on the proposed repeals may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These rules are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas MHMR Board with broad rulemaking authority, and §534.052, which requires the board to adopt rules, including standards, that it considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

These rules would affect the Texas Health and Safety Code, §534.052.

§408.21. Purpose.

§408.22. Application.

§408.23. Definition.

§408.24. Responsibilities of Local Authority.

§408.25. Distribution.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903037
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 206-4516

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Chapter 409. Medicaid Programs

Subchapter I. Rehabilitative Services for Persons with Mental Illness

25 TAC §§409.351-409.365

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§409.351-409.365 of Chapter 409, Subchapter I, governing rehabilitative services for persons with mental illness. Proposed new §§419.451-419.465 of Chapter 419, Subchapter L, governing the Medicaid rehabilitative services, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed repeals would allow for the adoption of a new rules governing the same matters.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenues of the state or local governments.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five years the proposed repeals are in effect the public benefits expected is the ability of TDMHMR to adopt new rules that promulgate the specific requirements for becoming a provider of rehabilitative services consistent with the Medicaid State Plan as approved by HCFA; the allowance of additional qualified professionals (licensed marriage and family therapists and advance practice nurses) to practice as licensed practitioners of the healing arts; and the allowance of greater flexibility for providers in determining the most appropriate programming configuration for eligible individuals, based upon their specific needs. It is anticipated that there would be no economic cost to persons required to comply with the new rules.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses because new rules, which would not place additional requirements on small business, are proposed to replace the repealed rules.

A public hearing will be held at 10:00 a.m. on Tuesday, June 22, 1999, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposed repeals. Persons requiring an interpreter for the deaf or hearing impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring any other accommodation for a disability should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516 or the TDY phone number of Texas Relay, 1-800-735-2988.

Written comments on the proposed repeals may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These rules are proposed for repeal 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC 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. HHSC has delegated to TDMHMR the authority to operate the Medicaid program for rehabilitative services.

These rules affect the Human Resources Code, §32.012(c).

§409.351. Purpose.

§409.352. Application.

§409.353. Definitions.

§409.354. Eligible Individuals.

§409.355. Rehabilitative Services: General Requirements.

§409.356. Reimbursable Rehabilitative Service Definitions: Community Support Services.

§409.357. Reimbursable Rehabilitative Service Definitions: Day Program Services for Acute Needs.

§409.358. Reimbursable Rehabilitative Service Definitions: Day Program Services for Skills Training.

§409.359. Reimbursable Rehabilitative Service Definitions: Day Program Services for Skills Maintenance; Plan of Care Oversight - Adults and Children.

§409.360. Documentation Requirements.

§409.361. Service Limitations.

§409.362. Program Limitations.

§409.363. Provider Participation Requirements.

§409.364. Rehabilitative Services Reimbursement Methodology.

§409.365. Right to 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 May 24, 1999.

TRD-9903040
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 206-4516

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Subchapter K. TDMHMR Standards for Behavioral Health Services by Medicaid Managed Care Organizations

25 TAC §§409.401-409.406

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§409.401-409.406 of Chapter 409, Subchapter K, governing standards for behavioral health services by Medicaid managed care organizations. Proposed new §§412.301-412.322 of Chapter 412, Subchapter G, governing mental health community services standards, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed repeals would allow for the adoption of new rules governing the same matters.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable significant implications relating to cost or revenues of the state or local governments.

Dave Wanser, director, Behavioral Health Services, has determined that for each year of the first five years the proposed repeals are in effect the public benefit expected is the ability for the TDMHMR to adopt new rules that promulgate uniform performance requirements for local mental health authorities, Medicaid managed care organizations, and providers of rehabilitative services and service coordination reimbursed by Medicaid regarding the provision of mental health community services funded by or through TDMHMR or funded by Medicaid managed care. Uniform standards ensure mental health community services are delivered to consumers in a consistent manner regardless of where consumers receive those services. It is anticipated that there would be no economic cost to persons required to comply with the new rules.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses because new rules, which would not significantly alter requirements for small business (i.e., providers contracting with Medicaid managed care organizations), are proposed to replace the repealed rules.

A public hearing will be held at 9:00 a.m. on Tuesday, June 22, 1999, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposed repeals. Persons requiring an interpreter for the deaf or hearing impaired should contact the Central Office operator at least 72 hours prior to the hearing by calling the TDD phone number, which is (512) 206-5330. Persons requiring any other accommodation should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Written comments on the proposed repeals may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668, within 30 days of publication.

These rules are proposed for repeal 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; 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; and the Texas Health and Safety Code, §533.047, which requires the Texas Board of Mental Health and Mental Retardation to develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients. HHSC has delegated to TDMHMR the authority to operate the Medicaid programs for rehabilitative services and service coordination.

These rules would affect the Texas Health and Safety Code, §533.047 and §534.052, and the Human Resources Code, §32.021(c).

§409.401. Purpose.

§409.402. Application.

§409.403. Definitions.

§409.404. Standards of Care.

§409.405. References.

§409.406. Distribution.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903038
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 206-4516

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Chapter 412. Local Authority Responsibilities

Subchapter G. Mental Health Community Services Standards

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§412.301-412.322 of Chapter 412, Subchapter G, governing mental health community services standards. The repeals of §§408.21-408.25 of Chapter 408, Subchapter B, governing the same, and the repeals of §§409.401-409.406 of Chapter 409, Subchapter K, governing standards for behavioral health services by Medicaid managed care organizations, both of which the new sections will replace, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed new rules would establish uniform standards for mental health community services delivered by local mental health authorities, Medicaid managed care organizations, and providers of rehabilitative services and service coordination reimbursed by Medicaid. Currently, local mental health authorities of TDMHMR and providers of rehabilitative services and service coordination reimbursed by Medicaid are required to comply with TDMHMR rules governing mental health community services standards (25 TAC Chapter 408, Subchapter B) and Medicaid managed care organizations are required to comply with TDMHMR rules governing standards for behavioral health services by Medicaid managed care organizations (25 TAC Chapter 409, Subchapter K). The proposed new rules would create one set of standards for the delivery of mental health community services funded by or through TDMHMR or funded by Medicaid managed care.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed new rules are in effect enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Sue Dillard, director, Quality Management, has determined that for each year of the first five years the proposed new rules are in effect the public benefit expected as a result of the adoption of the rules is the promulgation of uniform performance requirements for local mental health authorities, Medicaid managed care organizations, and providers of rehabilitative services and service coordination reimbursed by Medicaid regarding the provision of mental health community services funded by or through TDMHMR or funded by Medicaid managed care. Uniform standards ensure mental health community services are delivered to consumers in a consistent manner regardless of where consumers receive those services. It is anticipated that there would be no economic cost to persons required to comply with the rules.

It is not anticipated that the rules will affect a local economy.

It is anticipated that the rules will not have an adverse economic effect on small businesses because the revised standards do not significantly alter requirements that providers contracting with local mental health authorities or Medicaid managed care organizations are already required to comply with under the rules proposed for repeal or under an MMCO's contract with the Texas Department of Health.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held at 9:00 a.m. on Tuesday, June 22, 1999, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning this proposal. Persons requiring an interpreter for the deaf or hearing impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring any other accommodation for a disability should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516 or the TDY phone number of Texas Relay, 1-800-735-2988.

Division 1. General Provisions

25 TAC §§412.301-412.306

These rules are proposed 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; 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; the Texas Health and Safety Code, §534.052, which requires the Texas Board of Mental Health and Mental Retardation to adopt rules, including standards, that it considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and the Texas Health and Safety Code, §533.047, which requires the Texas Board of Mental Health and Mental Retardation to develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients. HHSC has delegated to TDMHMR the authority to operate the Medicaid programs for rehabilitative services and service coordination.

These rules would affect the Texas Health and Safety Code, §533.047 and §534.052, and the Human Resources Code, §32.021(c).

§412.301. Purpose.

The purpose of this subchapter is to describe performance requirements for the provision of mental health community services for:

(1) local mental health authorities, Medicaid managed care organizations, and providers as authorized by the Texas Health and Safety Code, §533.047 and §534.052; and

(2) providers of rehabilitative services and service coordination that are reimbursed by Medicaid.

§412.302. Application.

(a) This subchapter applies to all local mental health authorities and Medicaid managed care organizations.

(b) This subchapter applies to providers of rehabilitative services and service coordination that are reimbursed by Medicaid as required by Chapter 409, Subchapter I of this title (relating to Rehabilitative Services for Persons with Mental Illness) and Subchapter J of this chapter (relating to Service Coordination).

§412.303. Definitions.

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

(1) Access - A consumer's ability to obtain the mental health community services needed to achieve the outcomes as described in §412.306 of this title (relating to Outcomes for Mental Health Community Services). Barriers to access may be structural, financial, or personal. Access depends upon components such as availability and acceptability of services to the consumer (or LAR on the consumer's behalf), transportation, distance, hours of operation, language, and cultural competencies of staff.

(2) Adolescent - A consumer who is 13 through 17 years of age.

(3) Adult - A consumer who is 18 years of age or older.

(4) Aversive procedures - Highly restrictive behavior intervention procedures designed to eliminate undesirable behavior patterns through learned associations with unpleasant stimuli or tasks.

(5) Behavior management - Interventions to increase socially adaptive behavior and to modify maladaptive or problem behaviors by replacing them with behaviors and skills that are adaptive and socially productive.

(6) Child - A consumer who is 0 through 12 years of age.

(7) Competency - Demonstrated knowledge and skills necessary to perform a particular activity.

(8) Consumer - An individual receiving mental health community services from or through a local mental health authority, Medicaid managed care organization, provider of rehabilitative services that are reimbursed by Medicaid, provider of service coordination that is reimbursed by Medicaid, or provider.

(9) Continuity of services - Activities to ensure coordination of services to a consumer. For example, continuity of services may be provided when:

(A) a consumer needs or receives a referral to a physical or mental health care service;

(B) a consumer has a change in his/her level of need;

(C) a consumer is discharged from a hospital;

(D) a consumer transitions between services; and

(E) services are terminated.

(10) Continuity of services person - An individual designated to be accessible to a consumer (and LAR), and identified to the consumer, to conduct continuity of services for the consumer. The continuity of services person could be the consumer's primary care physician, service coordinator, case manager, or ACT team member.

(11) Contract - A legally enforceable written agreement for the purchase of mental health community services.

(12) Contract management - Management of the contracting process by the LMHA and MMCO, which includes determining the need for a contract, defining contract requirements (including quality indicators), ensuring adequate funding to enter into the contract, procuring the contract, contract monitoring, and ensuring payments are made by the LMHA and MMCO, as appropriate.

(13) Contract monitoring - The process of determining whether a provider is complying with the provisions of the contract and taking appropriate action when necessary.

(14) Credentialing - A process of review to approve a licensed staff or a qualified mental health professional-community services (QMHP-CS) staff as adequately prepared to provide specified clinical services. The process of review includes establishing and applying specific criteria and prerequisites to determine the staff's initial competency and assess and validate the staff's qualification to deliver care. (Re-credentialing is the periodic process of reevaluating the staff's competency and qualifications.)

(15) Cultural competency - The ability of staff to relate to consumers within the context of human behavior, including communication, actions, customs, beliefs, and values, and within racial, ethnic, religious, and social groups.

(16) DSM (Diagnostic and Statistical Manual of Mental Disorders) - The most recent edition of the American Psychiatric Association's official classification of mental disorders.

(17) Family member - Any individual a consumer identifies as being involved in the consumer's life, (e.g., the consumer's parent, spouse, child, sibling, or significant other).

(18) Identifying information - The name, address, social security number, or any information by which the identity of a consumer can be determined either directly or by reference to other publicly available information. The term includes medical records, graphs, and charts; statements made by the consumer either orally or in writing while receiving mental health community services; videotapes, photographs, etc.; and any acknowledgment that a consumer is receiving or has received services from a state facility, LMHA, MMCO, provider of rehabilitative services that are reimbursed by Medicaid, provider of service coordination that is reimbursed by Medicaid, or provider.

(19) LAR or legally authorized representative - The parent, guardian, or managing conservator of a child or adolescent or the guardian of the person of an adult.

(20) LMHA or local mental health authority - An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and/or for supervising and ensuring the provision of mental health community services to people with mental illness in one or more local service areas.

(21) Management information system - An information system designed to supply the LMHA and MMCO with information needed to plan, organize, staff, direct, and control their operations and clinical decision-making.

(22) MMCO or Medicaid managed care organization - An entity that has a current Texas Department of Insurance certificate of authority to operate as an Health Maintenance Organization (HMO) under Article 20A of the Texas Insurance Code or as an approved nonprofit health corporation under Article 21.52F of the Texas Insurance Code and which provides mental health community services to Medicaid recipients.

(23) Medical necessity - The need for a service that:

(A) is reasonable and necessary for the treatment of a mental health disorder or a mental health and chemical dependency disorder or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) is in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most appropriate and least restrictive setting in which the service can be safely provided;

(D) is provided at the most appropriate level and supply that is safe for the individual; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(24) Medical record - The systematic, organized compilation of information relevant to the services provided to a consumer.

(25) Mental health community services - Mental health services that are provided to a consumer in the consumer's home community, with the exception of inpatient services provided in a state facility.

(26) Mental illness - An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(27) Person - A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, individual, or an other legal entity.

(28) Personal restraint - The application of physical force alone to restrict the free movement of the whole or portion of a consumer's body in order to control physical activity.

(29) Provider - Any person who contracts with a LMHA or MMCO to provide mental health community services to consumers, including that part of a LMHA or MMCO directly providing mental health community services to consumers. The term excludes psychiatric hospitals, crisis residential units, and residential treatment facilities.

(30) QMHP-CS or qualified mental health professional - community services - An individual credentialed to provide QMHP-CS services (as referenced in §412.314(a)-(b) and §412.315(a) of this title (relating to Crisis Services and Assessment and Treatment Planning, respectively)) who has demonstrated competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours (as determined by the LMHA or MMCO in accordance with §412.312(c) of this title (relating to Competency and Credentialing) from an accredited college or university in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, early childhood intervention, or juvenile justice; or

(B) is a registered nurse.

(31) Recommended dose - The dose range for a particular medication based on the manufacturer's recommendation as reflected in the most recent edition of the *Physician's Desk Reference*.

(32) Regular integrated community job - A position that exists in the local business community that fills a need in an organization for which an individual will be hired. A regular community job confers on the individual holding the job all the status and benefits of employment that any other employee of that organization may receive. Specifically included are positions at a LMHA, MMCO, or provider that are governed by personnel policies and may have preferred qualifications of personal experience with a disability. Specifically excluded are affirmative industry (sheltered workshops), client worker programs; enclaves in industry; any position that would confer on an individual a status different than the individual's non-disabled counterparts; and any position viewed as existing primarily to fulfill the treatment needs of the individual.

(33) Rehabilitative services - A consumer-driven, integrated systemic approach to delivering services that meet the needs and choices of consumers with mental illness, which gives equal priority to:

(A) assisting and supporting the consumer in managing the symptoms of his/her mental illness;

(B) training the consumer in the skills needed to cope with the demands of the consumers' chosen environments;

(C) modifying characteristics of the environments when necessary; and

(D) strengthening or developing social support networks.

(34) Restraint - The use of a mechanical device or personal restraint to involuntarily restrict the free movement of the whole or a portion of a consumer's body in order to control physical activity.

(35) Seclusion - The placement of a consumer alone for any period of time in a hazard-free room or other area from which egress is prevented and in which direct observation can be maintained.

(36) Staff - Any and all personnel of a LMHA, MMCO, or provider, including full-time and part-time employees, contractors, students, and volunteers.

(37) Support services - Mental health community services delivered to a consumer, LAR, or family member(s) to assist the consumer in functioning in the consumer's (or LAR's on the consumer's behalf) chosen living, learning, working, and socializing environments.

(38) TDMHMR - The Texas Department of Mental Health and Mental Retardation.

(39) Treatment plan - A written document developed by the provider, in consultation with the consumer (and LAR on the consumer's behalf), that is based on assessments of the consumer and which addresses the consumer's strengths, needs, goals, and preferences regarding service delivery. The treatment plan includes:

(A) measurable goals targeted to the consumer's symptoms, needs, and functioning;

(B) the types of mental health community services to be provided;

(C) a schedule for service delivery, including amount, frequency, and duration;

(D) the staff responsible for the service(s) to be provided;

(E) time frames for achieving the goals; and

(F) a projected schedule for re-evaluation of the treatment plan.

§412.304. Responsibility for Compliance.

(a) Compliance with Division 2 and Division 3 of this subchapter (relating to Organizational Standards and Standards of Care, respectively).

(1) The LMHA and MMCO must comply with the applicable subsections contained in Division 2 and Division 3.

(2) The LMHA and MMCO must require providers to comply with the applicable subsections contained in Division 2 and Division 3 through a contract.

(3) The LMHA and MMCO must monitor providers for compliance with the applicable subsections contained in Division 2 and Division 3.

(4) Providers of service coordination reimbursed by Medicaid must comply with all subsections contained in Division 2 and Division 3, with the exception of §412.310(a) of this title (relating to Access to Mental Health Community Services).

(5) Providers of rehabilitative services reimbursed by Medicaid must comply with all subsections contained in Division 2 and Division 3, with the exception of §412.310(a) of this title (relating to Access to Mental Health Community Services).

(b) Compliance with Division 4 of this subchapter (relating to Service Standards).

(1) The LMHA and MMCO must comply with §412.320(a) of this title (relating to Assertive Community Treatment (ACT)) to the extent the provision of ACT is required under a contract between the LMHA or MMCO and a state agency.

(2) The LMHA and MMCO must require providers to comply with the sections contained in Division 4, with the exception of §412.320(a) of this title (relating to Assertive Community Treatment (ACT)), to the extent the provision of rehabilitative services, supported employment, supported housing, or Assertive Community Treatment (ACT) is required under a contract between the LMHA or MMCO and a state agency or a contract between the provider and LMHA or MMCO.

(3) The LMHA and MMCO must monitor providers for compliance with the sections contained in Division 4, with the exception of §412.320(a) of this title (relating to Assertive Community Treatment (ACT)), to the extent the provision of rehabilitative services, supported employment, supported housing, or ACT is required under a contract between the LMHA or MMCO and a state agency or a contract between the provider and LMHA or MMCO.

(4) Providers of rehabilitative services and providers of service coordination reimbursed by Medicaid must comply with the sections contained in Division 4 to the extent the provision of rehabilitative services, supported employment, supported housing, or ACT is required under the terms of the Medicaid contract between such providers and TDMHMR.

§412.305. TDMHMR Responsibilities.

TDMHMR shall make available interpretive guidelines and data collection tools, and training in their use, to assist LMHAs, MMCOs, providers of rehabilitative services and service coordination that are reimbursed by Medicaid in ensuring compliance with this subchapter.

§412.306. Outcomes for Mental Health Community Services.

The following are outcomes for mental health community services.

(1) Consumers are assured access to an array of mental health community services.

(2) The safety of consumers is protected and assured.

(3) Consumers participate in their treatment, as do LARs and family members when appropriate.

(4) Consumers' functioning improves as a result of receiving mental health community services.

(5) Consumers, LARs, and family members have access to the support services they need.

(6) Consumers receive mental health community services including support services that are sensitive and responsive to individual, family, and community cultures.

(7) The quality of mental health community services is continuously improved.

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

Filed with the Office of the Secretary of State on May 25, 1999.

TRD-9903082
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 206-4516

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Division 2. Organizational Standards

25 TAC §§412.307-412.313

These rules are proposed 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; 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; the Texas Health and Safety Code, §534.052, which requires the Texas Board of Mental Health and Mental Retardation to adopt rules, including standards, that it considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and the Texas Health and Safety Code, §533.047, which requires the Texas Board of Mental Health and Mental Retardation to develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients. HHSC has delegated to TDMHMR the authority to operate the Medicaid programs for rehabilitative services and service coordination.

These rules would affect the Texas Health and Safety Code, §533.047 and §534.052, and the Human Resources Code, §32.021(c).

§412.307. Leadership.

(a) Organizational planning and communication. The LMHA and MMCO must define and implement organizational plans and systems as described in this subchapter (e.g., local plan, quality

management plan, utilization management system) and ensure that there are mechanisms in place that facilitate effective communication throughout the organization and community to promote quality mental health community services.

(b) Local planning. The LMHA and MMCO must define and implement a local planning process that includes, as a key component, obtaining and using input and feedback from the stakeholders in the community, including consumers (and LARs on the consumers' behalf), family members, providers, and other agencies. The process must result in a local plan in which the LMHA and MMCO provides an array of mental health community services for consumers of all ages that is coordinated among the local and state agencies that serve adults, adolescents, and children. The array must meet the multiple and changing needs of the consumers the LMHA or MMCO serves.

(c) Management of key processes and functions. The LMHA and MMCO must define, allocate adequate resources, and provide oversight for key organizational and clinical processes and functions, including performance improvement activities.

(d) Management information system. The LMHA and MMCO must use an effective management information system that improves clinical, administrative, and fiscal decision-making.

(e) Consumer advocacy and peer support. The LMHA and MMCO must encourage and support advocacy by consumers for consumers, including providing space for meetings, training opportunities, and sponsorship of activities organized and operated by consumers.

§412.308. Environment of Care and Safety.

(a) Safe environment. The provider must:

(1) ensure service delivery sites (including, but not limited to, facilities and vehicles) are safe and free from hazards;

(2) comply with the applicable edition of the National Fire Protection Association's *Life Safety Code*, associated codes, standards, and other applicable requirements; and

(3) ensure safeguards exist regarding hazardous equipment, weather, and disasters.

(b) Sufficient numbers of staff. The provider must have sufficient numbers of staff on duty to ensure the safety of consumers and adequacy of mental health community services, including responding to crises during the provision of mental health community services.

(c) Exposure control of infections and diseases. The provider must implement procedures that address:

(1) exposure to chronic carrier state infections (e.g., hepatitis B, hepatitis C);

(2) exposure to life-threatening infectious diseases (e.g., TB, HIV, hepatitis B and hepatitis C);

(3) exposure to infectious diseases that may result in chronic infections (TB, hepatitis B and hepatitis C);

(4) postexposure management of infections; and

(5) if the provider serves food to consumers, the monitoring of food handlers for infectious diseases, prevention of bacterial contamination, and hygienic use of kitchen equipment and other applicable equipment in compliance with the Texas Department of Health's food establishment rules.

(d) Infection control plan. The provider of residential services or day program services must implement an infection control plan or procedures that address the prevention, education, management, and monitoring of significant infections. Components addressed in the plan must include:

(1) prevention and management of infection in the service delivery site(s);

(2) reporting of reportable diseases as required by the Texas Department of Health (25 TAC Part I, Chapter 97, §1);

(3) compliance with the Human Immunodeficiency Virus Services Act (Texas Health and Safety Code, §85.001 et seq.), the Texas Communicable Disease and Prevention and Control Act (Texas Health and Safety Code, §81.001 et seq.), and other applicable laws (e.g., Americans with Disabilities Act of 1990, Rehabilitation Act of 1973);

(4) identification of illnesses and conditions for which a consumer's participation in mental health community services is safely allowed; and

(5) identification of illnesses and conditions for which a consumer's participation in mental health community services is restricted and the procedures for minimizing exposure and facilitating the consumer's transfer to a more appropriate setting.

§412.309. Rights and Protection.

(a) Non-discrimination. The LMHA and MMCO and provider may not unlawfully discriminate against any consumer or individual based on race, color, national origin, religion, sex, age, disability, or political affiliation. The LMHA and MMCO and provider may not deny needed mental health community services to any individual based on sexual orientation.

(b) Protection against abuse, neglect, and exploitation. The provider must:

(1) implement procedures that address the prevention and reporting of abuse, neglect, and exploitation of consumers.

(2) provide or ensure the provision of immediate and appropriate medical and psychological care and protection to consumers who are alleged victims of abuse, neglect, or exploitation allegedly committed by the provider or staff of the provider;

(3) if an alleged victim does not have an LAR, then, with the consent of the alleged victim, notify family member(s) of the allegation of abuse, neglect, or exploitation and of any other pertinent information relating to the allegation as it becomes available;

(4) if an alleged victim has an LAR, notify the LAR of the allegation of abuse, neglect, or exploitation and of any other pertinent information relating to the allegation as it becomes available; and

(5) cooperate with the investigating agency and provide such agency unrestricted access to information, including identifying information, concerning any allegation of abuse, neglect, or exploitation of a consumer.

(c) Dignity and rights. The provider must implement procedures that address the rights of consumers in compliance with this subsection and applicable state and federal laws, regulations, and TDMHMR rules.

(1) Consumers have a right to give informed consent to treatment and services and to participate in clinical trials or research.

(2) Consumers have a right to be treated in the least restrictive clinically-appropriate setting.

(3) Consumers have a right to include family members in their treatment planning.

(d) Confidentiality. The LMHA and MMCO and provider must comply with all applicable federal and state laws, rules, and regulations governing confidentiality of identifying information of consumers with mental illness and/or chemical dependency disorders, including 42 CFR Part 2; 45 CFR 99ff; Texas Civil Statutes, Articles 4495b and 6252-17a; Texas Health and Safety Code, §242.002(6), §534.001 et seq., §576.005, §§595.001-595.010, and §§611.001-611.008; Texas Rules of Civil Evidence, Rule 510(d); and Texas Human Resources Code, §48.0385.

(e) Research. If the LMHA or MMCO or provider conducts research, then the research must be conducted in accordance with applicable state and federal laws, rules, and regulations, including 45 CFR Part 46 (Protection of Human Subjects).

§412.310. Access to Mental Health Community Services.

(a) Adequate provider network. The LMHA and MMCO must maintain a provider network that is adequate and qualified to provide all mental health community services that the LMHA and MMCO are required to provide under a contract with a state agency.

(b) Need-based service delivery. The LMHA and MMCO must implement procedures to ensure that consumers are provided mental health community services that are based on their individual needs. The procedures must ensure that a consumer's use of psychoactive medication is not a prerequisite to accessing other mental health community services.

(c) Service information. The LMHA and MMCO must proactively disseminate to consumers, LARs, family members, and the community, including those with a disability (e.g., deafness, hard of hearing, and blindness), information about mental illness and the LMHA's or MMCO's mental health community services in a format and language that is easily understandable and based on the demographics of its service area and the eligibility criteria for services.

(d) Communication with consumers. The LMHA and MMCO and provider must communicate with the consumer (and LAR) in a format understandable to the consumer (and LAR), including through the provision of:

(1) interpretative services;

(2) translated materials; and

(3) use of multi-cultural and multi-lingual staff.

(e) Time frames. The LMHA and MMCO must arrange mental health services for consumers within the following time frames.

(1) Crisis services - immediately.

(2) Urgent care services - within 24 hours of request.

(3) Routine care services - within 14 calendar days of request.

(f) Telephone crisis screening and crisis response system. The LMHA and MMCO must have a telephone crisis screening and crisis response system in operation 24 hours a day, 365 days a year, that is available throughout its service area. The telephone system must be available at no charge to the caller, easily accessible, and well publicized. Calls to the telephone system must be answered by an individual who is trained in crisis screening and response procedures. Individuals who are deaf or hard of hearing must be able to access the telephone system through TDD/TDY capabilities.

(g) Coordinating provision of crisis services in compliance with the Mental Health Code. The LMHA and MMCO must develop and implement policies and procedures governing the provision of crisis services that:

(1) comply with the Texas Mental Health Code (Texas Health and Safety Code, Subtitle C, §571.001 et seq.);

(2) identify providers' role and responsibilities in responding to crisis;

(3) coordinate the provision of crisis services to consumers; and

(4) facilitate the coordination of crisis services among law enforcement, the judicial system, and other community entities.

(h) Access to emergency services. The LMHA and MMCO must develop for providers' use, procedures to access emergency medical and mental health services for consumers.

(i) Charges for mental health community services. The LMHA and MMCO and provider must comply with all applicable federal and state laws and rules regarding the establishment of charges and the collection of fees for mental health community services provided.

(j) Continuity of services. The LMHA and MMCO must provide continuity of services for consumers and assign a continuity of services person to each consumer upon initiation of service.

§412.311. Medical Records System.

The LMHA and MMCO and provider must maintain all medical records in a manner that ensures the records' integrity and protection from damage, and ensures confidentiality in accordance with applicable federal and state laws, rules, and regulations.

§412.312. Competency and Credentialing.

(a) Competency of staff. The LMHA and MMCO must:

(1) define competency-based performance expectations for each job;

(2) implement a competency plan that addresses each performance expectation by identifying what competency is expected; of whom the competency is expected; and when demonstration of competency is expected. The plan must include:

(A) core competencies which:

(i) include, at a minimum, prevention and reporting procedures for abuse, neglect, and exploitation of consumers, dignity and rights of consumers, and confidentiality of consumers as described in §412.309 of this title (relating to Rights and Protection);

(ii) must be demonstrated by each staff; and

(iii) must be demonstrated by staff before contact with a consumer.

(B) specialty competencies which:

(i) include suicide/homicide precautions, infection control, screening and crisis intervention, safe management of verbally and physically aggressive behavior, recognition, reporting, and recording side effects, contraindications, and drug interactions of psychoactive medication, and rehabilitative approaches;

(ii) must be demonstrated by those staff providing the specialized mental health community services or performing the specialized tasks; and

(iii) must be demonstrated by staff before providing the specialized service or performing the specialized task.

(C) critical competencies which:

(i) are high risk and low frequency tasks that require verification of continuing competence along with specific timeframes for reassessment, including CPR, First Aid, and seizure assessment;

(ii) must be demonstrated by those staff performing the high risk and low frequency task; and

(iii) must be demonstrated before contact with a consumer and at the specified reassessment timeframes; and

(3) evaluate the performance of each staff in accordance with a defined criteria which is based on the performance expectations referenced in paragraph (1) of this subsection.

(b) Credentialing and appeals. The LMHA and MMCO must implement a credentialing and re-credentialing process for all its licensed staff and QMHP-CS staff and have a process for its staff to appeal credentialing and re-credentialing decisions. The LMHA and MMCO must require providers to:

(1) use the LMHA's or MMCO's credentialing and re-credentialing and appeals processes for all of the provider's licensed staff and QMHP-CS staff; or

(2) implement a credentialing and re-credentialing process for all of the provider's licensed staff and QMHPs-CS staff that meets the LMHA's or MMCO's credentialing and re-credentialing criteria and have a process for those staff to appeal credentialing and re-credentialing decisions.

(c) Additional requirement for credentialing QMHP-CS. For credentialing as a QMHP-CS, an individual who is not a registered nurse, the credentialing and re-credentialing process (described in subsection (b) of this section) must include:

(1) the minimum number of course work hours that is acceptable and a determination of whether a combination of course work hours in the specified areas is acceptable;

(2) research of the individual's course work; and

(3) justification and documentation of the credentialing decisions.

(d) QMHP-CS supervision. If the QMHP-CS is not a physician, licensed doctoral level psychologist, licensed masters social worker-advanced clinical practitioner (LMSW-ACP), licensed marriage and family therapist (LMFT), licensed professional counselor (LPC), clinical nurse specialist (CNS) in psych/mental health, or nurse practitioner (NP) in psych/mental health, then the LMHA or MMCO or provider must assign a physician, licensed doctoral level psychologist, LMSW-ACP, LMFT, LPC, clinical nurse specialist (CNS) in psych/mental health, or nurse practitioner (NP) in psych/mental health to clinically supervise the QMHP-CS.

(e) Peer review. The LMHA and MMCO and provider must implement a peer review process for licensed staff that:

(1) promotes sound clinical practice;

(2) promotes professional growth; and

(3) complies with applicable state laws (e.g., Medical Practice Act, Nursing Practice Act, Vocational Nurse Act, Dental Practice Act, and Pharmacy Practice Act) and rules.

§412.313. Quality Management.

(a) Quality management plan. The LMHA and MMCO must develop and implement a quality management plan that describes the ongoing activities of a quality management program, including a description of the methods for measuring, assessing, coordinating, communicating, and improving functions, processes, and outcomes.

(b) Self-assessment. The LMHA and MMCO must conduct an ongoing self-assessment culminating in an annual report that evaluates the degree to which the organization accomplishes its goals and fulfills its purpose. The self-assessment forms the basis of quality improvement activities. The self-assessment includes the evaluation of:

(1) clinical processes and functions, including:

(A) access to mental health community services;

(B) continuity of services;

(C) compliance with this subchapter;

(D) satisfaction of stakeholders in the community, including consumers (and LARs on the consumers' behalf), family members, providers, and other agencies; and

(E) clinical outcomes; and

(2) organizational processes, functions, and outcomes, including:

(A) leadership, including organizational and local planning and management information systems;

(B) competency and credentialing; and

(C) quality management, including risk management, contract management, and utilization management; and

(D) performance measures of importance to the organization and stakeholders in the community, including provider profiling results.

(c) Quality improvement activities. Based on the self-assessment (described in subsection (b) of this section) the LMHA and MMCO must describe the quality improvement activities and process(es) for its clinical and organizational functions, processes, and outcomes that improve or correct identified problems.

(d) Medical record audits. The LMHA and MMCO must audit statistically significant samples of medical records to measure compliance with internal and external performance requirements and evaluate quality of care indicators. The results of audits must be analyzed and incorporated into quality improvement activities.

(e) Monitoring of restraint and seclusion. The LMHA and MMCO must monitor the use of restraint and seclusion by providers for compliance with paragraphs (1) and (2) of this subsection.

(1) Restraint and seclusion in inpatient settings must be in accordance with TDMHMR rules, 25 TAC Chapter 405, Subchapter F (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs).

(2) Restraint and seclusion in outpatient settings is prohibited, except as provided for in subparagraphs (A) and (B) of this paragraph, in which case the restraint or seclusion must be in accordance with §405.125, §405.127, and §405.132 of TDMHMR rules, 25 TAC Chapter 405, Subchapter F (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs).

(A) In an emergency involving a child, adolescent, or adult, personal restraint may be used.

(B) In an emergency involving a child or adolescent in a partial hospitalization program or a day program for acute needs, seclusion may be used.

(f) Behavior management. The LMHA and MMCO must monitor the use of behavior management by providers to ensure that

all behavior management activities, including aversive procedures, are conducted in a manner that assures the safety and dignity of the consumer.

(1) Clinical review and approval.

(A) The LMHA and MMCO must develop for providers' use, a process to obtain clinical review and approval for a consumer to participate in a behavior management program that involves aversive procedures.

(B) Providers must document the clinical review and approval in the consumer's medical record.

(2) Consent. The provider must obtain specific written informed consent of the consumer (or LAR) to participate in any behavior management program that limits the consumer's rights or involves the use of aversive procedures. The written consent must include acknowledgement that consent can be withdrawn at any time without prejudice.

(g) Utilization management system. The LMHA and MMCO must define and implement a utilization management system that is under the direction of a psychiatrist and includes:

(1) practice guidelines, developed with provider involvement, that direct providers to deliver treatment in the most effective and efficient manner, including the frequency of treatment plan reviews;

(2) a process for making utilization/resource allocation determinations, including the formal determination of medical necessity, based on clinical data and information regarding the consumer's needs, and with consideration of the consumer's (and LAR's on the consumer's behalf) treatment preferences and objections, that includes:

(A) staff who have the clinical education, experience, and knowledge to make utilization/resource allocation determinations;

(B) notification of the determination to the consumer (or LAR) and provider in a timely manner; and

(C) an appeal process for the consumer, or individual acting on the consumer's behalf, to appeal a determination, which is separate and distinct from the process that allows a Medicaid recipient the right to request a Medicaid fair hearing;

(3) a process for reviewing provider treatment to determine whether it is consistent with the practice guidelines and the process for making utilization/resource allocation determinations;

(4) a mechanism for coordinating the delivery of mental health community services by multiple providers through the use of continuity of services persons; and

(5) the use of provider profiling to review, identify, and analyze current mental health community services, providers, and utilization patterns in order to educate clinicians and facilitate practice improvement.

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

Filed with the Office of the Secretary of State on May 25, 1999.

TRD-9903083
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999

For further information, please call: (512) 206-4516

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Division 3. Standard of Care

25 TAC §§412.314-412.316

These rules are proposed 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; 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; the Texas Health and Safety Code, §534.052, which requires the Texas Board of Mental Health and Mental Retardation to adopt rules, including standards, that it considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and the Texas Health and Safety Code, §533.047, which requires the Texas Board of Mental Health and Mental Retardation to develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients. HHSC has delegated to TDMHMR the authority to operate the Medicaid programs for rehabilitative services and service coordination.

These rules would affect the Texas Health and Safety Code, §533.047 and §534.052, and the Human Resources Code, §32.021(c).

§412.314. Crisis Services.

(a) Immediate assessment. The provider of crisis services must be available 24 hours a day, 365 days a year, to perform immediate assessments of consumers in crisis using the designated assessment instruments as required under a contract between the LMHA or MMCO and a state agency. Consumers experiencing a behavioral/emotional crisis with the potential for life threatening behavior or an acute psychiatric crisis must be immediately assessed face-to-face by a QMHP-CS.

(b) Physician assessment. If life-threatening behavior or acute psychiatric crisis is identified by the QMHP-CS assessment (as described in subsection (a) of this section), then the provider of crisis services must have a physician, preferably a psychiatrist, perform a face-to-face assessment of the consumer as soon as possible, but within 24 hours. The QMHP-CS must provide ongoing crisis services (e.g., interventions for the crisis and/or monitoring of the consumer) until the crisis is resolved or the consumer is placed in an appropriate treatment environment.

(c) Documentation of crisis services. The provider of crisis services must maintain documentation of the crisis services, including:

(1) date, time, name of consumer (if given);

(2) presenting problem;

(3) services requested by the consumer (or LAR on the consumer's behalf); disposition;

(4) names and titles of staff involved;

(5) actions used by the provider to address the problems presented; and

(6) the response of the consumer, and if appropriate, the response of the LAR and family members.

(d) Communication of crisis contacts. If a consumer currently receiving mental health community services through or by the LMHA or MMCO has experienced a crisis and been assessed in accordance with subsection (a) of this section, then the provider of crisis services must communicate that crisis contact to the consumer's continuity of services person as soon as possible, but no later than the next working day.

§412.315. Assessment and Treatment Planning.

(a) Assessment and documentation. At the first non-crisis face-to-face contact with a consumer, a provider who is a QMHP-CS must perform an assessment of the consumer. The assessment must be documented and includes:

(1) identifying data;

(2) eligibility for proposed mental health community services;

(3) present status and relevant history, including education, employment, legal, military, developmental, and current available social and support systems;

(4) determination of co-occurring mental health, substance abuse, or mental retardation disorders;

(5) relevant past and current medical and psychiatric information and a documented diagnosis based on all five axes of the current DSM by a licensed professional practicing within the scope of his/her license;

(6) information from the consumer (and LAR on the consumer's behalf) regarding the consumer's strengths, needs, natural supports, responsiveness to past interventions, as well as preferences for and objections to specific treatments;

(7) if the consumer is an adult without an LAR, the needs and desire of the consumer for family member involvement in treatment and mental health community services;

(8) the identification of the LAR's or family members' need for education and support services related to the consumer's mental illness and the plan to facilitate the LAR's or family members' receipt of the needed education and support services; and

(9) recommendations and conclusions regarding treatment needs.

(b) Treatment plan development.

(1) The provider must develop the consumer's treatment plan, in consultation with the consumer. The provider must give the consumer (and LAR) a copy of the treatment plan.

(2) The provider must involve the consumer (and LAR on the consumer's behalf) in all aspects of planning the consumer's treatment. If the consumer has requested the involvement of a family member, then the provider must involve the family member in all aspects of planning the consumer's treatment.

(3) In accordance with the process for making utilization/resource allocation determinations (described in §412.313(g)(2) of this title (relating to Quality Management)), the provider must seek appropriate authorizations and submit required documentation.

(4) The provider must communicate the consumer's treatment plan to the consumer's continuity of services person if the provider is not also the continuity of services person.

(c) Treatment plan review. The provider must review each consumer's treatment plan as clinically indicated and as required by the LMHA or MMCO and document such reviews.

(d) Progress notes. The provider must maintain in the medical record notes describing the consumer's progress towards goals identified in the treatment plan, as well as other clinically significant activities or events.

(e) Provider summary of care. Following completion of a consumer's episode of care, the provider must enter into the medical record:

(1) a summary of mental health community services provided to the consumer during the episode of care, the consumer's response to treatment, and any other relevant information; and

(2) the consumer's last diagnosis based on all five axes of the current DSM.

(f) Documentation of psychoactive medication related mental health community services. The provider must include in a consumer's medical record documentation that:

(1) justifies initial prescription(s) of psychoactive medications and all changes in psychoactive medications;

(2) a medical history (including medication history, known allergies, current prescriptions, and nonprescription medications) and if physical assessments as clinically indicated were conducted prior to prescribing psychoactive medications;

(3) consideration of the need for laboratory screening and other procedures to gather relevant clinical information was given prior to prescribing psychoactive medication and as clinically indicated throughout the course of treatment;

(4) consultation from a psychiatrist was obtained if:

(A) indicated by the treatment plan;

(B) a higher than recommended dose of psychoactive medication is prescribed;

(C) an unusual route of administration of psychoactive medication is prescribed;

(D) indicated by psychoactive medication side effects, adverse effects, or medication toxicity; and

(E) polypharmacy is prescribed (i.e., more than one drug in the same class is prescribed for the same condition);

(5) describes all errors in psychoactive medication administration; and

(6) verbal and written information was provided to the consumer (and LAR) about prescribed psychoactive medication(s) and about any subsequent significant alterations in the medication regimen, including:

(A) the condition for which it is prescribed;

(B) risks and benefits of taking and not taking the medication;

(C) side effects;

(D) alternative forms of treatment and expected results; and

(E) the proposed course of treatment and expected results.

§412.316. Mental Health Community Services for Children and Adolescents.

(a) Age and developmentally appropriate mental health community services. All mental health community services delivered to children and adolescents by a provider must be, for each child and adolescent, age-appropriate, developmentally-appropriate, and consistent with academic development.

(b) Separation of consumers by age. A provider that delivers mental health community services to children and adolescents in group settings (e.g., residential, day programs, group therapy, partial hospitalization, and inpatient) must separate children and adolescents from adults. The provider must further separate children from adolescents according to age and developmental needs, unless there is a clinical or developmental justification in the medical record.

(c) Clinical review of treatment plan. The provider must perform a clinical review of the treatment plan of each child and adolescent as clinically indicated, but no less that every 90 days, and document such review. The clinical review must involve the child or adolescent and the LAR.

(d) Transition to mental health community services for adults. The provider must develop a transition plan for each adolescent who will need mental health community services for adults. The transition plan must include:

(1) a summary of the mental health community services and treatment the adolescent received as a child and adolescent;

(2) the adolescent's current status (e.g., diagnosis, medications, level of functioning) and unmet needs;

(3) information from the adolescent and the LAR regarding the adolescent's strengths, preferences for mental health community services, and responsiveness to past interventions; and

(4) a treatment plan that:

(A) indicates the mental health community services the adolescent will receive as an adult; and

(B) ensures the adolescent's continuity of services.

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

Filed with the Office of the Secretary of State on May 25, 1999.

TRD-9903084
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 206-4516

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Division 4. Service Standards

25 TAC §§412.317-412.320

These rules are proposed 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; 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; the Texas Health and Safety Code, §534.052, which requires the Texas Board of Mental Health and Mental Retardation to adopt rules, including standards, that it considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and the Texas Health and Safety Code, §533.047, which requires the Texas Board of Mental Health and Mental Retardation to develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients. HHSC has delegated to TDMHMR the authority to operate the Medicaid programs for rehabilitative services and service coordination.

These rules would affect the Texas Health and Safety Code, §533.047 and §534.052, and the Human Resources Code, §32.021(c).

§412.317. Rehabilitative Services.

(a) Focus and setting. The provider of rehabilitative services must:

(1) focus the rehabilitative services on enhancing the consumer's access to community resources;

(2) develop strategies to enhance the consumer's functional resources that have been compromised by mental illness; and

(3) provide the rehabilitative services in individual and group settings that enhance the consumer's functioning in the consumer's (or LAR's on the consumer's behalf) chosen living, learning, working, and socializing environments.

(b) Assessing. The provider of rehabilitative services must base the delivery of rehabilitative services on a collaborative assessment with the consumer (and LAR on the consumer's behalf) that identifies:

(1) the consumer's recovery goals;

(2) the consumer's changing clinical needs;

(3) the consumer's natural supports and the consumer's current use and benefit from those supports; and

(4) the demands and adaptability of the consumer's chosen environments.

(c) Evaluating and modifying. The provider of rehabilitative services must evaluate and modify the rehabilitative services offered to the consumer on an on-going basis in order to:

(1) assess appropriateness and relevance to the consumer's recovery goals;

(2) maximize skill acquisition in the consumer's chosen environments;

(3) mobilize the consumer's natural supports; and

(4) enhance the consumer's response to environmental demands and modification of the consumer's chosen environments.

§412.318. Supported Employment.

(a) Identifying job goals and obtaining and maintaining employment. The provider of supported employment must provide the consumer with individualized rehabilitative services:

(1) to identify job and career goals;

(2) to obtain a regular integrated community job; and

(3) to maintain employment (e.g., assist the consumer in keeping his/her regular integrated community job or assist the consumer in obtaining another regular integrated community job).

(b) Developing regular integrated community jobs. The provider of supported employment must develop regular integrated community jobs for consumers through communication and involvement with community employers and other community stakeholders.

§412.319. Supported Housing.

(a) Promoting regular integrated housing options. The provider of supported housing must actively promote regular integrated housing options in the community and, when necessary, provide funds for rental assistance on a temporary basis.

(b) Locating, obtaining, maintaining, and retaining regular integrated housing. The provider of supported housing must provide the consumer with individualized rehabilitative services to locate, obtain, maintain, and retain regular integrated housing, based on the consumer's needs and choices. The provision of supported housing services may not be contingent on the consumer's compliance with his/her treatment plan.

§412.320. Assertive Community Treatment (ACT).

(a) Eligibility and discharge criteria. The LMHA and MMCO must have a clearly identified mission to serve consumers with severe symptoms and impairments of mental illness that are not effectively remedied by available treatments. The LMHA and MMCO, in consultation with its provider of ACT services, must have measurable and operationally defined criteria to identify those consumers for whom ACT services are appropriate and criteria to identify those consumers who no longer need ACT services.

(b) ACT service delivery. The provider of ACT services must deliver ACT services in accordance with the following requirements.

(1) The ACT staff function as a team and maintain full responsibility for the consumer's continuity of services, psychiatric services, counseling, housing support services, substance abuse treatment, employment support services, and rehabilitative services with minimal referrals to other providers of mental health community services.

(2) The ACT team meets daily to communicate and plan mental health community services for each consumer. The team reviews each consumer's status daily.

(3) ACT services are need-based rather than. time-limited and consumers are not transferred to a lesser level of care while they still need ACT services.

(4) The majority of ACT services are delivered one-on-one to the consumer while the consumer is in the community (e.g., in the consumer's home, neighborhood park, grocery store, or restaurant).

(5) The ACT team provides support and skills training for the consumer and the consumer's natural support system (e.g., family members, LAR, landlord, or employer).

(c) Crisis and hospitalizations. The provider of ACT services must:

(1) have 24-hour responsibility and availability for managing the consumer's psychiatric crisis;

(2) coordinate or be involved in all hospital admissions of the consumer; and

(3) be involved in all hospital discharges of the consumer.

(d) Consumer-to-staff ratio. The provider of ACT services must maintain, for each ACT team, a consumer-to-staff ratio of no more than 10 consumers to one full-time team member, excluding the psychiatrist and any administrative staff. The consumer-to-staff ratio must take into consideration evening and weekend hours, the needs of special populations, and geographic areas that are covered.

(e) ACT team staffing requirements. The provider of ACT services must meet, for each ACT team, the following minimum staffing configuration.

(1) An ACT team has a minimum of four hours per week of dedicated psychiatrist time per 20 consumers served by the team. (The psychiatrist is an integral team member.)

(2) An ACT team has at least one full-time registered nurse.

(3) At least 75% of the ACT team staff are licensed or have at least a bachelor degree.

(4) An ACT team includes at least one staff who has and maintains expertise in accessing affordable community housing (e.g., Housing and Urban Development's Section 8 certificate).

(5) An ACT team includes at least one staff who has at least one year of experience and training in substance abuse treatment.

(6) An ACT team includes at least one staff who has at least one year of training and supervised experience in vocational rehabilitation and support services.

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

Filed with the Office of the Secretary of State on May 25, 1999.

TRD-9903085

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 4, 1999

For further information, please call: (512) 206-4516

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Division 5. References and Distribution

25 TAC §412.321, §412.322

These rules are proposed 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; 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; the

Texas Health and Safety Code, §534.052, which requires the Texas Board of Mental Health and Mental Retardation to adopt rules, including standards, that it considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and the Texas Health and Safety Code, §533.047, which requires the Texas Board of Mental Health and Mental Retardation to develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients. HHSC has delegated to TDMHMR the authority to operate the Medicaid programs for rehabilitative services and service coordination.

These rules would affect the Texas Health and Safety Code, §533.047 and §534.052, and the Human Resources Code, §32.021(c).

§412.321. References.

The following laws and rules are referenced in this subchapter:

(1) Texas Health and Safety Code, §81.001 et seq., §85.001 et seq., §242.002(6), §533.047, §534.001 et seq., §§595.001-595.010, §571.001 et seq., §576.005, and §§611.001-611.008;

(2) Texas Insurance Code, Articles 20A and 21.52F;

(3) Texas Civil Statutes, Articles 4495b and 6252-17a;

(4) Texas Rules of Civil Evidence, Rule 510(d);

(5) Texas Human Resources Code, §48.0385

(6) 42 CFR Part 2;

(7) 45 CFR 99ff;

(8) 45 CFR Part 46 (Protection of Human Subjects)

(9) Chapter 419, Subchapter L of this title (relating to Medicaid Rehabilitative Services);

(10) Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs); and

(11) 25 TAC Part I, Chapter 97, §1.

§412.322. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the Texas Board of Mental Health and Mental Retardation ;

(2) executive, management, and program staff of TDMHMR Central Office;

(3) chairpersons of boards of trustees and executive directors of all LMHAs;

(4) chief executive officers of all MMCOs, providers of rehabilitative services reimbursed by Medicaid, and providers of service coordination reimbursed by Medicaid; and

(5) advocacy organizations.

(b) The executive director of each LMHA and the chief executive officer of each MMCO is responsible for disseminating copies of this subchapter to:

(1) all appropriate staff; and

(2) its providers.

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

Filed with the Office of the Secretary of State on May 25, 1999.

TRD-9903086
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 206-4516

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Chapter 419. Medicaid State Operating Agency Responsibilities

Subchapter L. Medicaid Rehabilitative Services

25 TAC §§419.451–419.466

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§419.451-419.466 of Chapter 419, Subchapter L, governing Medicaid rehabilitative services. The repeals of §§409.351-409.365 of Chapter 409, Subchapter I, governing rehabilitative services for persons with mental illness, which the new sections will replace, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed new sections would clarify the requirements for the delivery of Medicaid rehabilitative services; include two additional professionals under the definition of licensed practitioner of the healing arts (LPHA); state the specific requirements for becoming a provider of rehabilitative services consistent with the Medicaid State Plan as approved by HCFA; and modify the maximum number of hours per day for which reimbursement will be made.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed new rules are in effect enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five years the proposed new rules are in effect the public benefits expected as a result of the adoption of the rules are the promulgation of rules that state the specific requirements for becoming a provider of rehabilitative services consistent with the Medicaid State Plan as approved by HCFA; the allowance of additional qualified professionals (licensed marriage and family therapists and advance practice nurses) to practice as licensed practitioners of the healing arts; and the allowance of greater flexibility for providers in determining the most appropriate programming configuration for eligible individuals, based upon their specific needs. It is anticipated that there would be no economic cost to persons required to comply with the rules as proposed.

It is not anticipated that the rules will affect a local economy.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses because they do not place additional requirements on small business than those in the rules proposed for repeal.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental

Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held at 10:00 a.m. on Tuesday, June 22, 1999, in the auditorium of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning this proposal. Persons requiring an interpreter for the deaf or hearing impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring any other accommodation for a disability should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516 or the TDY phone number of Texas Relay, 1-800-735-2988.

These new sections are proposed 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 HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC 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. HHSC has delegated to TDMHMR the authority to operate the Medicaid program for rehabilitative services.

The sections affect the Human Resources Code, §32.012(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.

§419.451. Purpose.

The purpose of this subchapter is to describe the requirements for the delivery of rehabilitative services reimbursed by Medicaid.

§419.452. Application.

This subchapter applies to Medicaid providers.

§419.453. Definitions.

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

(1) Arrangement - A contract executed between the Medicaid provider and a person or entity for the provision of rehabilitative services that are reimbursed by Medicaid.

(2) Adolescent - An individual who is 13 through 17 years of age.

(3) Adult - An individual who is 18 years of age or older.

(4) Child - An individual who is 0 through 12 years of age.

(5) Crisis - A situation in which an individual is at immediate risk of causing harm to self or others.

(6) Direct contact - Face-to-face interaction with the individual (and/or LAR or primary care giver of a child or adolescent) for the delivery of a rehabilitative service.

(7) Individual - A person seeking or receiving rehabilitative services.

(8) Institution for mental diseases - A hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental illness, including medical attention, nursing care, and related services.

(9) LAR (legally authorized representative) - The parent, guardian, or managing conservator of a child or adolescent or the guardian of the person of an adult.

(10) LPHA or licensed practitioner of the healing arts - A person employed by a Medicaid provider, under arrangement with a Medicaid provider, or employed by a professional association or institution of higher learning under arrangement with a Medicaid provider who is:

(A) a physician (MD or DO) licensed to practice medicine in Texas;

(B) a licensed professional counselor (LPC) as defined in Texas Civil Statutes, §4512g;

(C) a licensed masters social worker (LMSW)-Advanced Clinical Practitioner (ACP) as defined in the Human Resources Code, Chapter 50;

(D) a licensed psychologist as defined in Texas Civil Statutes, §4495b;

(E) an advance practice nurse as defined in Texas Civil Statutes, Article 4514, §8, and recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist (CNS) in psych/mental health or nurse practitioner (NP) in psych/mental health; or

(F) a licensed marriage and family therapist (LMFT) as defined in Texas Civil Statutes, Article 4512c-1.

(11) LMHA or local mental health authority - An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to people with mental illness in one or more local service areas.

(12) Medicaid provider - An entity with which TDMHMR has a provider agreement to provide rehabilitative services that are reimbursed by Medicaid.

(13) Medically/clinically necessary service - A service that:

(A) is reasonable and necessary for the treatment of a mental health disorder or a mental health and chemical dependency disorder or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) is in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most appropriate and least restrictive setting in which the service can be safely provided;

(D) is provided at the most appropriate level and supply that is safe for the individual; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(14) On site - A location operated by the provider at which services are provided, such as a clinic, clubhouse, or day treatment setting, but not a residential treatment facility or assisted living facility with 16 or fewer beds, or a facility with more than 16 beds that is a hospital licensed under Chapter 577 or Chapter 241 of the Texas Health and Safety Code. The term also includes a school when services are provided to children or adolescents.

(15) Professional - A person who is credentialed as a QMHP-CS and appropriately supervised in accordance with Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards).

(16) Professional association - An entity formed and operated in accordance with Texas Civil Statutes, Article 1528f.

(17) Rehabilitative services - The following medical and remedial services approved by an LPHA and delivered to an individual with mental illness in accordance with this subchapter for the maximum reduction of symptoms of the individual's mental illness and restoration to his/her optimal functioning level:

(A) community support services;

(B) day programs for acute needs;

(C) day programs for skills training;

(D) day programs for skills maintenance; and

(E) rehabilitative plan oversight.

(18) Small group - A service delivery modality involving two to eight individuals and one staff.

(19) Texas Department of Mental Health and Mental Retardation (TDMHMR) - The Texas Department of Mental Health and Mental Retardation or its designee.

(20) Treatment plan - A written document developed by the Medicaid provider, in consultation with the individual (and LAR on the individual's behalf), that is based on assessments of the individual and which addresses the individual's strengths, needs, goals, and preferences regarding service delivery. The treatment plan includes:

(A) measurable goals targeted to the individual's symptoms, needs, and functioning;

(B) the types of services to be provided;

(C) a schedule for service delivery, including amount, frequency, and duration;

(D) the staff person responsible for the service(s) to be provided;

(E) time frames for achieving the goals; and

(F) a projected schedule for re-evaluation of the treatment plan.

(21) Vocational services - Services related to the preparation of an individual for employment including training in job-task specific skills and job development or placement.

§419.454. Eligibility of Individuals for Rehabilitative Services Reimbursed by Medicaid.

In order for a Medicaid provider to be reimbursed by Medicaid for rehabilitative services delivered to an individual, the individual must:

(1) meet the following diagnosis criteria:

(A) be under 18 years of age with a diagnosis of a mental illness (but not a sole diagnosis of substance abuse, mental retardation, autism, or pervasive developmental disorder) who exhibits a serious emotional, behavioral, or mental disorder and:

(i) who has been determined to have a Global Assessment of Functioning (GAF) score of 50 or less within the 365 days preceding the date of the eligibility determination performed in accordance with this section;

(ii) who has been determined to be seriously emotionally disturbed and requiring special education under the Individuals with Disabilities Education Act (IDEA), 25 USC §1400 et seq.; or

(iii) who is at risk of disruption of the preferred living or child care environment; or

(B) be 18 years of age or older and:

(i) have a diagnosis of schizophrenia, major depression, or bipolar disorder; or

(ii) have a diagnosis other than schizophrenia, major depression, or bipolar disorder, except a sole diagnosis of substance abuse or mental retardation, and have been determined to have a Global Assessment of Functioning (GAF) score of 50 or less within the 365 days preceding the date of the eligibility determination performed in accordance with this section;

(2) be enrolled as a Medicaid recipient;

(3) be residing in a living arrangement other than an institution for mental diseases or, if residing in a nursing facility, have been determined through a preadmission screening and annual resident review (PASARR) assessment to require specialized services;

(4) based on TDMHMR's uniform assessment protocol, be determined to need rehabilitative services; and

(5) have been personally assessed by an LPHA and, based on the findings of the assessment and other information in the individual's medical record, have a treatment plan, approved by an LPHA, that specifies and describes the types of rehabilitative services that are medically/clinically necessary services and reasonable to ameliorate the effects of mental illness. (The LPHA's signature on the treatment plan indicates approval of the plan.)

§419.455. Rehabilitative Services: General Requirements.

(a) Medicaid providers must develop a treatment plan in accordance with Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards).

(1) The treatment plan must identify the types of rehabilitative services to be provided to eligible individuals and the service delivery modality (i.e., one-on-one, small group, or day program) for delivering the rehabilitative services.

(2) The treatment plan must be approved by an LPHA before the delivery of rehabilitative services, unless a crisis requires immediate intervention, in which case the rationale for crisis intervention must be documented in the individual's medical record.

(b) Medicaid providers must comply with this subchapter and Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards) in the delivery of rehabilitative services.

(c) Rehabilitative services provided in response to a crisis may not be provided in a small group.

(d) Multiple community support services occurring at the same time and at the same facility must be conducted by separate staff and provided in separate locations. Multiple day programs occurring at the same time and at the same facility must each meet the staffing ratios required in this subchapter and be provided in separate locations.

(e) A community support service provided one-on-one to an LAR or primary care giver of a child or adolescent that is similar to a day program service provided to the individual may be provided to the LAR or primary care giver while the individual is attending the day program.

(f) A Medicaid provider may not unlawfully discriminate against individuals based on race, color, national origin, religion, sex, age, disability, or political affiliation. A Medicaid provider may not deny services to individuals based on sexual orientation.

§419.456. Community Support Services.

(a) Description. Community support services are services that are provided in person one-on-one or in a small group, either on site or in the community (including in the individual's home), but not as part of a day program. Services are continually monitored for effectiveness and modified as needed.

(b) Components. Components of community support services are as follows.

(1) Symptom management and support services.

(A) Symptom management and support services focus on managing, reducing, or eliminating acute or persistent symptoms of mental illness in adults and acute or persistent symptoms of serious emotional disturbance in children and adolescents.

(B) Medicaid providers must gather baseline information on the manifestation of the psychiatric symptoms, design interventions, and monitor outcomes.

(C) Symptom management and support services include:

(i) Nursing services. Nursing services must be provided by a registered nurse (RN) or licensed vocational nurse (LVN) and include:

(I) administration of medication;

(II) monitoring the efficacy of medication;

(III) monitoring the side-effects of medication;

(IV) nursing services relating to detoxification; and

(V) other nursing services that enable the individual to attain or maintain an optimal level of functioning.

(ii) Medication training and monitoring. Medication training and monitoring must be provided by a registered pharmacist, RN, LVN, or other qualified and appropriately trained person who is supervised in accordance with state law. Medication training regarding the individual's medication may be provided to the individual, LAR, or primary care giver of a child or adolescent. Medication training includes:

(I) information pertaining to the purpose of the medication;

(II) potential side-effects of the medication;

(III) contraindications;

(IV) overdose precautions; and

(V) self administration of medication.

(iii) Other services. Other services are those that assist in the identification and management of symptoms of mental illness in an adult or that assist in the identification and management of serious emotional disturbance in a child or adolescent.

(I) Other services provided to the individual include:

(-a-) instruction in methods of managing stress;

(-b-) instruction in strategies or behavioral techniques for coping with and managing symptoms or serious emotional disturbance;

(-c-) reality orientation;

(-d-) training related to self-administration of medication;

(-e-) identification and management of side-effects of medication; and

(-f-) supportive services during times of crisis or episodes of acute symptoms.

(II) Other services provided to the LAR or primary care giver of a child or adolescent include:

(-a-) instruction in methods of managing the individual's stress;

(-b-) instruction in strategies or behavioral techniques for coping with and managing the individual's symptoms or serious emotional disturbance;

(-c-) instruction in assisting the individual with reality orientation;

(-d-) training related to self-administration of medication by the individual;

(-e-) identification and management of side-effects of the individual's medication; and

(-f-) supportive services during times of crisis or episodes of acute symptoms experienced by the individual.

(2) Community living skills training.

(A) Community living skills training focuses on ameliorating mental and functional disabilities by reducing or eliminating the effect of the psychiatric symptoms on the individual's ability to integrate into the community.

(B) Medicaid providers must gather baseline information on the individual's skill strengths and deficits, determine the impact of the individual's symptoms on community integration, design interventions, and monitor outcomes.

(C) Community living skills training includes:

(i) training individuals in problem solving that assists, supports, or enables them to gain or better utilize skills necessary to attain or maintain community tenure (e.g., personal hygiene, household tasks, money management);

(ii) supporting and training individuals to enable them to access needed services in the community (e.g., medical care, dental care, legal services, transportation services, living accommodations);

(iii) training individuals to improve communication, increase interpersonal interactions, and enhance appropriate interpersonal behaviors; and

(iv) interventions to develop natural supports in individuals' chosen living, working, learning, and social environments.

(3) Employment-related support and skills training.

(A) Employment-related supports and skills training focus on reducing or managing behaviors or symptoms of mental illness that interfere with an individual's ability to obtain or retain employment.

(B) Medicaid providers must gather baseline information on the individual's skills strengths and deficits, determine the impact of the individual's symptoms on employment, design interventions, and monitor outcomes.

(C) Employment-related support and skills training include:

(i) instruction in dress, grooming, socially acceptable behaviors, and etiquette necessary to obtain or retain employment;

(ii) instruction in arranging transportation, utilizing public transportation, accessing and utilizing available resources related to the acquisition of employment, and accessing employment-related programs and benefits (e.g., unemployment, workers compensation, and social security);

(iii) interventions or supports provided on or off the job site to reduce behaviors and symptoms of mental illness that interfere with job performance; and

(iv) interventions designed to develop natural supports on or off the job site to compensate for skill deficits that interfere with job performance.

§419.457. Day Programs for Acute Needs.

(a) Description. Day programs for acute needs are short-term, intensive treatment provided to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a more restrictive treatment setting. Day programs for acute needs are provided in a highly structured and safe environment with constant supervision. An individual's interactions with staff are frequent. Services are available throughout the day program's operating hours and development of social supports are encouraged and facilitated. Services are goal-oriented and focus on improving peer interaction, appropriate social behavior, experience in the community, and stress tolerance. Services are continually monitored for effectiveness and modified as needed.

(b) Length of stay. An individual's initial prescribed length of stay per episode of care may not exceed 10 consecutive calendar days. The Medicaid provider may extend a prescribed length of stay if evidence of the individual's symptoms indicates that such an extension would be a medically/clinically necessary service, as determined by an LPHA, to improve the individual's current condition or to prevent admission to a more restrictive treatment setting. Such evidence of symptoms must be documented in accordance with §419.461(c) of this title (relating to Documentation Requirements).

(c) Components. Components of day programs for acute needs are as follows.

(1) Psychiatric nursing services. Continuous psychiatric nursing services must be provided by an RN at the day program's location. Psychiatric nursing services include:

(A) nursing assessment;

(B) coordination of medical activities (e.g., referrals to specialists and scheduling medical laboratory tests);

(C) administration of medication;

(D) specimen collection;

(E) crisis medical interventions (as ordered by a physician); and

(F) general nursing care.

(2) Medication training and monitoring. Medication training and monitoring must be provided by a registered pharmacist, RN, LVN, or other qualified and appropriately trained person who is supervised in accordance with state law. Medication training includes:

(A) information pertaining to the purpose of the medication;

(B) potential side-effects of the medication;

(C) contraindications;

(D) overdose precautions; and

(E) self administration of medication.

(3) Behavior skills training.

(A) Behavior skills training focuses on minimizing the effect of the individual's mental illness on his/her level of functioning.

(B) Medicaid providers must gather baseline information on the manifestation of the acute psychiatric symptoms, design interventions, and monitor outcomes.

(C) Behavior skills training topics include:

(i) the identification of signs of reoccurrence of symptomatology;

(ii) ways to avoid florid occurrences; and

(iii) techniques for developing internal locus of control in regard to symptoms and for developing new coping mechanisms associated with the symptoms.

(4) Independent daily living skills training.

(A) Independent daily living skills training focuses on assisting the individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avert more restrictive levels of treatment.

(B) Medicaid providers must gather baseline information pertaining to the individual's current functional skill levels, identify those skills that the adult will need to increase community tenure or the child or adolescent will need to be maintained at home or in the preferred living or child care environment, develop an individualized skill acquisition program, and evaluate outcomes.

(C) Independent daily living skills training:

(i) for children and adolescents includes training in self-care, social skills, integrating into community activities, and other developmentally appropriate skills; and

(ii) for adults includes training in personal hygiene, nutrition, food preparation, exercise, and integrating into community activities.

(d) Location of services. Day programs for acute needs must be provided:

(1) in a free-standing program serving persons residing elsewhere in the community; or

(2) within a residential treatment setting that is short-term and crisis resolution-oriented with 16 or fewer beds.

(e) Staffing ratios. Each day program for acute needs must have a staffing ratio that ensures program adequacy and the safety of individuals. Minimum staffing ratios are:

(1) one RN for every 16 individuals at the day program's location during all hours of program operation;

(2) one additional professional staff to be physically available, with a response time not to exceed 30 minutes, during all hours of program operation. This professional may not be someone assigned full-time to another day program;

(3) one physician to be available by phone, with a response time not to exceed 15 minutes, during all hours of program operation;

(4) two staff at the day program's location during all hours of program operation; and

(5) additional staff at the day program's location sufficient to maintain a ratio of one staff to every four individuals during all hours of program operation.

(f) Program director. Day programs for acute needs must be under the clinical and administrative direction of a professional who is not the RN as required in subsection (e)(1) of this section.

§419.458. Day Programs for Skills Training.

(a) Description. Day programs for skills training focus on the amelioration of mental and functional deficits through skills training and supportive interventions. Services are continually monitored for effectiveness and modified as needed. Services are provided to:

(1) individuals who, with instruction, guidance, and structure or support, may be capable of increasing their level of functioning;

(2) individuals who do not require more intensive short-term treatment; and

(3) adults who are able to manage self-care tasks, demonstrate awareness of impact on others, demonstrate a measurable degree of goal orientation, and not exhibit either threatening or extremely disruptive behaviors.

(b) Components. Components of day programs for skills training are as follows.

(1) Nursing services. Nursing services must be provided by an RN or LVN at the day program's location. Nursing services include:

(A) administration of medication;

(B) specimen collections (as ordered by a physician); and

(C) general nursing care.

(2) Medication training and monitoring. Medication training and monitoring must be provided by a registered pharmacist, RN, LVN, or other qualified and appropriately trained person who is supervised in accordance with state law. Medication training includes:

(A) information pertaining to the purpose of the medication;

(B) potential side-effects of the medication;

(C) contraindications;

(D) overdose precautions; and

(E) self administration of medication.

(3) Community integration skills training.

(A) Community integration skills training focuses on assisting the individual in acquiring skills necessary to function appropriately in the community.

(B) Medicaid providers must gather baseline information pertaining to the individual's current functional skill levels, identify skills necessary for the adult to increase community integration and for the child or adolescent to function effectively in his/her social environment (e.g., family, peers, school), develop a skills acquisition program, and evaluate outcomes.

(C) Community integration skills training:

(i) for children and adolescents includes instruction in behavioral skills necessary for the child or adolescent to be maintained in his/her usual community and school setting, socialization skills, stress management skills, and other developmentally appropriate skills; and

(ii) for adults and older adolescents (i.e., 16 and 17 years of age) includes instruction in:

(I) community integration (e.g., personal safety, home maintenance, employment, security, mobility, accessing services, social appropriateness);

(II) self-care tasks (e.g., personal hygiene, health, nutrition, dress, grooming); and

(III) functioning as independently as possible (e.g., completion of education, money management).

(4) Symptom management skills training. Symptom management skills training assists children and adolescents in the identification and management of symptoms of serious emotional disturbance and assists adults in the identification and management of symptoms of mental illness. Training includes methods of managing stress, and behavioral strategies and techniques for coping with and managing symptoms.

(c) Location of services. Day programs for skills training must be provided:

(1) on site; or

(2) within a residential treatment/training facility with 16 or fewer beds.

(d) Staffing ratios. Each day program for skills training must have a staffing ratio that ensures program adequacy and the safety of individuals. Minimum staffing ratios are:

(1) one professional staff at the day program's location during all hours of program operation;

(2) one additional professional to be physically available, with a response time not to exceed 30 minutes, during all hours of program operation. This professional may not be someone assigned full-time to another day program;

(3) two staff at the day program's location during all hours of program operation; and

(4) additional staff at the day program's location sufficient to maintain a ratio of one staff to every six children or adolescents or one staff to every eight adults during all hours of program operation.

(e) Program director. Day programs for skills training must be under the clinical and administrative direction of a professional.

§419.459. Day Programs for Skills Maintenance.

(a) Description. Day programs for skills maintenance focus on the maintenance of functional skills, symptoms reduction, and the provision of assistance and training in activities of daily living. Services are long-term and continually monitored for effectiveness and modified as needed.

(1) Services are provided to adults:

(A) with severe and persistent mental illness who are in need of day program services to ensure personal well being and to reduce the risk of or duration of placement in a more restrictive treatment setting; and

(B) who, due to age or the nature of their mental illness, are unable to benefit from a more active skills-based training program.

(2) Services may not be provided to children or adolescents.

(b) Components. Components of day programs for skills maintenance are as follows.

(1) Nursing services. Nursing services must be provided by an RN or LVN at the day program's location. Nursing services include:

(A) managing physical medical conditions;

(B) coordinating treatment with the primary care physician and psychiatrist as necessary; and

(C) administering a medication.

(2) Medication training and monitoring. Medication training and monitoring must be provided by a registered pharmacist, RN, LVN, or other qualified and appropriately trained person who is supervised in accordance with state law. Medication training includes:

(A) information pertaining to the purpose of the medication;

(B) potential side-effects of the medication;

(C) contraindications;

(D) overdose precautions; and

(E) self administration of medication.

(3) Skill maintenance programming. Skill maintenance programming focuses on utilizing the individual's existing functional skills in order to maintain those skills or slow their deterioration and includes personal care skills, social integration skills, relaxation exercise skills, and general physical activities.

(4) Services to increase community integration. Services to increase community integration focus on the development of socially valued, age-appropriate activities that provide life enriching experiences and include visiting community focal points and developing recreational interests.

(c) Location of services. Day programs for skill maintenance must be provided:

(1) on site;

(2) within a assisted living facility with 16 or fewer beds; or

(3) within a facility with more than 16 beds if:

(A) the eligible individual receiving the services is 65 years of age or older;

(B) the facility is not a hospital licensed under Chapter 577 or Chapter 241 of the Texas Health and Safety Code or a state hospital operated by TDMHMR; and

(C) the services are not otherwise reimbursed by Medicaid.

(d) Staffing ratios. Each day program for skills maintenance must have a staffing ratio that ensures program adequacy and the safety of adults. Minimum staffing ratios are:

(1) one RN or LVN to be physically available, with a response time not to exceed 30 minute, during all hours of program operation. This RN or LVN may not be someone assigned full-time to another day program;

(2) one additional professional staff to be physically available, with a response time not to exceed 30 minutes, during all hours of program operation. This additional professional may not be someone assigned full-time to another day program;

(3) two staff at the day program's location during all hours of program operation; and

(4) additional staff at the day program's location sufficient to maintain a ratio of one staff to every five individuals during all hours of program operation.

(e) Program director. Day programs for skill maintenance must be under the clinical and administrative direction of a professional.

§419.460. Rehabilitative Plan Oversight.

(a) Description. Rehabilitative plan oversight is a face-to-face assessment and/or evaluation of the individual performed by an LPHA for the purpose of determining the individual's continued need for, and the appropriateness of, the rehabilitative services prescribed in the individual's treatment plan.

(b) LPHA approval. Based on the face-to-face assessment and/or evaluation, the LPHA must:

(1) amend the treatment plan if necessary and sign the amended treatment plan as indication of approval; or

(2) concur with the treatment plan as written and sign the treatment plan as indication of approval.

(c) Rehabilitative plan oversight must be provided as medically/clinically indicated, but not less than once every 90 days.

(d) An arrangement (as defined in §419.453 of this title (relating to Definitions)) for rehabilitative plan oversight is limited to individual practitioners, professional associations, and institutions of higher learning.

§419.461. Documentation Requirements.

(a) Intervals. Rehabilitative services must be documented at the following intervals:

(1) community support services - after each direct contact;

(2) day programming for acute needs - daily;

(3) day programming for skills training and day programming for skills maintenance:

(A) daily for documentation elements described in subsection (b)(1)-(5) of this section; and

(B) weekly for documentation elements described in subsection (b)(6)-(7) of this section;

(4) rehabilitative plan oversight - after each direct contact; and

(5) for any pertinent event or behavior relating to the individual's treatment which occurs during the delivery of a rehabilitative service - as soon as possible after the occurrence.

(b) Content. Documentation must include:

(1) type of service provided;

(2) date and time the service was provided;

(3) amount of time spent in the delivery of the service;

(4) who provided the service;

(5) setting in which the service was provided;

(6) the treatment plan goal(s) that was addressed by the service; and

(7) progress or lack of progress in achieving treatment goals.

(c) Length of stay extension in day programs for acute needs. Documentation that extending an individual's length of stay is a medically/clinically necessary service is required for the provision of day programming for acute needs in excess of the ten day limit specified in §419.457(b) of this title (relating to Day Programs for Acute Needs). Documentation for each extension beyond the initial 10 days must include:

(1) a description of the specific symptoms that indicate a need for continued day programming for acute needs;

(2) the recommended number of days that programming be extended (not to exceed 10 calendar days per extension);

(3) a statement that continued day programming for acute needs is a medically/clinically necessary service; and

(4) the signature of the LPHA making the determination that the extension is a medically/clinically necessary service.

§419.462. Medicaid Reimbursement.

(a) Limitations on Medicaid reimbursement are as follows.

(1) Medicaid reimbursement will not be made for rehabilitative services delivered in excess of 12 hours per individual, per calendar day. In addition, Medicaid reimbursement will not be made in excess of:

(A) six hours of one-on-one services per individual, per calendar day;

(B) six hours of services in a small group per individual, per calendar day; and

(C) six hours of services in day programs per individual, per calendar day.

(2) Medicaid reimbursement will not be made in excess of one rehabilitative plan oversight per individual, per calendar month.

(b) Medicaid reimbursement for day programs is inclusive of all the services provided within a day program.

(c) Medicaid reimbursement will not be made for community support services provided to an individual on the same day as day programming if the community support services are duplicative of the day programming training or services, unless the services are:

(1) in response to a crisis that occurred outside of the day program; or

(2) of such specificity as to enhance and reinforce training or services begun within the day program (e.g., in a day program the individual learns about grocery shopping and as a community support service the individual shops at a grocery store).

(d) Individuals must be present, awake, and participating during the rehabilitative services for which reimbursement is requested.

(e) Services and activities not reimbursed by Medicaid as rehabilitative services include:

(1) any rehabilitative service that is not provided in accordance with this subchapter;

(2) any rehabilitative service provided to an individual who does not meet the eligibility criteria as described in §419.454 of this title (relating to Eligibility of Individuals for Rehabilitative Services Reimbursed by Medicaid);

(3) nursing services that are incidental to another Medicaid service, including an office visit with a physician;

(4) services that are an integral and inseparable part of another Medicaid service;

(5) outreach activities that are designed to locate individuals who are potentially Medicaid eligible;

(6) any medical evaluation, examination, or treatment that is otherwise billable as a separate and distinct Medicaid-covered benefit;

(7) room and board residential costs;

(8) educational or vocational services;

(9) services provided in an inpatient hospital setting;

(10) services provided to individuals with a single diagnosis of mental retardation or another developmental disabilities without a co-occurring diagnosis of mental illness;

(11) services provided to:

(A) inmates of a public institution (e.g., penal institutions) as defined in 42 CFR, §435.1009; or

(B) residents of an Intermediate Care Facility for Mental Retardation (ICF/MR); and

(12) services provided to individuals under 65 years of age who are patients of an institution of mental diseases regardless of where the services are provided.

§419.463. Medicaid Provider Participation Requirements.

(a) To become a Medicaid provider, an entity must:

(1) be designated as a local mental health authority (LMHA) in accordance with the Texas Health and Safety Code, §533.035(a), that:

(A) provides services comparable to rehabilitative services and the services described in the Texas Health and Safety Code, §534.053(a)(1)-(7);

(B) is in compliance with Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards);

(C) conducts criminal history clearances on all contractors delivering rehabilitative services and all employees and ap-

plicants of the LMHA to whom an offer of employment or volunteer status is made and ensures that individuals do not come in contact with and are not provided services by an employee, contractor, or volunteer of the LMHA (or employee, contractor, or volunteer of contractors delivering rehabilitative services under a contract with the LMHA) who has a conviction for any of the criminal offenses listed in §414.504(g) of this title (relating to Pre-employment Criminal History Clearance) or for any criminal offense that the LMHA has determined to be a contraindication to employment or volunteer status; and

(D) has signed a provider agreement with TDMHMR; or

(2) be a corporation incorporated or registered to do business in the state of Texas that:

(A) has completed an application indicating it:

(i) provides services comparable to rehabilitative services and the services described in the Texas Health and Safety Code, §534.053(a)(1)-(7);

(ii) is in compliance with Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards);

(iii) has demonstrated a history of providing, as well as the capacity to continue to provide, services to individuals required to submit to mental health treatment:

(I) under the Texas Code of Criminal Procedure, Article 17.032 (relating to Release on Personal Bond of Certain Mentally Ill De fendants), or Article 42.12, §5(a) or §11(d) (relating to Community Supervision); and

(II) under the Texas Health and Safety Code, Chapter 573 (relating to Emergency Detention) and Chapter 574 (relating to Court Ordered Mental Health Services);

(iv) conducts criminal history clearances on all contractors delivering rehabilitative services and all employees and applicants of the corporation to whom an offer of employment or volunteer status is made and ensures that individuals do not come in contact with and are not provided services by an employee, contractor, or volunteer of the corporation (or employee, contractor, or volunteer of contractors delivering rehabilitative services under a contract with the corporation) who has a conviction for any of the criminal offenses listed in §414.504(g) of this title (relating to Pre-employment Criminal History Clearance) or for any criminal offense that the corporation has determined to be a contraindication to employment or volunteer status;

(B) has had its application information confirmed by an on site visit by TDMHMR;

(C) has had its application approved by TDMHMR; and

(D) has signed a provider agreement with TDMHMR.

(b) A Medicaid provider must:

(1) comply with all applicable federal and state laws, rules, and regulations, and any provider manuals and policy clarification letters promulgated by TDMHMR;

(2) document and bill for reimbursement of rehabilitative services in the manner and format prescribed by TDMHMR;

(3) allow TDMHMR access to all individuals and individuals' records;

(4) ensure that if services are provided under arrangement that the person or entity providing the rehabilitative services under arrangement complies with all applicable federal and state laws, rules, and regulations, and any provider manuals and policy clarification letters promulgated by TDMHMR;

(5) continuously provide those services that are described in the Texas Health and Safety Code, §534.053(a)(1)-(7); and

(6) continuously provide services to individuals required to submit to mental health treatment:

(A) under the Texas Code of Criminal Procedure, Article 17.032 (relating to Release on Personal Bond of Certain Mentally Ill Defendants), or Article 42.12, §5(a) or §11(d) (relating to Community Supervision); and

(B) under the Texas Health and Safety Code, Chapter 573 (relating to Emergency Detention) and Chapter 574 (relating to Court Ordered Mental Health Services).

§419.464. Fair Hearings.

(a) Any Medicaid eligible individual whose request for eligibility for rehabilitative services is denied or is not acted upon with reasonable promptness, or whose rehabilitative services have been terminated, suspended, or reduced by TDMHMR is entitled to a fair hearing, conducted by the Texas Department of Human Services. A request for a fair hearing must be submitted to the TDMHMR Office of Medicaid Administration and received within 90 days from the date the notice of denial of eligibility for rehabilitative services or notice of termination, suspension, or reduction of rehabilitative services was mailed.

(b) The Medicaid provider must provide Medicaid eligible individuals with notice of their right to request a fair hearing in the form and manner prescribed by TDMHMR.

§419.465. References.

The following laws and rules are referenced in this subchapter:

(1) Texas Civil Statutes, Article 4514, §8, and Articles 4512c-1, §4495b §4512g, and 1528f;

(2) Human Resources Code, Chapter 50;

(3) Texas Health and Safety Code, Chapters 241, 573, 574, and 577; §533.035(a); and §534.053(a)(1)-(7);

(4) Texas Code of Criminal Procedure, Article 17.032 and Article 42.12, §§5(a) and 11(d);

(5) 20 USC §1400 et seq.;

(6) 42 CFR, §435.1009;

(7) §1915(a) of the Social Security Act;

(8) Chapter 408, Subchapter B of this title (relating to Mental Health Community Services Standards); and

(9) section 414.504(g) of this title (relating to Pre-employment Criminal History Clearance) of Chapter 414, Subchapter K of this title (relating to Criminal History Clearances).

§419.466. Distribution.

(a) This subchapter shall be distributed to:

(1) members of the Texas MHMR Board;

(2) executive, management, and program staff of Central Office;

(3) chief executive officers of all Medicaid providers; and

(4) advocacy organizations.

(b) The chief executive officer of each Medicaid provider must provide a copy of this subchapter to all persons and entities providing rehabilitative services under arrangement.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903039

Charles Cooper

Chairman

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 4, 1999

For further information, please call: (512) 206–4516

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.112 and §335.152, regarding Industrial Solid Waste and Municipal Hazardous Waste.

EXPLANATION OF PROPOSED RULES

The commission is proposing the adoption of a definition for "Substantial business relationship." The definition will be placed in 30 TAC Chapter 37, concerning Financial Assurance. The purpose of this rulemaking for Chapter 335 is to adopt the "substantial business relationship" for closure and post-closure and to provide the appropriate references to "substantial business relationship" in Chapter 335. The "substantial business relationship" rule will allow corporations to provide financial test guarantees for entities including Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs), and Limited Partnerships (LPs).

In September 1988, the United States Environmental Protection Agency (EPA) modified 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subpart H, to expand the mechanisms available to owners and operators to demonstrate financial responsibility for third party liability. The modifications included a new option which allowed corporate guarantors to demonstrate financial responsibility for liability using the financial test on behalf of entities with which the guarantor had a "substantial business relationship." In September 1992, EPA modified 40 CFR Parts 264 and 265, Subpart H, again and expanded the use of substantial business relationship to financial test guarantees for closure and post-closure care. In 40 CFR 254.141(h), EPA defines the "substantial business relationship" as "the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator." This broad federal definition requires each state to determine under its own laws what constitutes "a business relationship necessary ... to make a guarantee contract issued incident to that relationship valid and enforceable."

Current federal regulations allow corporations to use the financial test to provide guarantees on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define "subsidiaries" as corporations. The federal regulations, in 40 CFR 264.141(d), define a "parent" corporation as "a corporation which directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a 'subsidiary' of the parent corporation. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs, or other non-corporate entities as 'subsidiaries.'"

The commission's proposed rules in Chapters 37 and Chapter 335 will adopt a definition for "substantial business relationship" and allow corporate guarantors to use the financial test to demonstrate financial responsibility for liability, closure, and post-closure on behalf of non-corporate (non-subsidiary) entities such as LLCs, LLPs, and LPs. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LPs, LLPs, and LLCs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide guarantees on behalf of non-corporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a subsidiary. This definition will narrowly define the relationship and preserve the state's ability to enforce the guarantee for financial responsibility. In addition, the proposed rules require the guarantor to provide documentation to the commission which demonstrates that the guarantee contract is valid and enforceable under state law and that a substantial business relationship exists between guarantor corporation and the entity guaranteed.

Amended §335.112, concerning Standards, adds a reference to the definition of substantial business relationship. The definition of substantial business relationship will be in a concurrent proposed rulemaking for Chapter 37, concerning Financial Assurance.

Amended §335.152, concerning Standards, also adds references to the definition of substantial business relationship.

FISCAL NOTE

Matthew Johnson, Financial Administration Division, has determined that for the first five-year period the proposed sections are in effect, there will be no significant costs to state government or units of local government as a result of administration or enforcement of these sections. There are no new economic costs anticipated for any owners or operators required to comply with these sections as proposed. The rules will not reduce the amount of financial assurance required to be demonstrated. However, corporate guarantors who demonstrate financial assurance for an LLC, LLP, or LP in which it has at least a 50% interest will experience lower costs by using the financial test. The financial test is a less expensive mechanism than a letter of credit, bond, trust, etc. Savings realized by corporate guarantors will vary with the amount of financial assurance demonstrated and the guarantor's cost of previously available

mechanisms. For a demonstration of $64 million, a corporate guarantor could realize an estimated savings of $160,000 annually, assuming the guarantor's cost for a bank letter of credit is 0.25%. For a demonstration of $1.7 million, a corporate guarantor could realize an estimated savings of $4,250 annually, assuming a similar letter of credit cost. A corporate guarantor's savings would be greater if its cost for bank letters of credit or other similar mechanisms exceeded 0.25%.

PUBLIC BENEFIT

Mr. Johnson has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will not change. The effect on owners or operators of facilities subject to these new sections will be a potential reduction in cost of demonstrating financial assurance.

SMALL BUSINESS ANALYSIS

The proposed rules provide a new option for corporations to use the financial test to provide a financial guarantee on behalf of entities with which the corporation has a substantial business relationship. As a financial assurance mechanism, the financial test is a less expensive mechanism than other mechanisms, such as letters of credit, bonds, or trusts. These cost savings may represent a savings for any person affected by the proposed rules or a part of the costs of any project. The potential cost savings will affect small businesses on the same basis as any larger business to the extent that a small business is either a guarantor corporation or a noncorporate entity for which a guarantee is provided. There are no new economic costs anticipated for any owners or operators required to comply with these sections as proposed.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code inasmuch as the rules will merely offer an additional option for financial assurance, and they do not meet any of the four applicability requirements listed in §2001.0225(a). The rules will merely offer greater flexibility in instances where corporations guarantee financial responsibility for entities with which the corporation has a substantial business relationship.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no additional costs are caused by the rules.

The rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rules will not reduce the amount of financial assurance required to be demonstrated. The rules are administrative in nature and simply expand the instruments available to corporate guarantors who provide guarantees on behalf of non-corporate entities.

The purpose of these rules is to adopt a Texas definition for "substantial business relationship" which will allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporations to use the financial test for demonstrating financial responsibility on behalf of LLCs, LLPs, and LPs.

This proposal does not exceed a standard set by federal law and is specifically allowed by federal law. The federal regulations allow the corporations to use the financial test as a corporate guarantee for closure, post-closure, and liability coverage, on behalf of third parties with which the corporation has a substantial business relationship. The federal regulations defer to each state to ensure that guarantee contracts issued incident to that relationship are valid and enforceable.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as the substantial business relationship requirements as proposed will be equivalent to the federal financial assurance mechanism requirements.

The rules are proposed under specific state law and the general powers of the commission. The specific state law is Texas Health and Safety Code, §361.085.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to adopt the definition of substantial business relationship which would allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of non-corporate entities such as LLCs, LLPs, and LPs. The federal regulations allow guarantor corporations to provide corporate guarantees using the financial test on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define "subsidiaries" as corporations. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs, or other non- corporate entities as "subsidiaries." The commission's proposed rules will adopt a definition for "substantial business relationship" and allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of non-corporate (non-subsidiary) entities such as LLCs, LLPs, and LPs for liability, closure, and post-closure. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LLCs, LLPs, and LPs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide financial test guarantees to the state on behalf of non-corporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a corporate subsidiary. This definition narrowly defines the relationship and preserves the state's ability to enforce the guarantee for financial responsibility. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because the proposed rules will not reduce the amount of financial assurance required to be demonstrated.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is not subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), the rules of the Coastal Coordination Council (31 TAC Chapters

501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas CMP.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Written comments regarding this proposal and request for alternatives may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98059-037-AD. Comments must be received by 5:00 p.m., July 5, 1999. For further information or questions concerning this proposal, please contact Linda Shirck of the Financial Administration Division, Office of Administrative Services, (512) 239-6260.

Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §335.112

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Health and Safety Code, §361.085.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

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

(7) Subpart H–Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832); except 40 CFR §265.142(a)(2); provided that the corporate guarantee for closure or for post-closure care, described in 40 CFR §265.143(e)(10) or §265.145(e)(11), respectively, may be provided [~~only~~] by a direct or higher-tier parent corporation of the owner or operator , or a corporation which has a substantial business relationship, as defined in §37.11 of this title (relating to Definitions), with the entity guaranteed ;

(8)-(22) (No change.)

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

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

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

TRD-9902971
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 11, 1999
For further information, please call: (512) 239–1966

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Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §335.152

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission. The amendment implements Texas Health and Safety Code, §361.085.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

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

(6) Subpart H–Financial Requirements (as amended through June 10, 1994, in 59 FedReg 29958); except 40 CFR §264.142(a)(2); and subject to the limitations set forth in this section:

(A) (No change.)

(B) Facilities which qualify for the corporate guarantee for liability are additionally subject to 40 CFR §264.147(g)(2) and § 264.151(h)(2) . The corporate guarantee for liability may be provided by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title (relating to Definitions), with the entity guaranteed ; and

(C) The corporate guarantee for closure or for post-closure care, described in 40 CFR §264.143(f)(10) or §264.145(f)(11), respectively, may be provided by a direct or higher-tier parent corporation of the owner or operator , or a corporation which has a substantial business relationship, as defined in §37.11 of this title, with the entity guaranteed ;

(7)-(20) (No change.)

(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 May 20, 1999.

TRD-9902972
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 11, 1999
For further information, please call: (512) 239–1966

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Chapter 37. Finance Assurance

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §37.11, concerning Definitions, §37.261, concerning Corporate Guarantee for Closure, and §37.551, concerning Corporate Guarantee for Liability.

EXPLANATION OF PROPOSED RULES

The commission is proposing the adoption of a definition for "substantial business relationship," which would allow corporations to provide financial test guarantees for entities including Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs), and Limited Partnerships (LPs).

In September 1988, the United States Environmental Protection Agency (EPA) modified 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subpart H, to expand the mechanisms available to owners and operators to demonstrate financial responsibility for third-party liability. The modifications included a new option which allowed corporate guarantors to demonstrate financial responsibility for liability using the financial test on behalf of entities with which the guarantor had a "substantial business relationship." In September 1992, EPA modified 40 CFR Parts 264 and 265, Subpart H again and expanded the use of substantial business relationship to financial test guarantees for closure and post-closure care. In 40 CFR 254.141(h), EPA defines the "substantial business relationship" as "the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator." This broad federal definition requires each state to determine under its own laws what constitutes "a business relationship necessary... to make a guarantee contract issued incident to that relationship valid and enforceable."

Current federal regulations allow corporations to use the financial test to provide guarantees on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define a "subsidiary" in 40 CFR 261.141(d) as a corporation in which a "parent corporation" directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs or other noncorporate entities as "subsidiaries."

The commission's proposed rules will adopt a definition for "substantial business relationship" and allow corporate guarantors to use the financial test to demonstrate financial responsibility for liability, closure, and post-closure on behalf of noncorporate (non-subsidiary) entities such as LLCs, LLPs, and LPs. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LPs, LLPs, and LLCs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide guarantees on behalf of noncorporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a subsidiary. This definition will narrowly define the relationship and preserve the state's ability to enforce the guarantee for financial responsibility. In addition, the proposed rules require the guarantor to provide documentation to the commission which demonstrates that the guarantee contract is valid and enforceable under state law and that a substantial business relationship exists between guarantor corporation and the entity guaranteed.

Definitions of substantial business relationship and entity are added to §37.11. Substantial business relationship means a relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed. The term "entity," for the purposes of Chapter 37, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, LLC, LLP, or LP. The commission seeks comments on the definition of substantial business relationship and the definition of entity.

Amended §37.261, concerning Corporate Guarantee for Closure, adds a description of the supplemental information that the guarantor must include with the demonstration of financial responsibility for closure and post-closure in order to provide the commission with adequate assurances that a substantial relationship exists and that the guarantee issued incident to that relationship is valid and enforceable. The guarantor will be required to submit certain information such as a description of the "substantial business relationship" and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

Amended §37.551, concerning Corporate Guarantee for Liability, adds a description of the supplemental information that the guarantor must include with the demonstration of financial responsibility for liability in order to provide the commission with adequate assurances that a substantial relationship exists and that the guarantee issued incident to that relationship is valid and enforceable. Again, the guarantor will be required to submit certain information such as a description of the "substantial business relationship" and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

FISCAL NOTE

Matthew Johnson, Financial Administration Division, has determined that for the first five-year period the proposed sections are in effect, there will be no significant costs to state government or units of local government as a result of administration or enforcement of these sections. There are no new economic costs anticipated for any owners or operators required to comply with the sections as proposed. The rules will not reduce the amount of financial assurance required to be demonstrated. However, corporate guarantors who demonstrate financial assurance for an LLC, LLP, or LP in which it has at least a 50% interest will

experience lower costs by using the financial test. The financial test is a less expensive mechanism than a letter of credit, bond, trust, etc. Savings realized by corporate guarantors will vary with the amount of financial assurance demonstrated and the guarantor's cost of previously available mechanisms. For a demonstration of $64 million, a corporate guarantor could realize an estimated savings of $160,000 annually, assuming the guarantor's cost for a bank letter of credit is 0.25%. For a demonstration of $1.7 million, a corporate guarantor could realize an estimated savings of $4,250 annually, assuming a similar letter of credit cost. A corporate guarantor's savings would be greater if its cost for bank letters of credit or other similar mechanisms exceeded 0.25%.

PUBLIC BENEFIT

Mr. Johnson has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will not change. The effect on owners or operators of facilities subject to this new section will be a potential reduction in cost of demonstrating financial assurance.

SMALL BUSINESS ANALYSIS

The proposed rules provide a new option for corporations to use the financial test to provide a financial guarantee on behalf of entities with which the corporation has a substantial business relationship. As a financial assurance mechanism, the financial test is a less expensive mechanism than other mechanisms, such as letters of credit, bonds, or trusts. These cost savings may represent a savings for any person affected by the proposed rules or a part of the costs of any project. The potential cost savings will affect small businesses on the same basis as any larger business to the extent that a small business is either a guarantor corporation or a noncorporate entity for which a guarantee is provided. There are no new economic costs anticipated for any owners or operators required to comply with these sections as proposed.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code inasmuch as the rules will merely offer an additional option for financial assurance, and they do not meet any of the four applicability requirements listed in §2001.0225(a). The rules will merely offer greater flexibility in instances where corporations guarantee financial responsibility for entities with which the corporation has a substantial business relationship.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no additional costs are caused by the rules.

The rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rules will not reduce the amount of financial assurance required to be demonstrated. The rules are administrative in nature and simply expand the instruments available to corporate guarantors who provide guarantees on behalf of noncorporate entities.

The purpose of these rules is to adopt a Texas definition for "substantial business relationship" which will allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporations to use the financial test for demonstrating financial responsibility on behalf of LLCs, LLPs, and LPs.

This proposal does not exceed a standard set by federal law and is specifically allowed by federal law. The federal regulations allow the corporations to use the financial test as a corporate guarantee for closure, post-closure, and liability coverage, on behalf of third parties with which the corporation has a substantial business relationship. The federal regulations defer to each state to ensure that guarantee contracts issued incident to that relationship are valid and enforceable.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as the substantial business relationship requirements as proposed will be equivalent to the federal financial assurance mechanism requirements.

The rules are proposed under specific state law and the general powers of the commission. The specific state law is Texas Health and Safety Code, §361.085.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to adopt the definition of substantial business relationship which would allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of noncorporate entities such as LPs, LLPs, and LLCs. The federal regulations allow guarantor corporations to provide corporate guarantees using the financial test on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define "subsidiaries" as corporations. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs or other noncorporate entities as "subsidiaries." The commission's proposed rules will adopt a definition for "substantial business relationship" and allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of noncorporate (nonsubsidiary) entities such as LLCs, LLPs, and LPs for liability, closure, and post-closure. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LLCs, LLPs, and LPs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide financial test guarantees to the state on behalf of noncorporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a corporate subsidiary. This definition narrowly defines the relationship and preserves the state's ability to enforce the guarantee for financial responsibility. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because the proposed rules will not reduce the amount of financial assurance required to be demonstrated.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is not subject to the Texas Coastal Management Program in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

SUBMITTAL OF COMMENTS

Written comments regarding this proposal and request for alternatives may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98059-037-AD. Comments must be received by 5:00 p.m., July 5, 1999. For further information or questions concerning this proposal, please contact Linda Shirck of the Financial Administration Division, Office of Administrative Services, (512) 239-6260.

Subchapter A. General Financial Assurance Requirements

30 TAC §37.11

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements Texas Health and Safety Code, §361.085.

§37.11. Definitions.

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

(1) Assets–All existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) Current assets–Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(3) Current closure cost estimate–The most recent of the estimates prepared for closure and approved by the executive director.

(4) Current liabilities–Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(5) Current plugging and abandonment cost estimate–The most recent of the estimates prepared in accordance with Chapter 331 of this title (relating to Underground Injection Control).

(6) Entity–For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or limited partnership.

(7) [~~(6)~~] Face amount–The total amount the insurer is obligated to pay under an insurance policy.

(8) [~~(7)~~] Financial responsibility–This term shall mean the same as financial assurance.

(9) [~~(8)~~] Independent audit–An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(10) [~~(9)~~] Liabilities–Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(11) [~~(10)~~] Net working capital–Current assets minus current liabilities.

(12) [~~(11)~~] Net worth–Total assets minus total liabilities and equivalent to owner's equity.

(13) [~~(12)~~] Program area–TNRCC areas under which the facility is permitted, licensed , or registered to operate, including , but not limited to , Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

(14) [~~(13)~~] Standby trust–An unfunded trust established to meet the requirements of this chapter.

(15) Substantial business relationship–a relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed.

(16) [~~(14)~~] Tangible net worth–The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

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

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

TRD-9902968
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 11, 1999
For further information, please call: (512) 239-1966

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Subchapter C. Financial Assurance Mechanisms for Closure

30 TAC §37.261

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011 and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The amendment implements Texas Health and Safety Code, §361.085.

§37.261. Corporate Guarantee for Closure.

(a) (No change.)

(b) The guarantor shall be the direct or higher-tier parent corporation of the owner or operator or a corporation with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators as specified in §37.251 of this title (relating to Financial Test for Closure). The guarantor must comply with the terms of the corporate guarantee.

(c) (No change.)

(d) If the guarantor has a "substantial business relationship" with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the "substantial business relationship" and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) [~~(d)~~] The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to perform closure of the facility covered by the corporate guarantee in accordance with the closure plan or the closure requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in §37.201 of this title (relating to Trust Fund for Closure) in the name of the owner or operator;

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts;

(3) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

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

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

TRD-9902969
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 11, 1999
For further information, please call: (512) 239-1966

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Subchapter F. Financial Assurance Mechanisms for Liability

30 TAC §37.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011 and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The amendment implements Texas Health and Safety Code, §361.085.

§37.551. Corporate Guarantee for Liability.

(a) (No change.)

(b) The guarantor must be the direct or higher-tier parent corporation of the owner or operator or a corporation with a "substantial business relationship" with the owner or operator . The guarantor must meet the requirements for owners or operators as specified in §37.541 of this title (relating to Financial Test for Liability). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.661 of this title (relating to Corporate Guarantee). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.541(c) of this title.

(d) If the guarantor has a "substantial business relationship" with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the "substantial business relationship "and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) [~~(d)~~] The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage;

(2) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(f) [~~(e)~~] In the case of corporation incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:

(1) the state in which the guarantor is incorporated; and

(2) each state in which a facility covered by the guarantee is located have submitted a written statement to the Unites States Environmental Protection Agency [~~(EPA)~~] that a guarantee executed as described in this section and §37.661 of this title (relating to

Corporate Guarantee) is a legally valid and enforceable obligation in that state.

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

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

TRD-9902970
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: August 11, 1999
For further information, please call: (512) 239-1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office (Land Office) proposes an amendment to §15.11(a)(6), concerning the certification of local government dune protection and beach access plans (plans). The amendment is proposed to certify as consistent with state law the initiation of a beach user fee in Matagorda County (county).

On March 15, 1999, the county commissioners court adopted by order the inclusion of a $6.00 annual beach user fee to the county's plan. In the amendment to §15.11(a)(6), the Land Office certifies that the county's initiation of the beach user fee is consistent with state law in that the county will have sufficient funds to adequately preserve and enhance the public's access to and use of the public beach.

Mr. Andrew Neblett, Deputy Commissioner for the Resource Management Program Area, has determined that for the first five-year period this rule is in effect the fiscal implications for state or local government as a result of enforcing or administering the rule will be the availability of funds dedicated to beach-related services and facilities.

Mr. Neblett has also determined that for the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing or administering the rule will be the ability of the county to provide necessary beach-related services and facilities, provide necessary law enforcement security patrols and provide capital improvements such as new or improved restrooms and additional parking. Mr. Neblett has determined that there will be no economical costs to small businesses or individuals.

The proposed amendment to certify the county's beach user fee is subject to the Texas Coastal Management Program (CMP), §505.11(a)(1)(J), relating to the Actions and Rules Subject to the Coastal Management Program, and must be consistent with the applicable CMP goals and policies under §501.14(k), relating to Construction in the Beach/Dune System. The Land Office has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with the Land Office beach/dune regulations that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies.

Comments may be submitted in writing to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas, 78701-1495, facsimile number (512) 463-6311. Comments must be received no later than 5:00 p.m., July 5, 1999.

The amendment is proposed under Texas Natural Resources Code, §§61.011, 61.015(b) and §61.022(c) which provide the Land Office with the authority to preserve and enhance the public's right to use and have access to and from Texas' public beaches.

Texas Natural Resources Code, Chapter 61, Subchapter B, §61.011, §61.015(b), and §61.022(c) are affected by the proposed amendment.

§15.11. Certification of Local Government Dune Protection and Beach Access Plans.

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are consistent with state law:

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

(6) Matagorda County (adopted February 13, 1995) .[;] The General Land Office certifies that the Beach User Fees section of the Matagorda County plan adopted by the Matagorda County Commissioners Court on March 15, 1999, is consistent with state law.

(7)-(12) (No change.)

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

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903016
Larry R. Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 305-9129

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 6. License to Carry Concealed Handgun

Subchapter A. General Provisions

37 TAC §§6.1, 6.3-6.5

The Texas Department of Public Safety proposes amendments to §§6.1 and 6.3-6.5, concerning license to carry concealed

handgun. Amendments to §§6.1, 6.4, and 6.5 are necessary in order for the department to comply with legislative amendments to the Concealed Handgun Statute. Section 6.3 amendment reflects a change in the mailing address of the Concealed Handgun Legal Section.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Haas also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing or administering the rules will be the licensing of individuals to carry a concealed handgun. There is no anticipated economic cost to small or large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this article.

Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this proposal.

§6.1. 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 Civil Statutes, Article 4413(29ee) and Texas Government Code, Chapter 411, Subchapter H.

(2) Active judicial officer - A person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

(3) Applicant - A license applicant or an instructor applicant.

(4) Certified handgun instructor - A qualified handgun instructor.

(5) Chemically dependent person - A person who:

(A) frequently or repeatedly becomes intoxicated by excessive indulgence in alcohol or uses controlled substances or dangerous drugs so as to acquire a fixed habit and an involuntary tendency to become intoxicated or use those substances as often as the opportunity is presented;

(B) has been convicted two times within the 10-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense;

(C) is an unlawful user of or addicted to any controlled substance; or

(D) is an addict, as defined by United States Code §802.

(6) Concealed handgun - A handgun, the presence of which is not openly discernible to the ordinary observation of a reasonable person.

(7) Controlled substance - has the meaning assigned by 21 United States Code §802.

(8) Convicted - An adjudication of guilt or an order of deferred adjudication entered against a person by a court of competent jurisdiction for an offense under the laws of this state, another state, or the United States, whether or not the imposition of the sentence is subsequently probated and the person is discharged from community supervision. The term does not include an adjudication of guilt or an order of deferred adjudication which has been subsequently:

(A) expunged [~~the imposition of the sentence is subsequently probated and the person is discharged from community supervision~~]; or

(B) pardoned under the authority of a state or federal official [~~the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence~~].

(9) Delinquent Conduct - has the meaning assigned by Family Code, §51.03.

(10) [~~(9)~~] Department - The Texas Department of Public Safety, including employees of the department.

(11) [~~(10)~~] Director - The Director of the Texas Department of Public Safety or the Director's designee.

(12) [~~(11)~~] Director's designee - For purposes of conducting background investigations under this chapter, refers to an employee of the department, unless otherwise specified by the Director.

(13) Finally determined - whether a person has been finally determined to be delinquent in the payment of taxes, student loans, or child support payments will be determined by the agency reporting the delinquency to the Department.

(14) [~~(12)~~] Handgun - Has the meaning assigned by Texas Penal Code, §46.01.

(15) [~~(13)~~] Instructor applicant - A person who applies for certification, either original or renewed, as a qualified handgun instructor.

(16) [~~(14)~~] Intoxicated - Has the meaning assigned by Texas Penal Code, §49.01.

(17) [~~(15)~~] License applicant - An applicant for a license, either original or renewed, to carry a concealed handgun under the Act [~~Texas Civil Statutes, Article 4413(29ee)~~].

(18) [~~(16)~~] License holder - A person licensed to carry a concealed handgun under the Act [~~Texas Civil Statutes, Article 4413(29ee)~~].

(19) [~~(17)~~] Qualified handgun instructor - A person who is certified by the department to instruct in the use of handguns.

(20) [~~(18)~~] Residence - Domicile; that is, one's home and fixed place of habitation to which he intends to return after any temporary absence. The term "residence" has the meaning assigned in §15.25 of this title (relating to Address).

(21) [~~(19)~~] Retired judicial officer - A special judge appointed under Texas Government Code, §26.023 or §26.024; or a senior judge designated under Texas Government Code, §75.001;

or a judicial officer as designated or defined by Texas Government Code, §75.001, §831.001, or §836.001.

[(20) Unsound mind - The mental condition of a person who:]

[(A) has been adjudicated mentally incompetent, mentally ill, or not guilty of a criminal offense by reason of insanity;]

[(B) has been diagnosed by a licensed physician as being characterized by a mental disorder or infirmity that renders the person incapable of managing the person's self or the person's affairs, unless the person furnishes a certificate from a licensed physician stating that the person is no longer disabled or under any medication for the treatment of a mental or psychiatric disorder. Provided, that a person who refuses against medical advice to take medication prescribed by a licensed physician for a mental disorder or infirmity shall be considered to be "under medication"; or]

[(C) has been diagnosed by a licensed physician as suffering from depression, manic depression, or post-traumatic stress syndrome, unless the person furnishes a certificate from a licensed physician stating that the person is no longer disabled or under any medication for the treatment of a mental or psychiatric disorder.]

§6.3. Correspondence.

(a) Addressed to the department. Except as otherwise provided, applications and correspondence not relating to requests for hearings should be mailed to the department at the following address: Texas Department of Public Safety, Concealed Handgun Licensing Unit, Post Office Box 15888, Austin, Texas 78761-5888. A request for hearing and all correspondence relating thereto should be mailed to the department at the following address: Texas Department of Public Safety, Crime Records Service - Concealed Handgun Legal Section MSC-0236, Box 4143, Austin, Texas 78765-4143 [Legal Services - Concealed Handgun Section, Post Office Box 15327, Austin, Texas 78761-5327].

(b) Addressed to applicant, license holder, or certified instructor. Notice will be mailed to the address currently reported to the department by an applicant, license holder, or certified instructor as the correct address. For the purpose of any notice required by the Act, the department will assume that the address currently reported to the department by the applicant or license holder is the correct address.

(c) Notice. Written notice meets the requirements under this Act if the notice is sent by certified mail to the current address reported by the applicant or license holder to the department. If a notice is returned to the department because the notice is not deliverable, the department may give notice by publication once in a newspaper of general interest in the county of the applicant's or license holder's last reported address. On the 31st day after the date the notice is published, the department may take the action proposed in the notice.

§6.4. Notice Required on Certain Premises.

(a) Notice: The following establishments shall prominently display an appropriate notice at each entrance to the premises, to state that it is unlawful to carry a handgun on the premises:

(1) a business that has a permit or license issued under Alcoholic Beverage Code, Chapter 25, 28, 32, [or] 69, or 74, and that derives 51% or more of its income from the sale of alcoholic beverages for on-premises consumption as determined by the Texas Alcoholic Beverage Commission under Alcoholic Beverage Code, §104.06.

(2) a hospital licensed under the Health and Safety Code, Chapter 241.

(3) a nursing home licensed under the Health and Safety Code, Chapter 242.

(b) Text. The sign must state that it is unlawful for a person licensed under the Actto carry a handgun on the premises. [The following text may be used: "State law prohibits carrying a handgun on these premises." A citation to statute may be included as follows: "Texas Civil Statutes, Article 4413(29ee)."] The notice must also be posted in Spanish. [The following text may be used: "La ley del estado prohibe cargar arma de fuego en este sitio."]

(c) Visibility. The sign must appear in contrasting colors with block letters at least one inch in height and must include on its face the number "51" printed in solid red at least 5 inches in height. The sign shall be displayed in a conspicuous manner clearly visible to the public from outside or immediately inside each public, service, and employee entrance. Signs required by this section are not required to be posted by fire exits, interior entrances, or entrances to individual resident rooms.

§6.5. Notice Optional on Other Premises.

(a) Notice. A public or private employer may prohibit persons who are licensed to carry from carrying a concealed handgun on the premises of the business.

(b) Text. A sign prohibiting license holders from carrying a concealed handgun must comply with the requirements of Texas Penal Code, 30.06("Trespass by Holder of License to Carry Concealed Handgun"). [The sign may state that it is prohibited to carry a handgun on the premises. The following are samples of text which may be used:]

[(1) "Possession of a handgun under authority of Texas Concealed Handgun Permit Law, Texas Civil Statutes, Article 4413(29ee), is prohibited in this building."]

[(2) "Possession of a handgun under authority of Texas Concealed Handgun Permit Law, Texas Civil Statutes, Article 4413(29ee), is prohibited beyond this point."]

[(c) Spanish Text. The notice may also be posted in Spanish as follows:]

[(1) "No se permite posser armas de fuego en este edificio bajo authoridad de la Ley de Permisos para Portar Armas de Fuego en el Estado de Texas, Texas Civil Statutes, Article 4413, (29ee)."]

[(2) "De este lugar en adelante, no se permite poseer armas de fuego bajo authoridad de la Ley de Permisos para Portar Armas de Fuego en el Estado de Texas, Texas Civil Statutes, Article 4413 (29ee)."]

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902929
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

♦ ♦ ♦

Subchapter B. Eligibility and Application Procedures

37 TAC §§6.11, 6.14-6.18, 6.21

The Texas Department of Public Safety proposes amendments to §§6.11, 6.14-6.18 and new §6.21, concerning license to carry concealed handgun. Sections 6.11, 6.14, and 6.16-6.18 are amended to comply with legislative changes to the Concealed Handgun Statute. Figure 1, §6.16(b)(1) reference the Federal Poverty Guidelines is deleted. Section 6.15 is amended to comply with legislative changes to the Concealed Handgun Statute, to provide a grace period for the acceptance of proficiency certificates, and to clarify the circumstances under which an application may be terminated. New §6.21 which clarifies the renewal of license process is filed simultaneously with the repeal of current §6.21.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing or administering the rules will be the licensing of individuals to carry a concealed handgun. There is no anticipated economic cost to small or large businesses. The anticipated cost to individuals who are required to comply with the sections as proposed will be the cost of the nonrefundable application fee of $140 for a four-year license, the instruction fee of approximately $100 - $300, the renewal/recertification fee of $100, as well as costs for handguns, ammunition, and appropriate clothing.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments and new section are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this article.

Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this proposal.

§6.11. Eligibility for License to Carry a Concealed Handgun.

To be eligible for a license to carry a concealed handgun, a person must meet the following requirements:

(1) an applicant must have been a resident of this state for the six-month period preceding the date of application or must be eligible for a non-resident license as provided by the Act;

(2) the applicant must be at least 21 years of age;

(3) the applicant must not have been convicted of a felony. An offense is considered a felony if the offense is so designated by law or if confinement for one year or more in a penitentiary is affixed to the offense as a possible punishment;

(4) the applicant must not be currently charged with the commission of a Class A or Class B misdemeanor or an offense under Texas Penal Code, §42.01, or of a felony under an information or indictment;

(5) the applicant must not be a fugitive from justice for a felony or a Class A or Class B misdemeanor;

(6) the applicant must not be chemically dependent;

(7) the applicant must not be incapable of exercising sound judgment with respect to the proper use and storage of a handgun as defined in the Act[~~of unsound mind~~];

(8) the applicant must not, in the five years preceding the date of application, have been convicted of a Class A or Class B misdemeanor or an offense under Texas Penal Code, §42.01. An offense is considered a Class A [~~or Class B~~] misdemeanor if the offense is not a felony and confinement in a jail other than a state jail felony facility is affixed as a possible punishment;

(9) the applicant must be fully qualified under applicable federal and state law to purchase a handgun;

(10) the applicant must not have been finally determined to be delinquent in making a child support payment administered or collected by the attorney general, unless the applicant has since discharged the outstanding delinquency;

(11) the applicant must not have been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, state treasurer, tax collector of a political subdivision of the state, Texas Alcoholic Beverage Commission, or any other agency or subdivision of the state, unless the applicant has since discharged the outstanding delinquency;

(12) the applicant must not have been finally determined to be in default on a loan made under the Education Code, Chapter 57, unless the applicant has since discharged the outstanding delinquency;

(13) the applicant must not be currently restricted by or subject to a court order that restrains the applicant from injuring, harassing, stalking, or threatening the applicant's spouse or intimate partner, or the child of the applicant, the applicant's spouse, or intimate partner. This paragraph includes a protective order issued under the Family Code §3.58 or §3.581, or Family Code, Chapter 71. This paragraph does not include any restraining order or protective order solely affecting property interests;

(14) the applicant must not, in the 10 years preceding the date of application, have been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and

(15) the applicant must not have been made any material misrepresentation, or failed to disclose any material fact, in a request for application materials or in an application for a license to carry a concealed handgun.

§6.14. Proficiency Requirements.

(a) A person who wishes to obtain or renew a license to carry a concealed handgun shall apply in person to a certified handgun instructor to take the appropriate course in handgun proficiency, demonstrate handgun proficiency, and obtain a handgun proficiency certificate. An applicant will be required to demonstrate the applicant's ability to safely and proficiently use the category of handgun for which the applicant seeks certification.

(b) A proficiency examination to obtain or to renew a license must be administered by a certified handgun instructor. The proficiency examination must include:

(1) a written section on required subjects; and

(2) a physical demonstration of proficiency in the use of one or more handguns of specific categories and in handgun safety procedures.

(c) The department shall distribute the standards, course requirements, and examinations on request to any certified handgun instructor.

(d) The proficiency demonstration course will be the same for both the instructors and license applications. The course of fire will be at distances of three, seven, and fifteen yards, for a total of fifty rounds.

(1) Twenty rounds will be fired from three yards, as follows:

(A) five rounds will be fired "One Shot Exercise"; two seconds allowed for each shot;

(B) ten rounds will be fired "Two Shot Exercise"; three seconds allowed for each two shots; and

(C) five rounds will be fired; ten seconds allowed for five shots.

(2) Twenty rounds will be fired from seven yards, fired in four five-shot strings as follows:

(A) the first five shots will be fired in ten seconds;

(B) the next five shots will be fired in two stages:

(i) two shots will be fired in four seconds; and

(ii) three shots will be fired in six seconds.

(C) the next five shots at seven yards will be fired "One Shot Exercise"; three seconds will be allowed for each shot; and

(D) the last five shots fired at the seven-yard line, the time will be fifteen seconds to shoot five rounds.

(3) Ten rounds will be fired from fifteen yards, fired in two five-shot strings as follows:

(A) the first five shots will be fired in two stages:

(i) two shots fired in six seconds; and

(ii) three shots fired in nine seconds.

(B) the last five shots will be fired in fifteen seconds.

(e) The department shall issue a license to carry a concealed handgun to any person who is certified as a qualified handgun instructor and who pays the department a fee of $100 in addition to the training fee[~~waive the proficiency requirements for a license applicant who has successfully completed the instructor training course and paid the training fee~~].

§6.15. Basic Application Materials Required.

An applicant must complete the application materials required by this section and forward the completed materials to the department at its headquarters in Austin. Except as otherwise provided, an application must contain all the following items:

(1) Proficiency certificate. The applicant must submit a handgun proficiency certificate issued upon successful completion of a handgun proficiency course approved by the department and taught by a certified handgun instructor. A proficiency certificate, which is more than two years old, will not be accepted by the department.

(2) Application form. The applicant must submit a completed application on Form CR-78, which is adopted for that purpose. The applicant must complete the unique application form provided to that individual by the department. An application form may not be transferred or exchanged, or submitted by another applicant. The application form will require a statement of the applicant's:

(A) full name and place and date of birth;

(B) race and sex;

(C) residence and business addresses for the preceding five years;

(D) hair and eye color;

(E) height and weight;

(F) driver's license number or identification certificate number issued by the department;

(G) criminal history record information, including a list of offenses for which the applicant has been arrested or charged under an information or indictment, and the disposition of each offense; and

(H) history during the preceding five years, if any, of treatment received by, commitment to, or residence in:

(i) a drug or alcohol treatment center licensed to provide drug or alcohol treatment under the laws of this state or another state; or

(ii) a psychiatric hospital.

(3) Proof of residency in this state. Unless an applicant is eligible for a non-resident license under the Act, the [~~The~~] applicant must provide proof of residence in this state for the six-month period preceding the date of application. Residency may be shown by the following types of documents:

(A) proof that the applicant has been issued and has maintained an unexpired Texas driver's license or personal identification card issued by the department for six months or longer; provided further, that possession by an applicant of a driver's license issued by another state constitutes prima facie evidence of residency in such other state;

(B) proof that the applicant has been registered to vote in this state for six months or longer;

(C) proof that the applicant has owned or leased a residence in this state for six months or longer. Deed records, rental contracts, rental receipts, or canceled checks showing payment of rent may be used to support a claim of residency;

(D) records of utility payments; or

(E) other proof acceptable to the department.

(4) Two recent color passport photographs of the applicant. The applicant shall submit two identical photographs of the applicant to the person who fingerprints the applicant, as detailed in paragraph (5) of this section. The photographs must be un-retouched color prints. Snapshots, vending machine prints, and full length photographs will not be accepted. The photographs must be 2 by 2 inches in size. The photographs must be taken in normal light, with white or off-white background. The photographs must present a good likeness of the applicant taken within the last six months. The photographs must present a clear, frontal image of the applicant, and include the full face from the bottom of the chin to the top of the head, including hair. The image of the applicant must be between 1 and 1-3/8 inches. Only the applicant may be portrayed.

(5) Two fingerprint cards. The applicant must be fingerprinted by a person [~~employed by a law enforcement agency who is~~]appropriately trained in recording fingerprints who is employed by

a law enforcement agency or by a private entity designated by a law enforcement agency, as an entity qualified to take fingerprints of an applicant for a license. The applicant must display a Texas driver's license or personal identification card issued by the department. The applicant must deliver two passport photographs as described in paragraph (4) of this section, two blank fingerprint cards supplied by the department, and an instruction page included in the application materials on Form CR-75, which is adopted for that purpose. An instructor applicant is not required to submit photographs. Two complete sets of legible and classifiable fingerprints of the applicant must be recorded on cards provided by the department. The person who records the applicant's fingerprints shall:

(A) verify that the passport photographs are of the person being fingerprinted (not required for instructor applicants);

(B) either complete or verify the accuracy of the non-fingerprint data being submitted on the card;

(C) record the individual's fingerprints on the card, in a manner consistent with that normally done for an arrest fingerprint card, including the simultaneous impressions;

(D) obtain the signature of the license applicant on both the fingerprint cards and on the back of one of the passport photographs; (not required for instructor applicants). The applicant's signature must comply with §15.21 of this title (relating to Signature);

(E) sign the fingerprint card and the back of the same passport photograph signed by the applicant; (not required for instructor applicants); and

(F) return all documents to the applicant to be forwarded to the department.

(6) Affidavits. The applicant must execute and submit affidavits which in substance state the following:

(A) the applicant has read and understood each provision of the Act [~~Texas Civil Statutes, Article 4413(29ee)~~] that creates an offense under the laws of this state, and each provision of the laws of this state related to the use of deadly force. Form CR-86L is adopted for this purpose;

(B) the applicant fulfills all the eligibility requirements for a license to carry a concealed handgun. Form CR-87L is adopted for this purpose; and

(C) the applicant authorizes the director to make inquiry into any non-criminal history records that are necessary to determine the applicant's eligibility for a license. Form CR-85L is adopted for this purpose.

(7) Signature of applicant. The applicant must sign the passport photograph holder provided by the department. The applicant's signature must comply with §15.21 of this title (relating to Signature).

(8) Fee. Except as otherwise provided, the applicant must submit a nonrefundable fee of $140 with the application for license. The fee must be in the form of a cashier's check, money order, or a check issued by a federal, state, or local government agency, made payable to the Texas Department of Public Safety.

(9) Proof of age. Proof of age may be established by a Texas driver's license or personal identification card issued by the department. If an applicant cannot show proof of age through a driver's license or personal identification card issued by the department, the applicant must submit alternative proof of age. The applicant may submit a certified copy of the applicant's birth certificate as prescribed in §15.24 of this title (relating to Birth Certificate Or Other Acceptable Evidence).

(10) Social Security number. An applicant must provide the applicant's Social Security number. This information is required to assist in the administration of laws relating to child support enforcement, as required and authorized by Family Code, §231.302.

(11) Failure to provide information. If an applicant fails to provide all required application materials, or fails to respond to a request by the department for additional information necessary to process the application, the application process will be terminated as set out in §6.17(a) of this title (relating to Application Review and Background Investigation).

§6.16. Special Application Procedures and Fees.

(a) Senior citizens. For purposes of this subsection, a person 60 years of age or older is considered a senior citizen and is entitled to a reduced fee. Senior citizens must submit the basic application materials required, except that the department shall reduce by 50% any fee required for the issuance of an original, duplicate, or modified license under the Act.

(b) Indigent persons.

(1) Eligibility. The department shall reduce by 50% any fee required for the issuance of an original, duplicate, modified, or renewed license under the Act if the department determines that the applicant or license holder is indigent. Indigence is determined by determining the size of the family unit and the yearly income level of the family unit. For purposes of this subsection, an applicant is indigent if the applicant's income is not more than 100% of the applicable income level established by the federal poverty guidelines [~~according to Figure 1:, Federal Poverty Guidelines~~].
[~~Figure 1: 37 TAC §6.16(b)(1)~~]

(2) Applicants who are indigent must submit the basic application required. In addition, persons applying under this subsection are required to submit proof of indigence. An applicant may demonstrate indigence by producing the applicant's most recent tax return, a recent application for government assistance, or by other means acceptable to the department.

(c) Honorably retired peace officer.

(1) Eligibility. A person who is licensed as a peace officer under Texas Government Code, Chapter 415, and who has been employed full-time as a peace officer by a law enforcement agency may apply for a license upon retirement. The application must be made not later than the first anniversary after the date of retirement. The department may issue a license to an applicant who is a retired peace officer if the applicant is:

(A) honorably retired. For purposes of this subsection, "honorably retired" means the applicant:

(i) did not retire in lieu of any disciplinary action;

(ii) was employed as a full-time peace officer for not less than 10 years by one agency; and

(iii) is entitled to receive a pension or annuity for service as a law enforcement officer.

(B) is physically fit to possess a handgun; and

(C) is emotionally fit to possess a handgun.

(2) Proficiency. To obtain a license under this subsection, a retired peace officer must maintain, for the category of weapon licensed, the proficiency required for a peace officer under Texas

Government Code, §415.035. In lieu of a standard certificate of proficiency, an honorably retired peace officer may submit evidence of proficiency issued by a state or local law enforcement agency, or by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The department or a local law enforcement agency shall allow a retired peace officer of the department or agency an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal. An applicant who submits evidence of proficiency under this paragraph is not required to apply for or attend a course of instruction with a certified handgun instructor.

(3) Application and fee.

(A) Evidence of proficiency. The applicant shall submit evidence of proficiency issued by a state or local law enforcement agency.

(B) Application materials.

(C) Letter of good standing. In addition to the basic applications required, the applicant shall submit a sworn statement on agency letterhead from the head of the law enforcement agency employing the applicant to state the following:

(i) the name and rank of the applicant;

(ii) the status of the applicant before retirement;

(iii) whether or not the applicant was accused of misconduct at the time of the retirement;

(iv) the physical and mental condition of the applicant;

(v) the type of weapons the applicant had demonstrated proficiency with during the last year of employment;

(vi) whether the applicant would be eligible for reemployment with the agency, and if not, the reasons the applicant is not eligible; and

(vii) a recommendation from the agency head regarding the issuance of a license under the Act.

(D) Reduced fee. The fee for a license issued under this subsection shall be $25.

(d) Honorably retired federal peace officer [~~special agent~~]. A retired officer [~~criminal investigator~~] of the United States who was eligible to carry a firearm in the discharge of his official duties [~~is designated as a "special agent"~~] may apply for a license as an honorably retired peace officer. Except as otherwise provided, the license fee and application procedure for an honorably retired federal officer [~~special agent~~] shall be the same as for an honorably retired peace officer. An applicant described by this subsection may submit the application at any time after retirement. The applicant shall submit with the application proper proof of retired status by presenting the following documents prepared by the agency from which the applicant retired:

(1) retirement credentials; and

(2) a letter from the agency head on agency letterhead stating that the applicant retired in good standing.

(e) Active Peace Officer.

(1) Eligibility. A person who is licensed as a peace officer under Texas Government Code, Chapter 415, and is employed full-time as a peace officer by a law enforcement agency may apply for a license.

(2) Proficiency. To obtain a license under this subsection, an active peace officer must maintain, for the category of weapon licensed, the proficiency required for a peace officer under Texas Government Code, §415.035. In lieu of a standard certificate of proficiency, an active peace officer may submit evidence of proficiency issued by a state or local law enforcement agency, or by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). An applicant who submits evidence of proficiency under this paragraph is not required to apply for or attend a course of instruction.

(3) Application and fee.

(A) Evidence of proficiency. The applicant shall submit evidence of proficiency issued by a state or local law enforcement agency.

(B) Application materials, including two complete sets of legible and classifiable fingerprints.

(C) Letter of good standing. In addition to the basic application materials required, the applicant shall submit a sworn statement on agency letterhead from the head of the law enforcement agency employing the applicant stating the following.

(i) the name and rank of the applicant;

(ii) whether the applicant has been accused of misconduct at any time during the applicant's period of employment with the agency and the disposition of that accusation;

(iii) a description of the physical and mental condition of the applicant;

(iv) a list of the types of weapons the applicant has demonstrated proficiency with during the preceding year; and

(v) a recommendation from the agency head that a license be issued to the person.

(D) Reduced fee. The fee for a license issued under this subsection shall be $25.

(f) [~~(e)~~] Active judicial officer.

(1) Eligibility. An active judicial officer is eligible for a license to carry a concealed handgun. The department shall issue a license to an active judicial officer who meets the requirements of this subsection.

(2) Application and fee. An applicant for a license who is an active judicial officer must submit the basic application materials required, except that:

(A) the fee for a license issued under this subsection shall be $25;

(B) the classroom instruction part of the proficiency course required for an active judicial officer is not subject to a minimum hour requirement. Applicants who are active judicial officers shall be required to take classroom instruction only on:

(i) handgun use, proficiency, and safety; and

(ii) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(3) Renewal. An active judicial officer is not required to attend the classroom instruction part of the continuing education proficiency course to renew a license.

(g) [~~(f)~~] Retired judicial officer. The department shall issue a license to a retired judicial officer who meets the requirements of this subsection. An applicant for a license who is a retired judicial officer must submit the basic application materials required, except that the fee for a license issued under this subsection shall be $25. [~~:~~]

[~~(1) the fee for a license issued under this subsection shall be $25; and~~]

[~~(2) a retired judicial officer shall be required to take classroom instruction only on:~~]

[~~(A) handgun use, proficiency, and safety; and~~]

[~~(B) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.~~]

(h) [~~(g)~~] Felony prosecutor. An attorney who is elected or appointed to represent the state in the prosecution of felony cases is eligible for a license to carry a concealed handgun. The department shall issue a license to carry a concealed handgun [~~to an applicant~~] under this subsection to an applicant who meets the requirements for an active judicial officer. No fee is required for an original, duplicate, or renewed license for an applicant who meets the requirements of this subsection.

(i) Non-resident licenses.

(1) Eligibility. The department shall issue a license to a legal resident of another state if:

(A) the applicant's state of residence does not provide for the issuance of a license to carry a concealed handgun; and

(B) the applicant meets the eligibility requirements of the Act, other than the residency requirement.

(2) Application and fee. An applicant who is a legal resident of another state shall submit the basic application materials and pay an application fee of $140.

(3) If a Texas resident license holder moves to a state that does not provide for the issuance of a license to carry a concealed handgun, the license holder may submit a change of address form to the department to reflect the new out-of-state address. If the Texas license holder moves to a state which provides for the issuance of a license to carry a concealed handgun, the license holder must surrender the license to the department. If the license holder does not surrender the license, the department will revoke the license.

(4) If a state whose residents previously qualified for a Texas non-resident license subsequently enacts a law providing for the issuance of a license to carry a concealed handgun, any resident of that state who has been issued a non-resident license must surrender the license to the department. The department will revoke the license of any non-resident license holder who does not surrender the license after the non-resident's state enacts such a law.

[~~(h) Reciprocal licenses for non-residents. On application by a person who has a valid license to carry a concealed handgun issued by another state, the department may issue to the non-resident license holder a reciprocal license without requiring that the person meet eligibility requirements or pay fees otherwise imposed by the Act. Before issuing a reciprocal license, the department must first determine that:~~]

[~~(1) the eligibility requirements imposed by the other state are at least as rigorous as the requirements imposed by the Act; and~~]

[~~(2) the other state provides reciprocal licensing privileges to a person who holds a license issued by the department under the Act and applies for a license in the other state.~~]

(j) [~~(i)~~] Instructor applicants.

(1) Eligibility. To be eligible to be a certified handgun instructor, a instructor applicant must be eligible to be licensed to carry a concealed handgun. A certified handgun instructor is not required to be licensed to carry a concealed handgun.

(2) Application and fee. Prior to being accepted for training by the department, an instructor applicant must complete the required application materials and submit these to the department at its headquarters in Austin. An instructor applicant must complete the basic application materials required, except that:

(A) photographs are not required;

(B) the fee for application and training is $100. Initial and renewal instructor applicants will have two notified scheduled opportunities to attend respective classes in Austin. Upon not attending by the second opportunity, the $100 application renewal fee shall be forfeited; and

(C) in addition to other required application materials, instructor applicants are required to submit certain additional information required by the department on Form CR-90T, which is adopted for this purpose.

(k) Reciprocal agreements.

(1) The department shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state if the department determines that;

(A) the eligibility requirements imposed by the other state include background check requirements that meet or exceed background requirements imposed by federal law as a condition of receiving a handgun; and

(B) the other state recognizes a license issued in this state.

(2) Any agreement negotiated under this subsection shall be signed by the director of the department with the approval of the governor and by the appropriate agency head of the state with which the department is negotiating an agreement. A list of the states with which Texas has a reciprocal agreement shall be maintained in the department's public information office. A resident of a state with which Texas has a reciprocal agreement may not be issued a Texas license; however, if the resident has a valid license from his issuing state, the license will be honored in Texas.

[~~(j) Two year licenses. Initial licenses will be issued for either a two year or a four year term. Certain license applicants, randomly selected, will be issued an application for a two year license The department shall reduce by 50% the fee required for issuance of a two year license. After expiration of the two year license, renewals will be for a four year period.~~]

§6.17. Application Review and Background Investigation.

(a) Applications must be complete and legible. If an application is not legible or is not complete, the department will notify the applicant of any apparent deficiency. The applicant will have 90 days from the date on which the department first received the original license application to amend the application. Upon request, the department may extend the period to amend the application for

one additional 90 day period. After the period to amend has expired, then the application process will be terminated.

(b) Time to review application and complete background investigation. [~~Between September 1, 1995 and December 31, 1996, the department shall conduct the application review and background investigation not later than the 90th day after the date on which the director's designee receives the completed application materials. After January 1, 1997, the~~] The department shall conduct the application review and background investigation not later than the 60th day after the date on which the director's designee receives the completed application materials, unless a question exists with respect to the accuracy of the application materials or the eligibility of the applicant, in which case the record check and investigation shall be completed not later that 180 days after the date the department receives the application materials. The department shall conduct the application review and background investigation within the required time period, as measured from the date when it was received and complete. An application is not considered to have been received until it is complete. Failure of the department to either issue or deny a license for a period of more than 30 days after the time required constitutes denial.

(c) Central background investigation. On receipt of the completed application materials, the department shall review the application and conduct a background check of each applicant. The central background investigation will include a criminal history record check of each applicant for an original or renewal license or certification through the department's computerized criminal history system. The department shall send one set of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant. The scope of the background investigation additional to the criminal history check is within the sole discretion of the department.

(d) Field background investigation. Not later than the 30th day after the date the department receives the application materials, the department shall send the application materials to the director's designee in the geographical area of the applicant's residence for a field background investigation. The director's designee is authorized to conduct a field background investigation. The scope of the field background investigation is within the sole discretion of the department. The director's designee is authorized to conduct an additional criminal history record check of the applicant and an investigation of locally maintained official records to verify the accuracy of the application materials. The director's designee is authorized to check local arrest records of law enforcement agencies in each city and county where the applicant has resided for the five years preceding the date of application. The director's designee is authorized to obtain copies of official records of arrests or convictions if necessary. On request of the director's designee, a juvenile court shall reopen and allow the department to inspect the files and records of the juvenile court relating to the license applicant. The director's designee is authorized to investigate other credible information received and to conduct appropriate follow-up investigation as necessary. Upon completion of the investigation, the director's designee shall return all application materials and investigation results to the appropriate division of the department at the address as specified in §6.3 of this title (relating to Correspondence). The investigation results shall include a written recommendation that the application either be approved or disapproved. If the director's designee recommends disapproval, the recommendation shall be accompanied by an affidavit stating personal knowledge or naming persons with personal knowledge of a ground for denial under The Act. The investigation results may include affidavits from other persons stating grounds for denial.

§6.18. License Issuance.

(a) The department shall issue a license to carry a concealed handgun to an applicant if the applicant meets all the eligibility requirements and submits all the required application materials. The department shall not issue a license or instructor certificate to any applicant for whom possession of a firearm would be in violation of state or federal law. This determination will be based on all information available to the department, including information provided to the department on the application, the background investigation, and other information provided to the department.

(b) Category. The department may issue a license to carry handguns only of the categories indicated on the applicant's certificate of proficiency issued.

(c) Effective date of license. A [~~license issued before January 1, 1996, is not effective until January 1, 1996. A license issued before January 1, 1996, shall be clearly marked to reflect the date on which it becomes effective. The department shall inform each recipient of a license before that date that the license is not effective until that date. On or after January 1, 1996, a~~] license issued under the Act is effective from the date of issuance.

(d) Form of license. A license to carry a concealed handgun shall include the following information:

(1) a number assigned to the license holder by the department;

(2) a statement of the period for which the license is effective;

(3) a statement of the category or categories of handguns the license holder may carry. The categories of handguns are as follows:

(A) SA: any handguns, whether semi-automatic or not; and

(B) NSA: handguns that are not semi-automatic.

(4) a color photograph of the license holder; and

(5) the license holder's full name, date of birth, residence address, hair and eye color, height, weight, signature, and the number of a driver's license or an identification certificate issued to the license holder by the department.

§6.21. Renewal of License.

(a) Grace period. A license holder whose license has expired may submit an application to renew the license up to one year after the expiration of the license. After one year, the license holder will be required to reapply as a new applicant.

(b) Notice of renewal. Notice of renewal will not be sent to a license holder more than six months prior to the expiration of the license.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902931
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999

For further information, please call: (512) 424-2135

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37 TAC §6.21

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

The Texas Department of Public Safety proposes the repeal of §6.21, concerning license to carry concealed handgun. The section is proposed for repeal due to substantial amendments being made. The section is proposed for repeal with simultaneous filing of new §6.21 which clarifies the renewal of license process.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that repeal of the rule would have no anticipated economic cost or benefit to the public. The repeal would have no fiscal impact on small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this article.

Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this repeal.

§6.21. Renewal of License.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902930
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter C. Procedures on Denial of License

37 TAC §6.31

The Texas Department of Public Safety proposes an amendment to §6.31, concerning Notice of Denial; Grounds. Amendment to §6.31 is necessary in order for the department to comply with legislative changes to the Concealed Handgun Statute.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing or administering the rule will be the licensing of individuals to carry a concealed handgun. There is no anticipated economic cost to small or large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Civil Statutes, Article 4413 (29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this article.

Texas Civil Statutes, Article 4413 (29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this proposal.

§6.31. Notice of Denial; Grounds.

(a) After the time has elapsed for the department to conduct the application review and background investigation required, the department shall either issue the license, or shall give the applicant written notice of denial. Notice of denial will be mailed to the address currently reported to the department by the applicant, as provided in §6.3 of this title (relating to Correspondence).

(b) A notice of denial shall state one or more of the following grounds for denial:

(1) that the applicant failed to qualify under the eligibility criteria listed in the Act[~~, §2~~];

(2) that the director's designee has recommended denial by affidavit submitted to the department under the Act, [~~§5(b)~~]or;

(3) That a certified instructor has recommended denial by affidavit submitted to the department under the Act[~~, §17~~].

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902932
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter D. Time, Place, and Manner Restrictions on License Holders

37 TAC §§6.43-6.45

The Texas Department of Public Safety proposes amendments to §§6.43-6.45, concerning Time, Place, and Manner Restrictions on License Holders. Amendments to the sections are necessary in order for the department to comply with legislative changes to the Concealed Handgun Statute.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing or administering the rules will be the licensing of individuals to carry a concealed handgun. There

is no anticipated economic cost to small or large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 4413 (29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this article.

Texas Civil Statutes, Article 4413 (29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this proposal.

§6.43. Failure To Display License On Demand.

If a license holder is carrying a handgun on or about the license holder's person, then upon demand by a magistrate or a peace officer that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license. The first violation shall result in a 90-day suspension of the license holder's license and the second violation [~~Violation~~] is a Class B misdemeanor under the Act[~~, §6(i)~~].

§6.44. Places Prohibited: Felony Violations.

A license holder may not carry a handgun on or about the license holder's person under authority of the Act in the following places:

(1) On the premises of a business that has a permit or license issued under Alcoholic Beverage Code, Chapters 25, 28, 32, [~~or~~]69, or 74,, if the business derives 51% or more of its income from the sale or service of alcoholic beverages for on-premises consumption. Posting is required by the Act, but an establishment's failure to post is not a statutory defense to the license holder. Violation is a third degree felony under Texas Penal Code, §46.035.

(2) On the premises of a correctional facility. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.035.

(3) On the physical premises of a school, an educational institution, or a passenger transportation vehicle of a school or an educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(4) On the premises of a polling place on the day of an election or while early voting is in progress. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(5) In any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(6) On the premises of a racetrack. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(7) Into a secured area of an airport. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

§6.45. Places Prohibited: Class A Misdemeanor Violations.

A license holder may not carry a handgun on or about the license holder's person under authority of the Act in the following places:

(1) On the premises of a hospital licensed under the Health and Safety Code, Chapter 241, unless the license holder has written authorization of the hospital administration. Posting is required by the Act[~~, but an establishment's failure to post is not a statutory defense to the license holder~~]. Violation is a Class A misdemeanor under Texas Penal Code, §46.035. This subsection shall not apply if the actor was not given effective notice under Texas Penal Code §30.06.

(2) On the premises of a nursing home licensed under the Health and Safety Code, Chapter 242, unless the license holder has written authorization of the nursing home administration. Posting is required by the Act[~~, but an establishment's failure to post is not a statutory defense to the license holder~~]. Violation is a Class A misdemeanor under Texas Penal Code, §46.035. This subsection shall not apply if the actor was not given effective notice under Texas Penal Code §30.06.

(3) On the premises where a high school, collegiate, or professional sporting event is taking place, unless the license holder is a participant in the event and a handgun is used in the event. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

(4) In an amusement park. "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035. This subsection shall not apply if the actor was not given effective notice under Texas Penal Code §30.06.

(5) On the premises of a church, synagogue, or other established place of religious worship. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035. This subsection shall not apply if the actor was not given effective notice under Texas Penal Code §30.06.

(6) At any meeting of a governmental entity. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035. This subsection shall not apply if the actor was not given effective notice under Texas Penal Code §30.06.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902933
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter F. Suspension and Revocation Procedures

37 TAC §6.61, §6.63

The Texas Department of Public Safety proposes amendments to §6.61 and §6.63, concerning license to carry concealed handgun. The amendments are necessary in order for the department to comply with legislative amendments to the Concealed Handgun Statute.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Haas also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing or administering the rules will be the licensing of individuals to carry a concealed handgun. There is no anticipated economic cost to small or large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Transportation Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this chapter.

Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Transportation Code, Subchapter H, §411.197) is affected by this proposal.

§6.61. Suspension of License for Violation of the Act.

(a) Violation report; suspension of license. If any peace officer believes that grounds for suspension exist, the officer shall prepare an affidavit on a form provided by the department stating the reason for the suspension of the license. The officer shall send the department all of the information available to the officer at the time of the preparation of the violation report. The officer shall attach the officer's reports relating to the license holder to the form and send the form and the attachments to the appropriate division of the department at its Austin headquarters not later than the fifth working day after the date the form is prepared. The officer shall send a copy of the form and the attachments to the license holder.

(b) Notice of suspension; grounds. The department shall give written notice to each license holder of any suspension of that license. A license may be suspended under this section if the license holder:

(1) is charged with the commission of a Class A or Class B misdemeanor or an offense [~~convicted of disorderly conduct~~] under Texas Penal Code, §42.01, or of a felony under an information or indictment;

(2) fails to display a license as required by the Act[~~, §6(h) and 6(i)~~];

(3) fails to notify the department of a change of address or name as required by the Act[~~, §8~~];

(4) carries a concealed handgun under the authority of the Act of a different category than the license holder is licensed to carry, or;

[~~(5) has been charged by indictment with the commission of an offense that would make the license holder ineligible for a license on conviction; or~~]

(5) [~~(6)~~] fails to return a previously issued license after such license has been modified as required by the Act[~~, §10 (d)~~].

(c) Surrender of license. If the license holder has not surrendered the license or the license was not seized as evidence, the license holder shall surrender the license to the appropriate division of the department not later than the 10th day after the date the license holder received the notice of suspension from the department unless the license holder requests a hearing from the department.

(d) Hearing request. The license holder may request that the justice court in the justice court precinct in which the license holder resides review the suspension as provided by §6.32 of this title (relating to Request for Hearing; Administrative Review of Denial). If a suspension hearing is held and the court order is ordered by the justice court, the license holder shall surrender the license on the date an order of suspension has been entered by the justice court. If the license holder does not petition the justice court, the suspension takes effect on the 30th day after receipt of written notice.

(e) Procedure. Suspension hearings shall be conducted in the same manner as hearings on denial.

(f) Length of suspension. A license may be suspended under this section: [~~A license may be suspended for not less than one year and not more than three years.~~]

(1) for 30 days, if the person's license is subject to suspension for failing to notify the department of a change of address or name, for carrying a concealed handgun of a different category than the license holder is licensed to carry, or for failing to return a previously issued license after the license is modified;

(2) for 90 days, if the person's license is subject to suspension for failing to display the license as required under the Act;

(3) for not less than one year and not more than three years if the person's license is subject to suspension for any of the above reasons and the person's license has been previously suspended for the same reason; or

(4) until dismissal of the charges, if the person's license is subject to suspension because the license holder is charged with the commission of a Class A or Class B misdemeanor or an offense under Texas Penal Code §42.01 or of a felony under an information or indictment.

(g) A license holder whose license expires during a suspension period may renew the license; however, the renewed license will not be issued by the department until the expiration of the suspension period.

§6.63. Revocation of License.

(a) Violation report; revocation of license. If a peace officer believes that grounds for revocation exist, the peace officer shall prepare an affidavit on a form provided by the department stating the reason for the revocation of the license. The officer shall send the department all of the information available to the peace officer at the time of the preparation of the form. The officer shall attach the officer's reports relating to the license holder to the form and send the form and attachments to the department at its' headquarters in Austin not later than the fifth working day after the date the form is prepared. The officer shall send a copy of the form and the attachments to the license holder.

(b) Notice of revocation; grounds. The department shall give written notice to each license holder of any revocation of that license. A license may be revoked if the license holder:

(1) was not entitled to the license at the time it was issued;

(2) gave false information on the application;

(3) subsequently becomes ineligible for a license under the Act, §2, unless the sole basis for the ineligibility is that the license holder is charged with the commission of a Class A or Class B misdemeanor of an offense under Texas Penal Code, §42.01, or of a felony under an information or indictment; [~~or~~]

(4) is convicted of an offense under Texas Penal Code, §46.035; or [~~.~~]

(5) is determined by the department to have engaged in conduct constituting a reason to suspend the license after the license has been previously suspended twice for the same reason.

(c) Surrender of license. If the license holder has not surrendered the license or the license was not seized as evidence, the license holder shall surrender the license to the appropriate division of the department not later than the 10th day after the date the license holder receives the notice of revocation from the department, unless the license holder requests a hearing from the department.

(d) Hearing request. The license holder may request that the justice court in the justice court precinct in which the license holder resides review the revocation as provided by §6.32 of this title (relating to Request for Hearing; Administrative Review of Denial). If a revocation hearing is held and the court order is ordered by the justice court, the license holder shall surrender the license on the date an order of revocation has been entered by the justice court. If the license holder does not petition the justice court, the revocation takes effect on the 30th day after receipt of written notice.

(e) Procedure. Revocation hearings shall be conducted in the same manner as hearings on denial.

(f) Length of revocation; reapplication. A license holder whose license has been revoked for a reason listed in this section may reapply as a new applicant for the issuance of a license under the Act after the second anniversary of the date of the revocation if the cause for revocation no longer exists. If the cause of revocation still exists on the date of the second anniversary after the date of revocation, the licensee may not apply for a new license until the cause for the revocation no longer exists and has ceased to exist for a period of two years.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902934
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter G. Certified Handgun Instructors

37 TAC §§6.82, 6.84, 6.95

The Texas Department of Public Safety proposes amendments to §§6.82, 6.84, and 6.95, concerning license to carry concealed handgun. Section 6.82 and §6.84 are amended to comply with legislative changes to the Concealed Handgun Statute. §6.95 is amended to provide a grace period for the acceptance of renewal instructor applications.

Tom Haas, Chief of Finance, has determined that for each year of the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Haas also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing or administering the rules will be the licensing of individuals to carry a concealed handgun. There is no anticipated economic cost to small or large businesses. The anticipated cost to individuals is the $100 fee required by the department and successful completion of the retraining courses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this chapter.

Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this proposal.

§6.82. Instructor Certification.

An instructor applicant who has submitted the required application material, successfully completed training by the department, and who meets the eligibility requirements, may be certified as a handgun instructor by the department. Upon certification, an instructor may conduct training and proficiency examination of license applicants. [~~Provided, instructor certification is not effective before September 1, 1995, and provided that course training credit may not be extended to license applicants for training which occurs prior to September 1, 1995.~~]

§6.84. Curriculum for License Applicants.

(a) Certified handgun instructors must instruct license applicants on the basis of the curriculum developed and approved by the department. The department shall develop and distribute directions and materials for course instruction, test administration, and record-keeping.

(b) Classroom instruction. The course must include at least 10 hours and not more than 15 hours of instruction on:

(1) the laws that relate to weapons and to the use of deadly force;

(2) handgun use, proficiency, and safety;

(3) nonviolent dispute resolution; and

(4) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(c) Range instruction. The examination must include a physical demonstration of the proficiency in the use of one or more handguns of specific categories and in handgun safety procedures. An applicant may not be certified unless the applicant demonstrates, at a minimum, the degree of proficiency that is required to effectively operate a [~~9 millimeter or a .38 caliber~~] handgun of .32 caliber or above.

§6.95. Expiration and Renewal of Instructor Certification.

The certification of a qualified handgun instructor expires on the second anniversary after the date of certification. To renew certification, an instructor must pay a fee of $100 and take and successfully com-

plete the retraining courses required by the department. An instructor whose certificate has expired may renew the certificate up to two years after its expiration. After two years, the instructor must reapply as a new instructor applicant.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902935
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter H. Information and Reports

37 TAC §6.114, §6.118

The Texas Department of Public Safety proposes amendments to §6.114 and §6.118, concerning license to carry concealed handgun. Amendments to the sections are necessary in order for the department to comply with legislative changes to the Concealed Handgun Statute.

Tom Haas, Chief of Finance, has determined that for each year of the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Haas also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the licensing of individuals to carry a concealed handgun. There is no anticipated economic cost to small or large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) which authorize the department to adopt rules to administer this article.

Texas Civil Statutes, Article 4413(29ee), §22 (now codified in Texas Government Code, Subchapter H, §411.197) is affected by this proposal.

§6.114. Confidential Information.

Except as otherwise provided by this subchapter and the Act,[~~§21,~~] all other records maintained under the Act are confidential and are not subject to required disclosure under the Open Records law, Texas Government Code, Chapter 552, except that an applicant or license holder may be furnished a copy of such disclosable records on request and the payment of a reasonable fee.

§6.118. Reports from Law Enforcement Agencies to the Department.

Local law enforcement agencies in Texas shall maintain records necessary to prepare and submit the concealed handgun incident report form, which reports information regarding incidents in which a person licensed to carry a handgun under the Act [~~Texas Civil Statutes, Article 4413 (29ee),~~] has been arrested for an offense under Texas Penal Code, §46.035, or commits a reportable discharge of a handgun.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902936
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Chapter 11. Commercial Vehicle Registration

Subchapter A. Commercial Vehicle Registration Enforcement

37 TAC §§11.1, 11.5

The Texas Department of Public Safety proposes amendments to §11.1 and §11.5, concerning Commercial Vehicle Registration Enforcement. The amendments are necessary to reflect changes resulting from the re-codification of Texas Civil Statutes to Texas Transportation Code and the repeal of Texas Civil Statutes, Articles 911b and 6701c-1.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure greater compliance with commercial vehicle registration and weight enforcement. The cost of compliance for small businesses is the same as the cost of compliance for large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to 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.

Texas Government Code, §411.006(4) and §411.018 are affected by this proposal.

§11.1. Basic Enforcement Guidelines.
The Department of Public Safety is charged with the responsibility of enforcing registration requirements of commercial vehicles. This enforcement will be based on the statutory provisions of Texas Transportation Code, Chapter 502, [~~Civil Statutes, Article 6675a~~] and on policies and reciprocal agreements promulgated by the Texas Department of Transportation, as amended.

§11.5. Basic Enforcement Guidelines for Enforcement Registration and Permit Requirements of Oil Well Servicing Equipment.
The Department of Public Safety, under the authority of Government Code, Chapter 411, §411.002, is charged with the responsibility of

enforcing laws protecting public safety, including, but not limited to the registration requirements. This enforcement will be based on the statutory provisions of Texas Transportation Code, §§623.141-623.150 [~~Civil Statutes, Articles 6701d-11 and 6701d-16~~] and the rules promulgated by the Texas Department of Transportation, as amended.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902937
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter B. Lease Requirements for Commercial Motor Vehicles

37 TAC §11.28

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

The Texas Department of Public Safety proposes the repeal of Subchapter B and §11.28, concerning Lease Requirements for Commercial Motor Vehicles.

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 Texas Government Code, Chapter 2001 (Administrative Procedure Act). The subchapter title and section are proposed for repeal because the reason for adopting them no longer exists.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that repeal of the rule would have no anticipated economic cost or benefit to the public. The repeal would have no fiscal impact on small or large businesses.

Comments on the repeal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Government Code, §411.006(4), and §411.018, 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.

Texas Government Code, §411.006(4) and §411.018 are affected by this proposal.

§11.28. Mailing Address to File Lease, Memorandum, or Agreement.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902938
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter C. Motor Carrier Enforcement Guidelines

37 TAC §§11.41-11.44

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

The Texas Department of Public Safety proposes the repeal of Subchapter C and §§11.41-11.44, concerning Motor Carrier Enforcement Guidelines.

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 Texas Government Code, Chapter 2001, (Administrative Procedure Act). The subchapter title and sections are proposed for repeal because the reason for adopting them no longer exists.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that repeal of the rule would have no anticipated economic cost or benefit to the public. The repeal would have no fiscal impact on small or large businesses.

Comments on the repeal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The repeals are proposed pursuant to Texas Government Code, §411.006(4), and §411.018, 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.

Texas Government Code, §411.006(4) and §411.018 are affected by this proposal.

§11.41. Adoption of the Texas Railroad Commission Motor Transportation Regulations, as Amended.

§11.42. Display and Use of Railroad Commission Identification Card.

§11.43. Motor Carriers Operating Under Temporary Authority.

§11.44. Drive-Away Operators.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902939
Dudley M. Thomas
Director
Texas Department of Public Safety

Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Subchapter D. Weight Law Enforcement

37 TAC §11.51, §11.52

The Texas Department of Public Safety proposes amendments to §11.51 and §11.52, concerning Weight Law Enforcement. The amendments are necessary to reflect changes resulting from the re-codification of Texas Civil Statutes to Texas Transportation Code and the repeal of Texas Civil Statutes, Articles 911b and 6701c-1.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing or administering the rules will be to ensure greater compliance with commercial vehicle registration and weight enforcement. The cost of compliance for small businesses is the same as the cost of compliance for large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.006(4) and §411.018, which provide the director of the Texas Department of Public with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety.

Texas Government Code, §411.006(4) and §411.018 are affected by this proposal.

§11.51. Stopping, Weighing, and Reducing Excess Cargo of Loaded Motor Vehicles.

(a) The department of public safety will stop, weigh, and cause the excess loads to be reduced relating to the operation of loaded motor vehicles in compliance with the provisions of the statutes.

(b) It is the policy of the department of public safety to consider loaded trailers and semitrailers operated in combination with a truck or truck tractor to be a part of a loaded motor vehicle and would, therefore, be required to comply with the weighing and unloading provisions of Texas Transportation Code, Chapter 621[~~Civil Statutes, Article 6701d-11~~].

§11.52. Rearranging Excess Cargo.

The department of public safety interprets Texas Transportation Code, §621.404[~~sections 5 and 6~~] to mean that cargo may not be shifted from an overloaded axle or tandem axle to another axle or tandem axle that is already loaded to its maximum legal limit.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902940
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424-2135

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Chapter 14. School Bus Transportation

Subchapter E. Advertising General Provisions

37 TAC §§14.61–14.67

The Texas Department of Public Safety proposes new §§14.61-14.67, concerning requirements for placing advertising or paid announcements on the exterior of school buses transporting public school students. These new sections set forth the allowable materials and locations of advertising or paid announcements on the exterior of public school buses and define terms commonly used in the profession. These sections are proposed to define what a person must do to place advertising or paid announcements on the exterior of school buses transporting public school students in order to comply with the safety provisions of House Bill 3249, 75th Legislature, 1997, which amended Texas Transportation Code, §547.701(d).

The proposals are necessary to implement the provisions of House Bill 3249, 75th Legislature, 1997, which amended Texas Transportation Code, §547.701(d). This statute prohibits a school bus from bearing advertising or another paid announcement directed at the public if the advertising or announcement distracts from the effectiveness of required safety warning equipment in order to protect the safety of students who are transported on public school buses. The statute further directs the department to adopt rules to implement the statute.

Tom Haas, Chief of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the sections. Mr. Haas has also determined that for the first five-year period the sections are in effect, there will be fiscal implications for local government if the school districts enter a contract to advertise; however, the fiscal implications of revenues cannot be determined due to the individuality of contract negotiated terms.

Mr. Haas also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the potential for additional revenues to the local school district generated as a result of placing advertising or paid announcements from small or large businesses on the exterior of school buses. The anticipated economic cost of expense to persons who contract to advertise and are subsequently required to comply with the sections as proposed cannot be determined due to the individuality of contract negotiated terms.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new sections are proposed pursuant to Texas Transportation Code, §547.101, which authorizes the department to adopt rules necessary to administer this chapter.

Texas Transportation Code, §547.101 is affected by this proposal.

§14.61. Definitions.

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

(1) Advertisement - any communication brought to the attention of the public by paid announcement or in return for public recognition in connection with an event or offer or sale of a product or service, except for a single-line listing of a carrier name or manufacturer logo approved by the General Services Commission and the Texas Department of Public Safety.

(2) Safety Warning Equipment - that equipment which identifies a school bus including, but not limited to, the exterior color of the school bus painted national school bus yellow (Color No. 13432 of Federal Standard No. 595a), all lights, reflectors, "school bus" identification markings, emergency exit locations, stop signal arm, student crossing gate and reflective tape described in the General Services Commission annual manual, *Texas School Bus Specifications*.

§14.62. Applicability.

These rules apply to all school buses used to transport preprimary, primary, and secondary public school students.

§14.63. Material and Attachment.

(a) Advertisements must be of a durable material or paint.

(b) If the advertisement is removed or substantially damaged to the point that it is no longer in a serviceable condition, the school bus shall be returned to its original color or the advertisement shall be replaced.

(c) The advertisement shall not extend from the body intentionally or due to damage so as to allow a handhold or present a danger to pedestrians.

(d) No brackets or hardware shall be applied to the exterior of a school bus to hold advertisements.

§14.64. Location.

(a) The location of an advertisement(s) on the exterior of a school bus shall be limited to:

(1) the left rear quarter-panel of the school bus, beginning at least three inches behind the rear wheel and not closer than four inches from the lower edge of the window line; and

(2) above the windows on the right and left sides of the school bus, near the rear of the vehicle, not to extend forward of the rear axle.

(b) Advertisement(s) shall be at least three inches from any required lettering, lamp, wheel well, reflector, or emergency exit location.

(c) Advertisement(s) shall not be placed on or interfere with the operation of any door, window, lamp, reflector, or other device.

(d) Any reflective tape between the floorline and beltline of the school bus which is covered by an advertisement should be replaced above or below the advertisement.

§14.65. Permitted Space.

(a) The maximum covered area allowed for advertising on the left rear quarter panel of a school bus shall be contained within a block 30 inches in height and 90 inches in length.

(b) The maximum covered area allowed for advertising above the windows on the left and right sides of the school bus shall be contained within a block 18 inches in height and 108 inches in length, per side.

§14.66. Exemption.

(a) A school district which has entered into a contract to advertise on the exterior of their school buses at the time these rules become effective, will be exempted from required compliance until:

(1) the expiration date of the contract; or

(2) one year from the effective date of these rules; whichever event occurs earlier in time.

(b) Subsequently, the school district will be required to fully comply with these rules.

§14.67. Reporting.

(a) It shall be the responsibility of the school district to provide to the School Bus Transportation Safety Unit at the Texas Department of Public Safety written notification of:

(1) the number of school buses displaying exterior advertising or another paid announcement operated by or for the school district; and

(2) any accident directly or indirectly involving a school bus operated by or for the school district which bears advertising or another paid announcement on the exterior of the vehicle.

(A) A school bus directly involved accident is a motor vehicle accident in which a school bus, with or without a pupil on board, is involved directly as a contact vehicle.

(B) A school bus indirectly involved accident is a motor vehicle accident in which a school bus, with or without a pupil on board, is involved indirectly as a noncontact vehicle. Some examples of the school bus as a non-contact vehicle indirectly involved in an accident include:

(i) a collision accident or non collision accident involving a motor vehicle passing a school bus stopped and with its red lights flashing; or

(ii) a collision accident in which a child approaching or leaving a school bus, stopped and with its red lights flashing, is struck; or

(iii) a collision accident involving a motor vehicle lawfully stopped for a school bus stopped and with its red lights flashing.

(b) Notice shall be received by the department each September reporting the number of school buses bearing advertising or another paid announcement on the exterior of the vehicle. Only school districts involved in an advertising program are required to report.

(c) Notice shall be received by the department not more than five days from the date of the accident. Notice shall include the following:

(1) the name and address of the owner of the school bus,

(2) the name and driver's license number of the school bus operator,

(3) the date of the accident,

(4) the city or county where the accident occurred, and

(5) the investigating police agency.

(d) Notice shall be delivered by one of the following methods:

(1) facsimile;

(2) electronic mail; or

(3) mailed to the School Bus Transportation Safety Unit, Texas Department of Public Safety, Box 4087, Austin, TX 78773-0252.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902927
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424–2135

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Chapter 17. Administrative License Revocation

37 TAC §§17.1–17.6

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

The Texas Department of Public Safety proposes the repeal of §§17.1-17.16, concerning Administrative License Revocation ("ALR"). The department is proposing repeal of these sections due to substantive amendments being made. This action is being filed simultaneously with a proposal for new sections concerning ALR. The new sections will set forth procedures relating to definitions, issuance of notice of suspension, administrative suspension in an uncontested case, request for hearing and witnesses in a contested case, enforcement of suspension and reinstatement of license. In addition, the sections will reflect the changes in statute from Texas Civil Statutes to Texas Transportation Code and will encompass "zero tolerance" legislation involving minors.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Haas also has determined that for each year of the first five-year period the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with existing statutory requirements. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeals are proposed pursuant to Texas Transportation Code, Chapter 522, Chapter 524, and Chapter 724, which provide the department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.

The repeals affect Texas Transportation Code, Chapter 522, Chapter 524, and Chapter 724.

§17.1. Scope.

§17.2. Definitions.

§17.3. Notice of Suspension.

§17.4. ALR Reports.

§17.5. Intake.

§17.6. Rescission.

§17.7. Administrative Suspension of Driver's License.

§17.8. Hearing Requests.

§17.9. Hearings.

§17.10. Out-Of-State Orders and Judgments.

§17.11. Appeals.

§17.12. Final Order Of Suspension.

§17.13. Effect of Acquittal: Notification to the Department.

§17.14. Enforcement Of Suspensions.

§17.15. Reinstatement.

§17.16. Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed With the Department.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902941
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 424–2135

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The Texas Department of Public Safety proposes new §§17.1-17.16, concerning Administrative License Revocation ("ALR"). This action is being filed simultaneously with a proposal for repeal of existing sections concerning ALR. The new sections promulgate the procedures relating to issuance of notice of suspensions, administrative suspension in an uncontested case, request for hearing and witnesses in a contested case, enforcement of suspension, and reinstatement of license. The new sections further reflect changes in statute from Texas Civil Statutes to the Texas Transportation Code and will encompass "zero tolerance" legislation involving minors.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Haas also has determined that for each year of the first five-year period the sections are in effect the public benefit anticipated as a result of enforcing the sections will be efficiency in driver improvement and enhanced public safety on public highways. There will be no effect on small or large businesses. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be a reinstatement fee of $100.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new sections are proposed pursuant to Texas Transportation Code, Chapter 522, Chapter 524, and Chapter 724, which

provide the department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.

Texas Transportation Code, Chapter 522, Chapter 524, and Chapter 724 are affected by this proposal.

§17.1. Scope.

The procedures for notice, hearing, and appeal, as well as the procedures for service of the requests, notifications, copies, certified copies, or tangible/documentary evidence, as the case may be, which are contained in this title apply to suspensions, disqualifications, and denials arising under the provisions of Administrative License Revocation (ALR), including Texas Transportation Code, Chapters 522, 524, and 724.

§17.2. Definitions.

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

(1) Acquittal - A legal judgment or certification of "not guilty" of a person charged with a crime, including a judgment following directed verdict, in a court proceeding at which jeopardy attached.

(2) Address of record - A person's most recent residence address as shown by the records of the department in accordance with Texas Transportation Code, Chapter 521; or an alternate address provided to the department in accordance with Texas Transportation Code, Chapter 521.

(3) Administrative License Revocation (ALR) - Refers to the suspension of a driver's license under Texas Transportation Code, Chapter 524 or Chapter 724, or the disqualification of a person's privilege to drive a commercial motor vehicle under Texas Transportation Code, Chapter 522.

(4) Adult - An individual 21 years of age or older.

(5) Alcohol concentration - Has the meaning contained in Texas Penal Code, §49.01.

(6) Alcohol-related or drug-related enforcement contact - Has the meaning contained in Texas Transportation Code, Chapter 524.

(7) ALR contact - Refers to refusal to submit a breath or blood specimen as provided by Texas Transportation Code, Chapter 724, or refusal to submit a breath, blood or urine specimen as provided by Texas Transportation Code, Chapter 522; or a breath or blood test failure as provided by Texas Transportation Code, Chapter 524, or a breath, blood or urine test failure as provided by Texas Transportation Code, Chapter 522. Also includes the situation where a specimen test is not requested of a minor, as the presence of alcohol was detected by other means.

(8) ALR report - A sworn report of an ALR contact filed by a peace officer and submitted to the department in accordance with Texas Transportation Code, Chapter 524, or a written report of an ALR contact submitted to the department in accordance with Texas Transportation Code, Chapter 724. Also includes a sworn report submitted by a peace officer in accordance with Texas Transportation Code, Chapter 522.

(9) ALR suspension or ALR license suspension - A suspension under Texas Transportation Code, Chapter 524 or Chapter 724.

(10) Arresting officer - Refers to a certified Texas peace officer who arrests a person for an offense under Texas Penal Code, §49.04, §49.07, or §49.08, or Alcoholic Beverage Code, §106.041, or any other offense against the laws of the State of Texas.

(11) Breath alcohol test - Has the meaning assigned in §19.7 of this title (relating to Explanation of Terms and Actions).

(12) Breath test operator - Refers to the individual who takes a specimen of the person's breath to determine alcohol concentration.

(13) Child - Has the meaning contained in Texas Family Code, §51.02(2).

(14) Commercial driver's license - Has the meaning assigned by Texas Transportation Code, Chapter 522 and Chapter 16 of this title (relating to Commercial Driver's License).

(15) Commercial motor vehicle - has the meaning assigned by Texas Transportation Code, Chapter 522 and Chapter 16 of this title (relating to Commercial Driver's License).

(16) Criminal complaint - Refers to any charging instrument, including, but not limited to, a complaint, an information, an indictment, or a similar sworn document clearly indicating an intent to proceed with criminal prosecution.

(17) Current address - Refers to the address given to an arresting officer by an arrested driver at the time of arrest, as distinguished from the "address of record."

(18) Defendant - Refers to a person who has received notice of ALR license suspension or disqualification and who has timely requested a hearing.

(19) Denial - Refers to the loss of the privilege to obtain a driver's license or permit.

(20) Department - Has the meaning assigned in Texas Transportation Code, Chapter 524.

(21) Director - Has the meaning assigned in Texas Transportation Code, Chapter 524.

(22) Disqualification - Has the meaning assigned in Texas Transportation Code, Chapter 522.

(23) Driver - Has the meaning assigned in Texas Transportation Code, Chapter 521.

(24) Driver's license - Has the meaning assigned in Texas Transportation Code, Chapter 521.

(25) Failure, or breath, blood or urine test failure - Refers to the analysis of a test specimen of breath or blood which indicates an alcohol concentration specified in Texas Penal Code, §49.01(2)(B), or where a test specimen of breath, blood or urine is provided pursuant to Texas Transportation Code, Chapter 522, and the analysis of the specimen indicates an alcohol concentration of 0.04 or more. Also includes the analysis of a test specimen provided by a minor that indicates any detectable amount of alcohol as specified in Texas Transportation Code, §524.011(a)(2)(B).

(26) Instrument or breath test instrument - Has the meaning assigned in §19.7(i) of this title (relating to Explanation of Terms and Actions).

(27) License or license to operate a motor vehicle - Has the meaning assigned in Texas Transportation Code, Chapter 521.

(28) Maintenance records - Refers to records pertaining to the inspection, maintenance, repair, and upkeep of the breath test instrument on which the driver's alcohol concentration was measured.

Maintenance records do not have a regulated format and may be kept in a form as designated by each technical supervisor.

(29) Minor - An individual under 21 years of age.

(30) Nonresident - Has the meaning assigned in Texas Transportation Code, Chapter 521.

(31) Peace Officer - Has the meaning assigned in Texas Penal Code, §1.07(a).

(32) Peace Officer's sworn report or probable cause affidavit - A statement in support of a peace officer's belief that a person committed an offense. This statement shall describe the officer's reasonable suspicion for making contact with a person and/or the probable cause to arrest or detain the person. This statement may additionally include any other grounds known to the officer for believing the person committed the offense. The peace officer's sworn report or probable cause affidavit is normally submitted on Form DIC-23, or an approved alternate form.

(33) Person - Refers to the following: an individual arrested for a violation of Texas Penal Code, §49.04, §49.07, or §49.08; a minor arrested or detained for a violation of Texas Alcoholic Beverage Code, §106.041; or the operator of a commercial motor vehicle who refused to provide a specimen of breath, blood or urine when requested to do so by a peace officer, or who provided a specimen with an alcohol concentration defined in Texas Transportation Code, Chapter 522, whether or not the operator of the commercial motor vehicle was arrested for a violation of Texas Penal Code, §49.04, §49.07, or §49.08.

(34) Public place - Has the meaning assigned in Texas Transportation Code, Chapter 524.

(35) Refusal - Refers to a refusal to submit a specimen under the provisions of Texas Transportation Code, Chapter 522 or Chapter 724.

(36) Revocation of driver's license - Has the meaning assigned in Texas Transportation Code, Chapter 521.

(37) Suspension of driver's license - Has the meaning assigned in Texas Transportation Code, Chapter 521.

(38) Technical supervisor or certified breath test technical supervisor - Refers to the person who is responsible for maintaining and directing the operation of the breath test instrument used to analyze the specimen of the person's breath, and who has been certified by the department under the provisions of §19.5 of this title (relating to Technical Supervisor certification).

(39) Test record or breath alcohol test record - Means the record of a breath alcohol test generated by a breath test instrument.

§17.3. Notice of Suspension or Disqualification.

(a) Notice of an ALR suspension or disqualification. Notice of an ALR suspension or disqualification may be served either by a peace officer or by the department.

(b) Notice given by a peace officer.

(1) If a person arrested for an offense under Texas Penal Code, §49.04, §49.07, or §49.08, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Texas Penal Code, §49.01(2)(B), the peace officer shall personally serve notice of driver's license suspension on the arrested driver.

(2) If the person is a minor arrested for an offense under Alcoholic Beverage Code, §106.041, or under Texas Penal Code, §49.04, §49.07, or §49.08, who either submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of a level specified by Texas Transportation Code, §524.011(a)(2)(B), or is not requested to submit to the taking of a specimen, the peace officer shall personally serve notice of driver's license suspension on the minor.

(3) If a person was operating a commercial motor vehicle and submits to the taking of a specimen of breath, blood or urine as provided by Texas Transportation Code, Chapter 522, and an analysis of the specimen shows an alcohol concentration of 0.04 or more, the peace officer shall personally serve notice of disqualification on the person.

(4) Pursuant to paragraphs (1), (2), and (3) of this subsection, if a specimen is taken and the analysis of the specimen is not returned to the peace officer before the person is admitted to bail, released from custody, delivered as provided by Title 3, Family Code, or committed to jail, the arresting officer shall attempt to serve notice of driver's license suspension or disqualification by personally delivering the notice to the person.

(5) If a person arrested for an offense under Texas Penal Code, §49.04, §49.07, §49.08, or an offense under Texas Alcoholic Beverage Code, §106.041, or a person requested to submit a breath, blood or urine specimen under Texas Transportation Code, Chapter 522, refuses to give a specimen as designated by the peace officer, the officer shall personally serve notice of driver's license suspension or disqualification on the person.

(c) Notice given by the department. In the event that the arresting officer did not serve notice of suspension or disqualification on the person following an ALR contact, the department shall send, by certified mail, notice of suspension or disqualification to the person's address of record, and to the person's current address given in the ALR report if different. If the department cannot verify that proper notice of suspension was served on the person by a peace officer following an ALR contact, the department may serve notice of suspension or disqualification. Notice is presumed received on the fifth day after the date it is mailed.

(d) Notice given by the department to control. In any case where notice of suspension or disqualification is served by the arresting officer and notice of suspension or disqualification is also sent by the department, notice sent by the department shall be controlling.

§17.4. ALR Reports.

Following an ALR contact, the peace officer shall submit an ALR report to the department on a form approved by the department.

(1) ALR Reports: breath, blood or urine test refusal. This section applies to offenses under Texas Penal Code, §49.04, §49.07, §49.08, Texas Transportation Code, Chapter 522, or Texas Alcoholic Beverage Code, §106.041. An ALR report based on a breath, blood or urine test refusal shall contain the following information:

(A) The identity of the person by full legal name, date of birth, and driver's license number, if any;

(B) the peace officer's sworn report or probable cause affidavit (Form DIC-23 and/or Form DIC-54);

(C) a copy of the statutory warning delivered to the person prior to requesting a specimen of breath or blood (Form DIC-24) and/or a copy of the statutory warning for commercial motor vehicle operators delivered to the person prior to requesting a specimen of breath, blood or urine (Form DIC-55);

(D) the person's current address;

(E) documentation of the refusal (Form DIC-24 and/or Form DIC-55), as evidenced by:

(i) a written refusal to give a specimen, signed by the person; or

(ii) a statement signed by the officer stating that the person refused to give a specimen and also refused to sign the statement requested by the officer under Texas Transportation Code, §724.031.

(F) the notice of suspension (Form DIC-25) served and/or the notice of disqualification (Form DIC-57); and

(G) any other information required by the department on its approved form.

(2) ALR Reports: breath, blood or urine test failures. This section applies to offenses under Texas Penal Code, §49.04, §49.07, §49.08, Texas Transportation Code, Chapter 522, or Alcoholic Beverage Code, §106.041. An ALR report based on a breath, blood or urine test failure shall be sworn to by the arresting officer (or by the peace officer requesting the specimen in the case of a commercial motor vehicle operator who is not arrested) and shall contain the following information:

(A) The identity of the person by full legal name, date of birth, and driver's license number, if any;

(B) the peace officer's sworn report or probable cause affidavit (Form DIC-23 and/or Form DIC-54);

(C) a copy of the statutory warning delivered to the person prior to requesting a specimen of breath or blood (Form DIC-24) and/or a copy of the statutory warning for commercial motor vehicle operators delivered to the person prior to requesting a specimen of breath, blood or urine (Form DIC-55);

(D) the person's current address;

(E) a copy of the analysis of the specimen, such as a photocopy of the breath test result; and

(F) the notice of suspension (Form DIC-25) served and/or the notice of disqualification (Form DIC-57); and

(G) a copy of the criminal complaint, if any, that has been filed with a magistrate or delivered to a local prosecuting attorney with jurisdiction over the offense; and

(H) any other information required by the department on its approved form.

(3) ALR Reports: offense under Alcoholic Beverage Code, §106.041, no specimen requested. An ALR report shall contain the following information:

(A) identity of the person by full legal name, date of birth, and driver's license number, if any;

(B) the peace officer's sworn report or probable cause affidavit (Form DIC-23);

(C) the person's current address;

(D) the notice of suspension served (Form DIC-25);

(E) a copy of the criminal complaint, if any, that has been filed with a magistrate or delivered to a local prosecuting attorney with jurisdiction over the offense; and

(F) any other information required by the department on its approved form.

§17.5. Intake.

(a) the department may reject any ALR report and decline to prosecute any ALR suspension or disqualification.

(b) For purposes of an ALR suspension or disqualification based on a breath test failure, a valid breath alcohol test record is required. To be considered valid, the breath test record must meet the following criteria:

(1) There must be no "invalid" message.

(2) Results must be clearly printed.

(3) All air blanks must be 0.000.

(4) The test record must bear the signature of the breath test operator.

(c) No additional report, memo, record, or maintenance record is required to validate the breath alcohol test.

§17.6. Rescission.

(a) The department may rescind any ALR suspension or disqualification.

(b) If for any reason the department declines to prosecute an ALR suspension or disqualification, or rescinds said action after imposition, the department shall send notice of rescission to the person at his/her address of record, and current address, if different.

(c) A decision by the department to rescind notice of suspension or disqualification has no binding precedential value and the department may later prosecute a suspension or disqualification arising out of the same incident.

§17.7. Administrative Suspension or Disqualification of Driver's License.

After notice of suspension and/or disqualification has been properly served, the department shall impose a suspension or disqualification as provided by law, unless the person makes a timely hearing request as provided in §17.8 of this title (relating to Hearing Requests).

§17.8. Hearing Requests.

A person who receives notice of suspension or disqualification may request a hearing as provided.

(1) A hearing request must either be delivered in writing, including by facsimile transmission, or be transmitted by telephone, to the department at its headquarters in Austin at the address or phone number contained in the notice of suspension or disqualification. Hearing requests delivered to any other department address or telephone number will not be honored.

(2) A hearing request must contain sufficient information to enable the department to identify the defendant and to schedule the hearing, which information shall include the following: the defendant's full legal name, date of birth, driver's license number, the date of arrest, the county of arrest, the name of the law enforcement agency which made the arrest, whether the defendant allegedly failed or refused the specimen test or was not requested to submit a specimen, and such additional nonprivileged information as may be requested by the department.

(3) A hearing request must be timely. In order to be considered timely, a hearing request containing all of the information set forth in paragraph (2) of this section must be received by the department at its headquarters in Austin at the address or phone

number contained in the notice of suspension not later than 5:00 p.m. on the 15th day after:

(A) the date notice of suspension or disqualification was served by a peace officer; or

(B) the date notice is presumed to have been received, according to the records of the department.

(4) A hearing request which fails to include one or more of the items of information required by paragraph (2) of this section, or one containing incorrect information, will not be deemed to be timely filed. Nothing in this section is intended to prevent a person making a hearing request from supplementing or correcting information contained in a hearing request, provided that such supplementation or correction is received by the department before the deadline for filing a hearing request as set out in paragraph (3) of this section.

(5) The department shall reject any untimely hearing request. When a written hearing request is received and rejected, the department shall mail written notice to the defendant that the hearing request was received and rejected, and state the reason for rejection. When a telephone hearing request is received and rejected, the department shall mail a written notice of the reason for rejection only upon request.

(6) Upon receipt of a timely hearing request, the department shall schedule a hearing and mail written confirmation to the defendant.

(7) A timely hearing request stays the suspension or disqualification pending a final affirmative decision by the administrative law judge.

(8) The department will presume that notice of hearing date, time, and location was received on the fifth day after the day it was mailed.

§17.9. Hearings.

ALR hearings shall be held in accordance with Texas Transportation Code, Chapter 524, and in accordance with 1 Texas Administrative Code, Chapter 159.

§17.10. Out-Of-State Orders and Judgments.

The department shall give full faith and credit to convictions, suspensions, denials, and disqualifications arising in other states.

§17.11. Appeals.

(a) Upon receipt of an appeal petition, the department shall determine whether the defendant is entitled to a 90-day stay of suspension or disqualification pending appeal, in accordance with Texas Transportation Code, Chapter 524. For purposes of determining whether an appeal stays a suspension, the department will consider prior alcohol-related and drug-related enforcement contacts. For purposes of this subsection, alcohol-related and drug-related enforcement contacts occurring both prior to and after the effective date of ALR shall be considered. The date of a prior alcohol-related or drug-related enforcement contact, not the date of the conduct, shall be controlling.

(b) If a stay is granted pending appeal, it shall be effective from the date the petition is filed, not from the date of hearing or decision of the administrative law judge.

(c) A remand does not stay the suspension or disqualification.

(d) To perfect service on the department of a judicial appeal of a final order in a contested ALR case pursuant to 1 TAC §159.37 (relating to Appeal of Judge's Decision) and this section, a defendant must send by certified mail a file-stamped copy of the defendant's appeal petition, certified by the clerk of the court in which the petition is filed, to the department at its headquarters in Austin. The certified copy must be addressed and mailed to Director of Hearings, ALR Program, Box 15327, Austin, Texas 78761-5327. A suspension will not be stayed until service is perfected according to this subsection.

(e) If an affirmative finding by an administrative law judge is reversed on appeal, the appellant shall notify the department by mailing a file-stamped copy of the judgment from the appellate court to the department, addressed to Director of Hearings, ALR Program, Box 15327, Austin, Texas 78761-5327. Upon verification, the department shall remove references of the ALR suspension or disqualification from defendant's driving record if warranted.

§17.12. Final Order of Suspension or Disqualification.

If an administrative hearing is not requested, then before the effective date of suspension or disqualification, the department shall mail a final order of suspension or disqualification to the person's address of record and to the person's current address, if different. The order shall state the length of suspension or disqualification and the procedure for reinstatement. A final order of suspension or disqualification is not considered notice of suspension or disqualification for purposes of requesting an administrative hearing under this section. A final order of suspension or disqualification is presumed received on the 5th day after the day it is mailed.

§17.13. Effect of Acquittal; Notification to the Department.

(a) Upon notification that a criminal charge under Texas Penal Code, §49.04, §49.07, §49.08, or Texas Alcoholic Beverage Code, §106.041, has resulted in an acquittal, the department shall not impose a suspension arising out of the same conduct or transaction. If a suspension has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the defendant.

(b) To ensure that the department receives notice of acquittal, the defendant shall send a certified copy of the judgment of acquittal to the department at the address listed in §17.16(1) of this title (relating to Service On The Department Of Certain Items Required To Be Served On, Mailed To, Or Filed With The Department). A defendant should send a written request which identifies the defendant by name and driver's license number, states the date and county of arrest, and requests rescission of the suspension. The department reserves the right to verify the acquittal. Upon verification, the department shall rescind the suspension and remove references to the suspension from the defendant's computerized driving record.

(c) For purposes of this section, the following types of dispositions of any criminal complaint shall not be regarded as an acquittal:

(1) a pre-trial order of dismissal where jeopardy has not attached;

(2) a reduction of charges;

(3) a conviction on a lesser included charge;

(4) a disposition under Texas Penal Code, §12.45; or

(5) any discharge or dismissal brought about by a failure to bring a cause of action to speedy trial within the time required by the state or federal constitutions.

§17.14. Enforcement of Suspensions or Disqualifications.

(a) Knowledge of a license suspension or disqualification is presumed if a peace officer served notice of suspension or

disqualification on the person, or if the department mailed notice of suspension or disqualification to the person's address of record and to the person's current address given to the peace officer, if different.

(b) A Texas driver's license, permit, or privilege to operate a motor vehicle may be suspended, denied or disqualified under provisions of ALR. The loss of the privilege to drive in Texas shall apply to unlicensed drivers and nonresidents, as well as residents. The department shall not issue a driver's license to any person who is subject to an order of suspension, denial or disqualification.

(c) Upon suspension or disqualification of a driver's license, a Texas licensee must surrender any suspended or disqualified license to the department. If a person cannot comply, he must submit an affidavit to the department stating the reason why he cannot produce and surrender the license. Failure or refusal to surrender a license may result in the department initiating criminal proceedings against that licensee, as provided by Texas Transportation Code, Chapter 521. A person may surrender a suspended or disqualified license by either of the following methods:

(1) A person may deliver a suspended or disqualified license to an ALR Hearing Attorney employed by the department, any uniformed officer of the department, or any department office during regular business hours.

(2) A person may mail a suspended or disqualified license to the Texas Department of Public Safety, Driver Improvement and Control, Box 4040, Austin, Texas 78773-0320.

(d) Any department employee who receives a suspended or disqualified license shall send the license to the department's main headquarters in Austin at the address listed in subsection (c)(2) of this section.

(e) ALR suspensions shall be enforced as provided by Texas Transportation Code, Chapter 521.

§17.15. Reinstatement.

A driver's license suspended under Texas Transportation Code, Chapter 524 or Chapter 724, or disqualified under Texas Transportation Code, Chapter 522, may not be reinstated and another driver's license may not be issued until the suspended/disqualified person files an appropriate application and pays to the department a reinstatement fee of $100, in addition to any other fees required by law.

§17.16. Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed With the Department.

(a) Where authorized, required, or permitted by statute or rule, a Request for Production and/or any tangible/documentary evidence required to be served by the defendant on the department must be served on the department by one of the following methods:

(1) by first-class mail, or by certified mail where required, addressed to Director of Hearings, ALR Program, Box 15327, Austin, Texas 78761-5327;

(2) by telephonic document transfer (fax) to (512) 424-7171, to the attention of the Director of Hearings, ALR Program;

(3) by hand delivery, during regular business hours, directly to the Director of Hearings, ALR Program, Driver License Division, Department of Public Safety, Main Building, 5805 North Lamar Boulevard, Austin, Texas 78752-0300.

(4) by courier receipted delivery through a commercial overnight express delivery service to the Director of Hearings, ALR Program, Driver License Division, Department of Public Safety, Main Building, 5805 North Lamar Boulevard, Austin, Texas 78752-0300.

(b) This section does not authorize or confer any discovery rights on a person or entity.

(c) Any request for the appearance of the "breath test operator and/or breath test technical supervisor" at the ALR hearing, pursuant to Texas Transportation Code, §524.039(a), when made subsequent to the defendant's initial request for hearing, must be made by one of the methods set forth in paragraph (a) of this section and must be received by the department at least five days prior to the scheduled hearing date.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902942
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 4, 1999
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 proposes an amendment to §143.43, concerning the application process to the Board for a recommendation to the governor of a reprieve from execution. The amendment is proposed for the purpose of clarifying existing application procedures, providing the opportunity for the inmate to request an interview with a member of the Board, and providing a time deadline for supplementation of the initial application.

Victor Rodriguez, Chair of the Policy Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Chairman Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be to provide the first necessary step to give the Board the opportunity to review the clemency process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas, 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amendment is proposed 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.

There is no cross-reference to the proposed amended rule.

§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. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day. Otherwise, the applicant's recourse will be directly to the governor.

(b) All supplemental information, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the Texas Board of Pardons and Paroles, Clemency Section, Austin, Texas, not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day.

(c) Any information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, which require reproduction facilities, equipment, or technology not operated by the board, must be provided by the applicant in an amount sufficient to allow review by all members of the board. An amount sufficient shall mean not less than 10 and not more than 20 copies of the duplicate item.

(d) A convicted person seeking a board recommendation to the governor of a reprieve from execution may request an interview with a member of the board. Such request shall be included in the written application or any supplement filed therewith in accordance with this section.

(e) Upon receipt of a request for an interview, the presiding officer (chair) shall designate at least one member of the board to conduct the requested interview. Such interview shall occur at the confining unit of TDCJ. Attendance at such interviews shall be limited to the convicted person, the designated board member(s), Board of Pardons and Paroles staff, and TDCJ staff. The board may consider statements by the inmate made at such interviews when considering the inmate's application for reprieve.

(f) [~~(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.

(g) [~~(c)~~] When the board sets a hearing pursuant to subsection (f)(3) [~~(b)(3)~~] of this section, it shall notify the trial officials of the county of conviction and the attorney general of the State of Texas and allow any such official(s), or the designated representatives thereof, the opportunity to attend the hearing and/or to present any relevant information. At the time of notifying the trial officials, the board shall also notify any representative of the family of the victim (who has previously requested to be notified) of the receipt of the application, the setting of a hearing, and of said representative or family member's rights to provide any written comments or to attend the hearing.

(h) [~~(d)~~] All hearings conducted by the board under this section shall be in open session pursuant to requirements of the Texas Open Meetings Act, Article 6252-17. For the purpose of discussing matters which are deemed confidential by statute, or where otherwise authorized by the provisions of the Texas Open Meetings Act, the proceedings may be conducted in executive session closed to members of the general public, for that limited purpose. Only those persons whose privacy interests and right to confidentiality may be abridged by discussion involving disclosure of confidential information may be allowed to meet with members of the board in their executive session to discuss that information. No decision, vote, or final action by the board shall be made during a closed meeting; the board's decision, vote, or final action shall be made and announced in an open meeting. The hearing may be recessed prior to its completion and reconvened pursuant to the directions of the board.

(i) [~~(e)~~] Advocates for and against the death penalty, generally, and members of the general public may present written information for the board's consideration at its central office headquarters at any reasonable time.

(j) [~~(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.

(k) [~~(g)~~] Each of the provisions of this section and §143.42 of this title (relating to Reprieve Recommended by Board) are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it.

(l) [~~(h)~~] Successive or repetitious reprieve applications submitted in behalf of the same condemned felon may be summarily denied by the board without meeting.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903001
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 4, 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 proposes 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. The

amendment is proposed for the purpose of clarifying existing application procedures, providing the opportunity for the inmate to request an interview with a member of the Board, and providing a time deadline for supplementation of the initial application.

Victor Rodriguez, Chair of the Policy Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Chairman Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be to provide the first necessary step in order to give the Board the opportunity to review the clemency process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas, 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amendment is proposed under the Texas Constitution, Article IV, Section 11, and the Code of Criminal Procedure, Article 48.01, which provide the Board with authority to recommend reprieves, commutations of punishments and pardons to the governor.

There is no cross-reference to the proposed amended rule.

§143.57. Commutation of Death Sentence to Lesser Penalty.

(a) 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.

(b) [~~(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. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day.

(c) All supplemental information not filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the Texas Board of Pardons and Paroles, Clemency Section, Austin, Texas, not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day.

(d) Any information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, which require reproduction facilities, equipment, or technology not operated by the board must be provided by the applicant in an amount sufficient to allow review by all members of the board. An amount sufficient shall mean not less than 10 and not more than 20 copies of the duplicate item.

(e) A convicted person seeking a board recommendation to the governor of commutation of the death sentence to a lesser penalty may request an interview with a member of the board. Such request shall be included in the written application or any supplement filed therewith in accordance with this section.

(f) Upon receipt of a request for an interview, the presiding officer (chair) shall designate at least one member of the board to conduct the requested interview. Such interview shall occur at the confining unit of TDCJ. Attendance at such interviews shall be limited to the convicted person, the designated board member(s), Board of Pardons and Paroles staff, and TDCJ staff. The board may consider statements by the inmate made at such interviews when considering the inmate's application for commutation of the death sentence to a lesser penalty.

(g) [~~(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:

(1) [~~(i)~~] recommend to the governor the commutation of the death sentence to a lesser penalty;

(2) [~~(ii)~~] not recommend commutation of the death sentence to a lesser penalty; or

(3) [~~(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903002
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463-1883

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Chapter 145. Parole

Subchapter A. Parole Process

37 TAC §145.12

The Policy Board of the Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.12, concerning action upon Board review. The amendment is proposed for the purpose of providing that, in order to require aftercare treatment for those inmates released to mandatory supervision, a special condition must be imposed.

Victor Rodriguez, Chair of the Policy Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or

local government as a result of enforcing or administering this section.

Chairman Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be a clarification of the rules regarding the requirement of participation in aftercare programs following completion of a TDCJ treatment program. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas, 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amendment is proposed under the Code of Criminal Procedure, Article 42.18, §8(g), and §508.044(d)(1), Government Code, which provide the Policy Board with the authority to adopt rules with respect to the release of inmates on parole and mandatory supervision; and §508.045, Government Code, which provides parole panels with the authority to release inmates eligible for parole.

There is no cross-reference to the proposed amended rule.

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

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

(5) any person released to parole [~~or mandatory supervision~~] after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9902999
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463-1883

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Subchapter B. Terms and Conditions of Parole

37 TAC §145.22

The Policy Board of the Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.22, concerning the conditions and rules of parole. The amendment is proposed for the purpose of clarifying that the Board shall not make the approval of release to parole or mandatory supervision contingent on the adoption of an out-of-state plan only.

Victor Rodriguez, Chair of the Policy Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Chairman Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be that the Board will be increased efficiency in the procedures utilized by the Board in making release decisions. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas, 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amendment is proposed under the Code of Criminal Procedure, Article 42.18, §8(g), and §508.044(d)(1), Government Code, which provide the Policy Board with the authority to adopt rules with respect to the release of inmates on parole and mandatory supervision; and §508.045, Government Code, which provides parole panels with the authority to release inmates eligible for parole.

There is no cross-reference to the proposed amended rule.

§145.22. Conditions and Rules of Parole.

(a) Every inmate approved for release on parole shall be issued a written statement listing the conditions and rules of parole in clear and intelligible language. The conditions and rules of parole must be agreed to and accepted by the inmate prior to release. The inmate [~~parolee~~] may have additional conditions imposed by the parole panel after release, and shall be notified in writing of any such conditions.

(b) Continuance on parole or mandatory supervision is conditioned upon full compliance with all the conditions and rules of parole or mandatory supervision as imposed by the parole panel.

(c) The parole panel shall not impose as a condition for release on parole or mandatory supervision that the inmate be released only to a state other than the State of Texas.

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903000
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463-1883

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Part VI. Texas Department of Criminal Justice

Chapter 152. Institutional Division

Subchapter D. Other Rules

37 TAC §152.53

The Texas Department of Criminal Justice proposes new §152.53 concerning death row visitations. The new section

sets specific guidelines for visitation of death sentenced offenders.

David P. McNutt, Director of Financial Services for the Texas Department of Criminal Justice has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the new section as proposed.

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing the new section as proposed will be a better understanding of the *TDCJ Visitation Plan* and the Code of Criminal Procedure, Article 43.17. There will be no effect on small businesses. There is no anticipated economic cost to individuals required to comply with the section as proposed

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under Government Code, §492.013, which grants general rulemaking authority; and Article 43.17, Code of Criminal Procedure.

Cross-reference to statute: Article 43.17, Code of Criminal Procedure.

§152.53. Death Row Visitation.

(a) Policy. Pursuant to Article 43.17, Code of Criminal Procedure, an offender sentenced to death shall be confined until the time for execution arrives and while confined, all persons outside of the TDCJ shall be denied access to the offender, except his or her physician, lawyer, and clergyperson, who shall be admitted when necessary for the offender's health or for the transaction of business, as well as the relatives and friends of the offender in accordance with this section and the *TDCJ Visitation Plan*. Pursuant to the 1st Amendment, U.S. Constitution, news media shall have reasonable access to death sentenced offenders to the extent that such access does not disrupt the safe and secure operation of the unit or detract from the deterrence of crime.

(b) Definitions

(1) "News media" means news publications, accredited news services such as the Associated Press, licensed radio and television broadcast stations or networks, and government franchised community cable television systems that originate scheduled news programming. "News media" does not include broadcast programs syndicated by independent producers, or television stations or networks devoted primarily to advocacy purposes or to a particular point of view.

(2) "News publication" means a publication that possesses a second class mailing permit and:

(A) is published at least weekly and contains at least 25 percent news of general interest; or

(B) is a magazine with a circulation of at least 25,000 that is published at least monthly and contains news and feature articles appealing to a broad spectrum of interests.

(c) News media access

(1) News media interviews of death sentenced offenders shall be scheduled by the Huntsville Public Information Office and shall be conducted weekly at the death row units at times specified by agency policy.

(2) A news media entity requesting an interview with a death sentenced offender should submit appropriate information, as specified by agency policy, to the Huntsville Public Information Office prior to the interview date. News media requests shall not be accepted at the offender's unit of assignment. The number of offenders requested to be interviewed should be kept within reason.

(d) Visits by relatives and friends

(1) Offenders sentenced to death shall be allowed one general (non-contact) visit per week for a two hour period.

(2) Visiting hours for death sentenced offenders are Monday through Friday, 8:00 a.m. to 5:00 p.m., and Saturdays between 5:30 p.m. and 9:30 p.m., except on State-approved holidays.

(e) Attorney visitation. Attorney visitation shall take place in accordance with the *TDCJ Uniform Offender Access to Courts, Counsel and Public Officials Rules*. These rules shall be implemented liberally in accordance with the extraordinary features of death row litigation.

(f) Physician access. Offenders sentenced to death shall be provided medical care pursuant to agency policy. This rule and Article 43.17, Code of Criminal Procedure, are not interpreted to allow for a physician chosen by the offender sentenced to death.

(g) Clergy access. Offenders sentenced to death shall be provided access to clergy pursuant to agency policy.

(h) General Provisions and Exceptions.

(1) All visitors must abide by the *TDCJ Offender Rules and Regulations for Visitation.*

(2) Special security procedures (e.g., security cages) may be utilized during the visitation periods to ensure the safety and security of offenders, visitors, and staff, and the security of the institution.

(3) All death row visitation and access may be suspended for security reasons as determined by the Executive Director or his designee for a period of up to 70 days, and subject to Board ratification at the next regularly scheduled Board meeting.

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

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903006
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 463-9693

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Part XIII. Texas Commission on Fire Protection

Chapter 423. Fire Suppression

Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

37 TAC §423.3

The Texas Commission on Fire Protection proposes amendments to §423.3, concerning minimum standards for basic structure fire protection personnel certification. The amendments to §423.3 change the reference from "examination" (singular) to "examinations" (plural) to allow for testing of Firefighter I and II separately, and change the phases from four phases to five phases. Firefighter I includes phases one through four and Firefighter II includes phase five.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be no fiscal impact for state or local governments.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that training and certification of volunteer fire protection personnel will be encouraged by segmenting the basic fire suppression curriculum into Firefighter I and Firefighter II.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments. The commission has determined that the proposed amendments relating to certified training facilities will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the changes.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed amendments.

§423.3. Minimum Standards for Basic Structure Fire Protection Personnel Certification.

(a) In order to become certified as basic structure fire protection personnel, an individual must:

(1) complete a commission approved basic structure fire suppression program and successfully pass the commission examination(s) [~~examination~~] as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:

(A) completion of a commission approved Basic Fire Suppression Curriculum as specified in Chapter 1 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(B) completion of the five [~~four~~] phase levels of the approved Basic Fire Suppression Curriculum as specified in Chapter 1 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(C)-(E) (No change.)

(2) (No change.)

(b)-(f) (No change.)

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903008
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918–7189

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Chapter 427. Certified Training Facilities

37 TAC §§427.1, 427.3, 427.5, 427.15

The Texas Commission on Fire Protection proposes amendments to §§427.1, 427.3, 427.5, and 427.15, concerning Certified Training Facilities. The amendments incorporate changes necessary to implement the new voluntary certification for driver/operator-pumper.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be fiscal implications. Local governments that operate training academies that seek certification or approval to provide basic training required for driver/operator-pumper certification may be required to purchase new fire apparatus required to teach the new curriculum at a cost of up to $120,000.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be standardization of training for driver/operator-pumper resulting in safer and better trained fire apparatus drivers. There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments. The commission has determined that the proposed amendments relating to certified training facilities will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the changes.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.028,

which provides the commission with authority to certify facilities operated for training fire protection personnel or recruits.

Texas Government Code, §419.028 is affected by the proposed amendments.

§427.1. Minimum Standards for Certified Training Facilities for Fire Protection Personnel.

(a) A training facility that provides basic instruction, for certification, to fire protection personnel in any of the following disciplines must be certified by the Texas Commission on Fire Protection:

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

(6) hazardous materials technician; [.]

(7) driver/operator-pumper.

(b)-(h) (No change.)

§427.3. Facilities.

The following minimum resources, applicable to the curricula, are required for certification as a certified training facility. These facilities may be combined or separated utilizing one or more structures. In either event the facilities must be available and used by the instructor and trainees.

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

(7) If performance or driving skills are part of the curriculum, suitable area(s) for practicing required skills, demonstration of skills, and performance testing must be available.

§427.5. Apparatus.

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

(c) Certified training facility–approved for Driver/Operator-Pumper. A piece of fire apparatus with a permanently mounted fire pump that has a rated discharge capacity of 750 gpm (2850 L/min) or greater as defined in NFPA 1901, Standard for Automotive Fire Apparatus.

§427.15. Testing Procedures.

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

(d) Written tests shall be designed to encompass the contents of the subjects being taught and phrased in a manner which can be readily understood by a trainee whose comprehension is at a level consistent with the academic level of the material being presented.

(1) Periodic written tests serve the dual purpose of permitting the instructor to evaluate the effectiveness of the instruction and the comprehension of the trainees. The instructor must determine that each trainee understands and comprehends the subject matter being presented. Trainees must maintain a grade average of not less than 70% for all periodic tests administered during the course.

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

(D) A minimum of one periodic written test shall be administered during the course for certification of driver operator-pumper covering the subjects listed in the applicable curriculum.

(2)-(3) (No change.)

(e) (No change.)

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902914

T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918-7189

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Chapter 433. Minimum Standards for Driver/ Operator-Pumper

37 TAC §§433.1, 433.3, 433.5

The Texas Commission on Fire Protection proposes new Chapter 433, §§433.1, 433.3, 433.5, concerning Minimum Standards for Driver/Operator-Pumper. The new chapter creates a voluntary certification for individuals with specialized training which meets the competencies and objectives outlined in National Fire Protection Association Standard 1002.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new chapter is in effect there will be fiscal implications. The agency will have an increase in revenue of $20.00 per person in certification fees and $15.00 per person in testing fees. However, this increase in revenue will be offset by the cost of administering the test. Local governments who choose to pay certification, training and testing fees for employed individuals will incur costs of $20.00 per person for certification and $15.00 per person for testing and approximately $300.00 per person for training. In addition, local governments that operate training academies that seek certification or approval to provide basic training required for driver/operator-pumper certification may be required to purchase new fire apparatus required to teach the new curriculum at a cost of up to $120,000.

Mr. Calagna also has determined that for each of the first five years the proposed new chapter is in effect the public benefit anticipated as a result of enforcing the new chapter will be standardization of training for driver/operator-pumper resulting in safer and better trained fire apparatus drivers. There are no additional costs of compliance for small or large businesses required to comply with the new chapter. Individuals whose employers who do not elect to pay for this voluntary certification will incur costs of $20.00 for certification and $15.00 for testing and approximately $300.00 for training. The commission has determined that the proposed new chapter relating to minimum standards relating to driver/operator - pumper will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the changes.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The new chapter is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish mini-

mum educational and training standards for specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new chapter.

§433.1. Driver/Operator-Pumper Certification.

(a) The effective date of this section shall be November 1, 1999.

(b) A driver/operator-pumper is defined as an individual who safely operates a fire pumper in accordance with all state and local laws; operates a fire pump in a safe manner; and determines effective fire stream calculations and pump discharge pressures. Responsibilities include routine apparatus tests, maintenance, inspections, and servicing functions.

(c) Within one year of the effective date of this section, an individual may apply for certification as a Driver/Operator-Pumper and is eligible to take the commission examination for driver/operator-pumper, upon documentation to the Commission that the individual has completed the minimum requirements of the National Fire Protection Association Standard 1002 (1998 edition, or earlier).

§433.3. Minimum Standards for Driver/Operator-Pumper Certification.

(a) The effective date of this section shall be November 1, 1999. Training programs that are intended to satisfy the requirements of this section, started on or after the effective date of this section, must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain Driver/Operator-Pumper certification the individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel;

(2) complete a commission approved Driver/Operator-Pumper Curriculum and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator - pumper program must consist of one of the following:

(A) complete a commission approved Driver/Operator-Pumper Curriculum of at least 40 hours as specified in Chapter 7 of the Commission's document titled "Commission Certification Curriculum Manual," as approved by the Commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual).

(B) complete an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Driver/Operator-Pumper Curriculum.

(C) complete a military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Driver/Operator-Pumper Curriculum.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 7 (pertaining to Driver/Operator-Pumper) of the "Commission Certification Curriculum Manual" are met.

(d) The commission approved Driver/Operator-Pumper Curriculum must be conducted by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Certified Training Facilities).

(e) An individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress as Driver/Operator-Pumper shall be eligible to take the commission written examination for driver/operator-pumper.

(f) No individual will be permitted to take the commission examination for driver/operator-pumper unless the individual meets the requirements of subsection (b)(1) of this section.

§433.5. Examination Requirements.

(a) The written examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive driver/operator-pumper certification.

(b) Performance skills must meet the requirements in §439.11 of this title (relating to Performance Skill Evaluation) with the following exceptions:

(1) All performance skills listed in the curriculum must be tested for competency during the course.

(2) The number of opportunities to successfully complete particular performance skill objectives evaluated during a Driver/Operator-Pumper academy is at the discretion of the training officer or coordinator. Retests must be conducted prior to the completion of the course.

(3) All skills must be demonstrated before a commission approved field examiner.

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902915
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918-7189

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Chapter 439. Examinations for Certification

37 TAC §§39.3, 439.5, 439.7, 439.11, 439.13, 439.15

The Texas Commission on Fire Protection proposes amendments to §§439.3, 439.5, 439.7, 439.11, 439.13, and 439.15, concerning examinations for certification. The amendments provide for testing of training for Firefighter I and II separately or combined, and make technical changes to correct cross references and clarify testing requirements.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be fiscal implications. If the basic fire suppression curriculum is segmented into Firefighter I and Firefighter II by the academy and tested separately there will be an increase in cost to local governments of $15 per person for testing fees and approximately $500 in cost for instructors for additional skills testing. The agency will experience an increase in revenue of $15 per person for testing fees

which will be offset by expenses for administration of the examinations.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that training and certification of volunteer fire protection personnel will be encouraged by segmenting the basic fire suppression curriculum into Firefighter I and Firefighter II.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments. The commission has determined that the proposed amendments relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the changes.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032, concerning basic certification examinations.

Texas Government Code, §419.032 is affected by the proposed amendments.

§439.3. Definitions.

The following words and terms used in this chapter[~~,~~] have the following definitions unless the context clearly indicates otherwise.

(1) Certificate of Completion - A signed statement certifying that an individual has successfully completed a commission approved basic certification curriculum or phase program for a particular discipline, including having been evaluated by field examiners on performance skills identified by the commission. The Certificate of Completion will be on a form provided by the commission and is to be completed and signed by the provider of training and issued to the individual upon successful completion of the training. The certificate of completion must, as a minimum, identify the provider of training, the course I.D. number, the course approval number, hours of instruction, date issued, curriculum name, training officer or course coordinator, and the name of the person completing the course. The certificate of completion qualifies an individual to take an original certification examination.

(2)-(9) (No change.)

§439.5. Procedures.

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

(e) [~~To apply for a commission examination at a certified volunteer training facility, the designated training officer or coordinator of the entity providing the training must have each examinee complete the Application for Testing form and return it to the commission no later than 30 days prior to the requested examination date. Upon receipt of the Application(s) for Testing, the commission will tentatively schedule a time and place for the examination. A reasonable attempt shall be made to schedule the examination at a time and place agreeable to the provider of training and examinees.~~] The provider of training of a Basic Fire Suppression Fire Fighter I academy will receive from the commission at least seven randomly selected performance skill [~~skills~~] objectives from Section II of the Performance Evaluation Forms [~~booklet~~] that each examinee must successfully complete prior to the commission examination. The provider of training of a Basic Fire Suppression Fire Fighter II academy will receive from the commission at least seven randomly selected performance skill objectives from Section III of the Performance Evaluation Forms that each examinee must successfully complete prior to the commission examination. The provider of training of a Basic Fire Suppression Fire Fighter I and Fire Fighter II combined academy will receive from the commission at least seven randomly selected performance skill objectives from Section II and Section III of the Performance Evaluation Forms that each examinee must successfully complete prior to the commission examination.

(f) (No change.)

(g) Commission examinations, or retests, for less than eight examinees must be conducted in accordance with this section, provided that entity providing the training agrees to pay an examination fee equal to the amount that would be charged for eight examinees.

(h)-(s) (No change.)

(t) The Basic Fire Suppression examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three hours.

(1) Basic Fire Suppression Fire Fighter I examination includes 100 active questions with an option of adding up to 10 pilot questions. The time allowed for the completion of the written examination will not exceed two (2) hours.

(2) The Basic Fire Suppression Fire Fighter II examination includes 50 active questions with an option of adding up to 10 pilot questions. The time allowed for the completion of the written examination will not exceed one hour.

(3) The Basic Fire Suppression Fire Fighter I and II combined examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three hours.

(u) An individual who has documented completion of commission approved Fire Fighter II training will be allowed to take the Basic Fire Suppression Fire Fighter II examination, if it has been less than four years since the individual has passed the commission's Basic Fire Suppression Fire Fighter I written and performance evaluation.

§439.7. Eligibility.

(a) (No change.)

(b) In order to qualify for a commission examination, the examinee must:

(1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;

(2) provide the staff examiner with a copy of a Certificate of Completion for the course required for the specific examination sought or an endorsement of eligibility issued by the commission;

(3) bring to the test site and display upon request some form of identification which contains the name and a photograph of the examinee;

(4)-(5) (No change.)

(c) (No change.)

§439.11. Performance Skill Evaluation.

(a) State performance skill evaluation. If a performance skill test is [~~objectives are~~] part of a commission examination, [~~an approved curriculum~~] the examinee must complete a state performance skill evaluation in accordance with subsection [~~Subsection~~] (b) of this section. The state performance skill evaluation may be part of an original certification examination administered at the conclusion of a basic certification course at an approved training facility, as part of a Test for Certification Status, or as part of a commission examination for Proof of Proficiency.

(b) Evaluation procedures. The state performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated by staff examiners or by field examiners under the supervision of a staff examiner after completion of an approved curriculum.

(1) The state performance skill [~~objectives~~] evaluation of a Basic Fire Fighter I academy or a combined Fire Fighter I and Fire Fighter II academy must consist of one skill pertaining to self-contained breathing apparatus and at least two other skills identified as a critical skill in Section I of the Performance Evaluation Forms [~~booklet~~].

(2) Each student's performance evaluation form for each skill must be signed by the examiner performing the evaluation.

(3) An examinee who fails a state performance skill evaluation may be allowed a retest at a time and place to be determined by the staff examiner. If the candidate fails the retest, remedial training conducted by a certified instructor who is approved to teach in that specific subject area is required for a second retest. Remedial training must be of no less duration than the recommended curriculum instructional hours for the section in which the failed skill(s) is reflected. An examinee being retested on a performance skill must be retested on any skill, randomly selected by the staff examiner, from the same subject area as the performance skill objective that was failed.

(4) If the examinee fails the final retest as part of a state performance skill evaluation, the examinee must requalify by repeating the entire curriculum applicable to the examination.

(c) Original certification examination. In accordance with §439.5(e) [~~If performance skill objectives are part of an original certification examination~~], the examinee must be evaluated for competency by an approved field examiner at a certified training facility and [~~on at least seven~~] pass all of the [~~completed~~] performance skill objectives randomly selected by the commission prior to the administration of the [~~to qualify for a~~] state performance skill evaluation. The evaluation for competency to qualify for the state performance skills evaluation may occur at any time during the course of instruction. The number of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the training officer or course coordinator. The training facility must maintain copies of performance evaluation forms on each examinee to document competency. The instructor of a particular subject may not evaluate the performance skill related to that subject unless the instructor is an approved field examiner. At the conclusion of a course at an approved training facility, the examinee must complete the state performance skill evaluation in accordance with subsection [~~Subsection~~] (b) of this section.

(d) Testing for certification status. If performance skill objectives are part of a commission examination as provided in §439.15 [~~§439.17~~] of this title (relating to Testing for Certification Status), the performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated in accordance with subsection (b) of this section by staff examiners or by field examiners at an approved training facility with the consent of its training officer or course coordinator.

(e) Proficiency examination. If performance skill objectives are part of a commission examination as provided in §439.13 [~~§439.15~~] of this title (relating to Testing for Proof of Proficiency), the performance skill evaluation must consist of at least three (3) successfully completed performance skill objectives evaluated in accordance with subsection (b) of this section by staff examiners or by field examiners at an approved training facility with the consent of its training officer or course coordinator.

§439.13. Testing for Proof of Proficiency.

(a) An individual whose certificate [~~certificate(s)~~] has been expired for one year or longer may not renew the certificate [~~or certificates~~] that was [~~were~~] previously held.

(b) The individual may obtain a new certificate [~~or certificates~~] in the discipline [~~or disciplines~~] which was previously held by passing a commission proficiency examination pertaining to the discipline [~~or disciplines which was previously~~] held and becoming certified within the time specified for that discipline [~~or disciplines~~]. The proficiency examination must be passed prior to assignment to fire protection duties. If performance skills are part of the proficiency examination, the individual may be exempted from that portion of the examination by documenting [~~if the individual can document~~] twenty hours of continuing education for each year since the expiration of the certificate for a maximum of five years. The continuing education training must be done within the most recent five years and must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills. The training must be conducted as specified in Chapter 441 of this title (relating to Continuing Education).

(c)-(d) (No change.)

§439.15. Testing for Certification Status.

(a) If an individual who has never held certification in a discipline defined in §421.5, (relating to the definitions [~~definition~~] of fire protection personnel and volunteer fire protection personnel), seeks certification in that discipline two years or longer after passing a commission examination pertaining to that discipline, the individual shall:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903009
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918–7189

Chapter 449. Head of a Fire Department

37 TAC §449.1

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

The Texas Commission on Fire Protection proposes the repeal of §449.1, concerning head of a fire department. The repealed section is being replaced by new sections dealing with the same subject matter.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no impact on state or local government.

Mr. Calagna also has determined that for each of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that individuals and fire departments will have a clearer understanding of the requirements for certification as head of a fire department as well as the activities authorized by the certificate.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the repeal. The commission has determined that the proposed repeal relating to head of a fire department will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(f), which provides that the commission shall adopt rules for the purpose of this subsection relating to the appointment of a person to the position of head of the fire department.

Texas Government Code, §419.032(f) is affected by the proposed repeal.

§449.1. Minimum Standards for the Head of a Fire Department.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902916
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918-7189

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37 TAC §§449.1, 449.3, 449.5

The Texas Commission on Fire Protection proposes new §§449.1, 449.3, and 449.5, concerning head of a fire department. The new sections replace repealed sections dealing with the same subject matter. The new sections clarify the requirement for certification as head of a fire department for appointments made after March 1, 1999, and include an explicit assignment requirement for certification, and specifying the duties authorized by the certification. Finally, the new sections established specialized certifications for head of a fire department providing fire suppression and departments providing fire prevention services.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no impact on state or local government.

Mr. Calagna also has determined that for each of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be that individuals and fire departments will have a clearer understanding of the requirements for certification as head of a fire department as well as the activities authorized by the certificate.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the new sections.

The commission has determined that the proposed new sections relating to head of a fire department will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the changes.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(f), which provides that the commission shall adopt rules for the purpose of this subsection relating to the appointment of a person to the position of head of the fire department.

Texas Government Code, §419.032(f) is affected by the proposed new sections.

§449.1. Minimum Standards for the Head of a Fire Department.

(a) An individual who becomes employed and is assigned as the head of a fire department, on or after March 1, 1999, must be certified by the commission as head of a fire department, within one year of appointment.

(b) Holding the head of a fire department certification does not qualify an individual for any other certification. An individual who seeks certification in another discipline must meet the requirements for that discipline.

(c) Nothing contained in this chapter shall be construed to supercede Chapter 143, Local Government Code, in regard to appointment of a head of a fire department.

§449.3. Minimum Standards for Certification as Head of a Suppression Fire Department.

(a) In order to be certified as a head of a fire department providing fire suppression, an individual must:

(1) be assigned as head of a fire department; and

(2) hold a certification as a fire protection personnel in any discipline that has a commission approved curriculum that requires structural fire protection personnel certification and five years experience in a full-time fire suppression position; or

(3) provide documentation in the form of a sworn affidavit of ten years experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; and

(A) document completion of continuing education, that meets the requirements of Chapter 441, for each year the individual has been out of the fire service up to a maximum of five years; and

(B) successfully pass a written commission examination based on the basic structural fire protection personnel curriculum as specified in Chapter 439 of this title (relating to Examinations for Certification); or

(4) provide documentation in the form of a sworn affidavit of ten years of experience as a certified structural part-time fire protection employee; or

(5) provide documentation in the form of a sworn affidavit of ten years experience as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section and successfully pass a written commission examination based on the basic structural fire protection personnel curriculum as specified in Chapter 439 of this title.

(b) The ten years of volunteer service must include documentation of attendance at 40% of the drills for each year and attendance of at least 25% of a department's emergencies in a calendar year while a member of a volunteer fire department or departments with 10 or more active members that conducts a minimum of 48 hours of drills in a calendar year.

(c) Individuals certified as the head of a fire department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

(d) An individual certified as head of a fire department under this section may engage in fire fighting activities only as the head of a fire department. These activities include incident command, direction of fire fighting activities or other emergency activities typically associated with fire fighting duties, i.e. rescue, confined space and hazardous materials response.

§449.5. Minimum Standards for Certification as Head of a Prevention Only Department.

In order to be certified as the head of a fire department providing fire prevention activities only, an individual must:

(1) be assigned as head of a fire department; and

(2) hold a certification as a fire inspector, fire investigator, or arson investigator and have five years of full-time experience in fire prevention activities; or

(3) provide documentation in the form of a sworn affidavit of ten years experience with a local governmental entity in a full-time, part-time or volunteer fire inspector, fire investigator, or arson investigator position with ten years of experience in fire prevention activities; and

(A) document completion of continuing education, that meets the requirements of Chapter 441, for each year the individual has been out of the fire service up to a maximum of five years; and

(B) successfully pass a written commission examination based on the basic inspector or investigator curriculum as specified in Chapter 439 of this title (relating to Examinations for Certification).

(4) Individuals certified as the head of a fire department under this section must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902917
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918-7189

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Chapter 453. Minimum Standards for Hazardous Materials Technician

37 TAC §§453.1, 453.3, 453.5

The Texas Commission on Fire Protection proposes amendments to §§453.1, 453.3, and 453.5, concerning minimum standards for hazardous materials technician. The change to §453.1 deletes unnecessary language concerning who may seek Hazardous Material Technician Certification. The amendment to §453.3 clarifies that certification as structure fire protection personnel, aircraft fire rescue fire fighting personnel, or marine fire protection personnel is a prerequisite for the hazardous material technician certification. The amendment to §453.5 deletes a requirement of testing within 180 days of course completion to make the requirement consistent with other disciplines.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that testing requirements for hazardous material technician will be consistent with other disciplines and individuals will have additional time for study for a second attempt on the certification examination.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments. The commission has determined that the proposed amendments relating to minimum standards for hazardous materials technician will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the changes.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum educational and training standards for specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendment.

§453.1. Hazardous Materials Technician Certification.

(a) (No change.)

(b) [~~An individual who is certified as Structural Fire Protection Personnel, Aircraft Crash and Rescue Fire Protection Personnel, or Marine Fire Protection Personnel may be certified as a hazardous materials technician.~~]

[~~(c)~~] A hazardous materials technician is defined as an individual who performs emergency response to an occurrence which results in, or is likely to result in, an uncontrolled release of a hazardous substance where there is a potential safety or health hazard (i.e., fire, explosion, or chemical exposure). A hazardous materials technician responds to such occurrences and is expected to perform work to handle and control (stop, confine, or extinguish) actual or potential leaks or spills. The hazardous materials technician assumes a more aggressive role than a first responder at the operations level in that the hazardous materials technician will approach the point of release. The hazardous materials technician is expected to use specialized chemical protective clothing (CPC) and specialized control equipment.

(c) [~~(d)~~] Within one year of the effective date of this section, an individual may apply for certification as a Hazardous Materials Technician and is eligible to take the commission examination for hazardous materials technician, upon documentation to the Commission that the individual has completed the Hazardous Materials Technician training meeting the minimum requirements of the Occupational Safety and Health Administration 29 CFR 1910.120(q)(6)(iii) or National Fire Protection Association Standard 472 (1997 edition, or earlier).

(d) [~~(e)~~] All individuals holding a hazardous materials technician certification shall be required to comply with the continuing education requirements in §441.17 of this title (relating to Continuing Education Requirements for Hazardous Materials Technician).

§453.3. Minimum Standards for Hazardous Materials Technician Certification.

(a) (No change.)

(b) In order to be certified as a Hazardous Materials Technician an individual must [~~complete a commission approved hazardous materials technician program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved hazardous materials technician program must consist of one of the following~~]:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel and;

(2) complete a commission approved hazardous materials technician program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved hazardous materials technician program must consist of one of the following:

(A) [~~(1)~~] completion of a commission approved Hazardous Materials Technician Curriculum of at least 80 hours as specified in Chapter 6 of the Commission's document titled "Commission Certification Curriculum Manual," as approved by the Commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual).

(B) [~~(2)~~] completion of an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Hazardous Materials Technician Curriculum.

(C) [~~(3)~~] completion of a military training program that has been submitted to the commission for evaluation and found to be equivalent or exceed the commission approved Hazardous Materials Technician Curriculum.

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

§453.5. Examination Requirements.

(a) (No change.)

(b) [~~The written examination for hazardous materials technician must be taken and passed within 180 days of course completion.~~]

[~~(c)~~] Performance skills must meet the requirements in §439.11 [~~§439.13~~] of this title (relating to Performance Skill Evaluation) with the following exceptions:

(1) All performance skills listed in the curriculum must be tested for competency during the course.

(2) The number of opportunities to successfully complete particular performance skill objectives evaluated during a Hazardous Materials Technician School is at the discretion of the training officer or coordinator. Retests must be conducted prior to the completion of the course.

(3) All skills must be demonstrated before a commission approved field examiner.

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

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902918
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 918-7189

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community for Aged and Disabled

Subchapter J. §1915(c) Medicaid Home and Communicty-Based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

40 TAC §48.6003

The Texas Department of Human Services (DHS) proposes to amend §48.6003, concerning Client Eligibility Criteria, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to implement existing Community Based Alternatives (CBA) policy which provides exceptions to eligible individuals from the first-come, first- serve enrollment policy. This policy is applied to individuals who meet the exception criteria whether CBA enrollment is open or suspended pending receipt of additional funding. These exception criteria provide continuity of services for children aging out of other comparable programs and adults who are either at risk of losing their services in assisted living facilities or wish to leave nursing facilities.

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 governments as a result of enforcing or administering the section.

Mr. Bost also has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that eligible individuals in one of four categories specified in the rules will be able to access CBA services without being placed on the interest list. The section will not have any adverse effect on small businesses. This section will actually allow more individuals to be served by small businesses since the change will allow individuals that meet the exception criteria to be enrolled if they meet all eligibility criteria. Large businesses will also be able to serve these individuals. CBA client enrollment is limited by the availability of state funding. When enrollment is suspended, this amendment will allow individuals that meet the exception criteria to be enrolled if they meet all eligibility criteria, instead of being placed on an interest list.

Questions about the content of this proposal may be directed to Gerardo Cantú at (512)438-3693 in DHS's Community Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-160, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules. The department has determined that the proposed rule will not affect any private real property interests. Accordingly, no takings impact assessment regarding this rule is required under §2007.043 of the Texas Government Code and §2.19 of the Private Real Property Rights Preservation Act Guidelines adopted by the Attorney General and published on January 12, 1996, in the *Texas Register* (21 TexReg 387).

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 the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§48.6003. Client Eligibility Criteria.

(a) (No change.)

(b) Enrollment in the Community Based Alternatives (CBA) [~~this waiver~~] program is limited to the number of participants approved by the Health Care Financing Administration (HCFA) or the availability of state funding.

(1) Eligible individuals are to be enrolled from the CBA interest list on a "first come, first serve" basis, except for individuals who meet the following criteria:

(A) children age 21 who are no longer eligible for the Medically Dependent Children's Program (MDCP);

(B) children age 21 who have been receiving nursing services through the Texas Health Steps Program and are no longer eligible;

(C) individuals who have been residents of nursing facilities for the past six months; or

(D) individuals who have been private pay residents of assisted living/residential care facilities contracted with DHS to provide CBA services and have spent-down their resources.

(2) DHS will suspend enrollment into the CBA program when the census reaches funded capacity except for those individuals who meet the criteria specified in paragraph (1)(A)-(D) of this subsection.

(c)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on May 19, 1999.

TRD-9902900
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 438–3765

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Part IV. Texas Commission for the Blind

Chapter 159. Administrative Rules and Procedures

The Texas Commission for the Blind proposes the repeal of all rules in Chapter 159 pertaining to Administrative Rules and Procedures §§159.1-159.16, 159.22, 159.24, and 159.31-159.35 and simultaneously proposes new §§159.1-159.3; 159.20-159.23; and 159.40-159.45. These proposed actions are the latest in a systematic recodification process the agency began several years ago. The new rules are the result of removing obsolete rules, duplicate rules, and language that does not conform to the state's definition of rule. The chapter has been divided into new subchapters and rules have been reordered in a consistent manner for clarity.

New Subchapter A contains general administrative rules. Proposed §159.1 contains the methods used by the agency to notify people of the name, mailing address, and telephone number of the Commission for the purpose of directing complaints. Proposed §159.2 contains the rules with which Texas corporations must abide when contracting with the agency. Proposed §159.3

contains the agency's rules for reimbursing the expenses of witnesses who are called by the Commission.

New Subchapter B contains rules pertaining to procedures of the Commission's board. Section 159.20 speaks to the frequency of board meetings. Section 159.21 contains the rules whereby a person may petition for adoption of rules. Section 159.22 contains the procedures for hearing public comments and requesting to appear before the board. Section 159.23 contains the procedures for public hearings.

New Subchapter C contains rules about access to public information maintained by the Commission. Section 159.40 contains the method for requesting public information. Section 159.41 contains information about available copy formats. Section 159.42 contains the agency's charges for providing copies. Section 159.43 contains procedures pertaining to estimates, deposits, and waivers of charges. Section 159.44 contains procedures for processing public complaints of overcharges. Section 159.45 contains rules on gaining access to public information when copies are not requested.

Ernest Pereyra, Deputy Director of Administration and Finance, has determined that for the first five years the rules are in effect there will be no fiscal implications for local government as a result of the repeals. The fiscal implications to the state as a result of the rules on charging for public information will be positive, but minimal in light of the small number of requests for public information the agency receives annually that result in charges.

Mr. Pereyra also has determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of the rules will be the availability of understandable guidelines for the public in Commission administrative matters.

There will be no effect on small businesses. There is no anticipated economic cost to individuals as a result of the repeal and new rules other than the cost of obtaining copies of public information, which would be minimal in most cases and depends on the amount of information requested.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

Subchapter A. Procedures of the Commission

40 TAC §§159.1–159.16

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

The repeals are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The repeal of §159.12 affects Business Corporation Act, Article 2.45. The remaining repeals affect no other statutes.

§159.1. Membership.

§159.2. Appointment.

§159.3. Terms of Office.

§159.4. Vacancies.

§159.5. Appointment of Chairman.

§159.6. Meetings.

§159.7. Quorum.

§159.8. Appointment of the Executive Director.

§159.9. Function and Responsibility.

§159.10. Report to the Legislature.

§159.11. Petition for Adoption of Rules.

§159.12. Public Access to Documents and Records.

§159.13. Opportunity to Appear Before the Board.

§159.14. Public Hearings.

§159.15. Complaints.

§159.16. Contracts, Permits, and Licenses.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902872
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Subchapter A. General Rules

40 TAC §§159.1–159.3

The new rules are proposed under the Human Resources Code, Title 5, Chapter 91, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs and §91.018, which requires the Commission to promulgate rules establishing methods by which consumers or service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission.

Proposed §159.2 affects Business Corporation Act, Article 245. Section 159.3 affects Government Code §2001.103. The remaining section affects no other statutes.

§159.1. Complaints.

(a) For the purpose of notifying applicants and service recipients of the method by which they can direct complaints to the agency, the Commission shall include its name, mailing address, and toll-free telephone number on all service applications and associated publications.

(b) The Commission shall place a sign in all business enterprises operated by a person licensed by the Commission. The sign shall contain the name, mailing address, and toll-free telephone number for the purpose of directing complaints to the agency.

§159.2. Contracts, Permits, and Licenses.

(a) A Texas corporation contracting with the agency or applying for a license or permit issued by the agency must certify in writing that its corporate franchise taxes are current.

(b) A Texas corporation that is exempt from the payment of franchise taxes or an out-of-state corporation that is not subject to the Texas franchise tax must certify in writing to that effect when contracting with the agency or applying for a license or permit issued by the agency.

(c) A corporation making a false statement as to corporate franchise tax status with regard to a state contract with the Commission is subject to having the state contract cancelled at the option of the Commission by treating the statement as a material breach of the contract.

(d) A corporation making a false statement as to corporate franchise tax status on any license or permit application may have its license or permit suspended or cancelled.

§159.3. Reimbursement of Expenses of Witnesses.

(a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding by the Commission to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding is entitled to receive:

(1) An amount per mile for going to and returning from the place of the hearing or deposition equal to the rate provided by law for state employees if the place of hearing or deposition is greater than 25 miles from the witness's or deponent's residence and the person uses the person's personally owned or leased motor vehicle for the travel.

(2) Transportation expenses at rates no greater than the rates provided by law for state employees if the place where the hearing is held or the deposition is taken is more than 25 miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel.

(3) Reimbursement of meal and lodging expenses while going to and returning from the place where the hearing is held or deposition is taken if the place is more than 25 miles from the person's place of residence.

(4) In addition to the amount for travel in subsection (a) of this section, the person shall be paid $10 for each day or part of a day that the person is necessarily present.

(b) Any witness or deponent who is blind or otherwise disabled and who lives within 25 miles from the place of hearing or deposition is entitled to reimbursement for cab fare to and/or from the hearing or deposition.

(c) Witnesses and deponents seeking payment under the provisions of this section shall be required to certify to the accuracy of mileage traveled and all amounts claimed to receive payment. This agency certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on May 18, 1999. Terrell I. Murphy, Executive Director Texas Commission for the Blind

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902875
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Subchapter B. Commission Board Procedures

40 TAC §§159.20–159.23

The new rules are proposed under the Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs and requires the Commission to develop and implement policies that provide the public with a reasonable opportunity to appear before it.

Section 159.21 affects Government Code §2001.021. Section 159.23 affects Government Code, §2001.029. The remaining sections affect no other statutes.

§159.20. Meetings of the Board.

Meetings of the Commission's Board are called by the chairman as frequently as circumstances might require, but not less than once each calendar quarter, unless otherwise agreed to by an affirmative vote of two-thirds of the Board.

§159.21. Petition for Adoption of Rules.

(a) Any interested person or organization may petition the Commission requesting the adoption or amendment of a rule.

(b) For the purpose of interpreting this section, the term "rule" shall have the same meaning as contained in Government Code, Chapter 2001, Section 2001.003.

(c) Petitions for adoption of rules must be submitted in writing and directed to the Commission's executive director.

(d) The petitioner may either hand deliver the petition to the Commission's central office at 4800 North Lamar Boulevard, Austin, Texas, 78756, or mail the petition to P.O. Box 12866, Austin, Texas 78711.

(e) For purposes of calculating days under this section, the date of submission of a petition under this section shall be the date the petition is hand delivered to the Commission, or if the petition was sent by mail or carrier, the date it is date-stamped according to regular agency incoming mail procedures.

(f) No format is prescribed for the petition other than as provided in this section, but the petition should:

(1) specify or otherwise make clear that the petition is made pursuant to the provisions of the Administrative Procedure Act;

(2) clearly state the body or substance of the rule requested for adoption, and, if appropriate, relate the requested rule to an adopted rule or rules of the Commission;

(3) contain the full name and address of the petitioner; and

(4) be signed by the petitioner.

(g) The Executive Director, (or a person designated by the Executive Director to act in the matter), shall:

(1) acknowledge receipt of the petition in writing and include in the letter the date the petition was received; and

(2) communicate with the petitioner, if necessary, to clarify the requested rule or to clarify other relevant information contained in the petition.

(h) Not later than the 60th day after the date of submission of a petition under this section, the Executive Director shall either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate rulemaking procedures and inform the petitioner of the date rule action by the Commission's board is scheduled pursuant to Government Code, Title 10, Chapter 2001.

(i) The Executive Director shall provide copies of all petitions, whether denied or approved, to the Board prior to scheduled Board meetings for review.

§159.22. Opportunity to Appear Before the Commission's Board.

(a) Time shall be set aside in regular meetings of the board for the public to speak on any issue under the board's jurisdiction. The time allocated shall be divided equally among those registering to speak, up to a maximum of five minutes for each person.

(b) If time constraints preclude the opportunity of hearing public comments in a meeting, the public is invited and encouraged to send their comments to the Board in writing to P. O. Box 12866, Austin, Texas 78711.

§159.23. Public Hearings.

(a) If the Commission receives a request for public hearing under the provisions of Government Code, Sec. 2001.029, a portion of the meeting during which the board is scheduled to consider the adoption of the substantive rules shall be considered a public hearing for the discussion of the rules and any member of the public may speak or submit written comments.

(b) The time allocated for such hearing will be divided equally to allow each person the opportunity to be heard. The board's parliamentarian shall enforce the time limits.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902876
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Subchapter B. Fair Hearing Procedures for Resolution of Client Dissatisfaction

40 TAC §159.22, §159.24

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

The repeals are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The repeal of §159.22 affects Government Code §2001.103. No other statutes are affected by the repeal of §159.24.

§159.22. Reimbursement of Expenses of Witnesses.

§159.24. Public Access to Internal Procedural Documents.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902873
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Subchapter C. Full and Evidentiary Hearings for Business Enterprises Operators

40 TAC §§159.31–159.35

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

The repeals are proposed under Human Resources Code, Title 5, §94.012, which authorizes the Commission to promulgate rules in the administration of the Business Enterprises Program.

The repeals affect no other statutes.

§159.31. Basis for Requesting Hearing.

§159.32. Request for Hearing.

§159.33. Content of the Request for a Hearing.

§159.34. Timeliness of the Request for a Hearing.

§159.35. Public Access to Internal Procedural Document.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902874
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Subchapter C. Access to Public Information

40 TAC §§159.40–159.45

The new rules are proposed under the Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The rules affect Government Code, §552.262.

§159.40. Requests for Public Information.

(a) Requests for access to or copies of public information maintained by the Texas Commission for the Blind must be in writing.

(b) Requests may be addressed to the Executive Director, P.O. Box 12866, Austin, Texas 78711, or any Commission office.

§159.41. Public Information Copy Formats.

(a) If a requesting party asks that information be provided on a diskette or other computer-compatible media, and the requested information is electronically stored, the Commission shall provide the information on computer-compatible media.

(b) The extent to which a requestor can be accommodated will depend largely on the technological capability of the Commission. The Commission shall not purchase any hardware, software or programming capabilities that it does not already possess to accommodate a particular request.

(c) To accommodate requests for public information from persons who are blind:

(1) Copies of information may be provided in braille if the information is already available in braille format, or available on a diskette formatted for braille reproduction;

(2) Copies of information will be provided on voice cassette when the information already exists in that medium.

(3) Provision of a copy of public information in the requested medium shall not violate the terms of any copyright agreement between the Commission and a third party.

§159.42. Charges for Providing Copies of Public Information.

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

(1) Actual cost–The sum of all direct costs plus a proportional share of overhead or indirect costs.

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

(3) Commission–Texas Commission for the Blind

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

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

(6) Nonstandard copy–A copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskettes, magnetic tapes, and CD-ROM, are examples of nonstandard copies. Paper copies larger than 8-1/2 x 14 inches (legal size) are also considered nonstandard copies.

(7) Standalone PC–An IBM compatible PC, Macintosh, or Power PC-based computer system operated without a connection to a network.

(8) Standard paper copy–A printed impression on one side of a piece of paper that measures up to and including 8-1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.

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

(c) Copy charge.

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

(2) Nonstandard copy. The charges for nonstandard copies are:

(A) diskette–$1.00 each;

(B) magnetic tape–4 mm., $13.50 each; 8 mm., $12.00 each; 9-track, $11.00;

(C) data cartridge–2000 Series, $17.50; 3000 Series, $20.00 each; 6000 Series, $25.00 each; 9000 Series, $35.00 each; 600A, $20.00 each.

(D) tape cartridge–250 MB, $38.00 each; 525 MB, $45.00 each;

(E) VHS video cassette–$2.50 each;

(F) audio cassette–$1.00 each;

(G) oversize paper copy (e.g.: 11" x 17", greenbar, bluebar)–$.50 each;

(H) Mylar–3mil., $.85/linear foot; 4 mil., $1.10/linear foot; 5 mil., $1.35/linear foot;

(I) Blueprint/Blueline paper–$.20/linear ft. (all widths);

(J) Other–actual cost

(d) Programming Personnel. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the Commission shall charge for the programmer's time.

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

(2) Any personnel time spent in performing services other than programming shall be charged at the rate specified for personnel as described in subsection (e) of this section

(e) Other personnel charge.

(1) The charge for other personnel costs incurred in processing a request for public information is $15.00 an hour, including fringe benefits. When applicable, the charge may include the actual time to locate, compile, and reproduce the requested information.

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

(A) more than one building; or

(B) a remote storage facility.

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

(A) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act; or

(B) to research or prepare a request for a ruling by the attorney general's office pursuant to Section 552.301 of the Public Information Act.

(4) When confidential information is mixed with public information on the same page, personnel time shall be recovered for time spent to obliterate, black out, or otherwise obscure confidential information in order to release the public information.

(f) Overhead charge.

(1) Whenever any personnel charge is applicable to a request, the Commission shall include in the charges direct and indirect costs, in addition to the specific personnel charge. This overhead charge will cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead.

(2) An overhead charge shall not be made for requests for copies of 50 pages or fewer of standard paper records.

(3) The overhead charge shall be computed at 20% of the charge made to cover any personnel costs associated with a particular request.

(g) Microfiche and microfilm charge.

(1) If the Commission has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for the copy shall not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the Commission shall make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction.

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

(h) Remote document retrieval charge.

(1) To the extent that the retrieval of documents in storage results in a charge to the Commission to comply with a request, the cost to the public shall be the same charge.

(2) If the Commission has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional personnel charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the Commission, the boxes must still be searched for records that are responsive to the request, a personnel charge shall be added in accordance with subsection (f)(1) of this section.

(i) Computer resource charge.

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

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

(3) According to the type of system from which information is requested, the following computer resource charges shall be billed to the requestor:

(A) Mainframe–$10 per minute;

(B) Midsize–$1.50 per minute;

(C) Client/Server–$2.20 per hour;

(D) PC or LAN–$1.00 per hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge shall be made for computer print-out time.

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

(k) Postal and shipping charges. The Commission shall add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(l) Sales tax. Sales tax shall not be added on charges for public information.

§159.43. Estimate, Deposit, and Waiver of Public Information Charges.

(a) Where a particular request will involve considerable time and resources to process, the Commission shall inform requestors of the anticipated completion date and potential resulting charges.

(b) If the Commission cannot produce the public information for inspection and/or duplication within 10 business days after the date the information is requested, the Commission shall certify to that fact in writing, and set a date and hour within a reasonable time when the information will be available.

(c) A deposit or a bond may be required in the amount of the estimated charges if such charges exceed $100.

(d) The Commission may furnish public records without charge if it determines that waiver or reduction of fees is in the public interest.

§159.44. Processing Complaints of Overcharges.

(a) A requestor who believes he or she has been overcharged for a copy of public information may request a review of the charges by writing or calling the Commission designee who provided the public information to the complainant.

(b) If the review indicates that the person was overcharged, state procedures for issuing refunds shall be initiated promptly.

(c) If the requestor is not satisfied with the results from the Commission's review, the requestor may complain to the General Services Commission through the rules adopted by the General Services Commission for this purpose.

§159.45. Access to Public Information When Copies Are Not Requested.

(a) Access to information in standard paper form.

(1) The Commission does not charge the requesting party for making available for inspection public information maintained in standard paper form that contains no confidential information.

(2) When information contains confidential information and public information, the Commission shall charge only for making a copy of the page from which information must be edited. No other charge shall be assessed.

(b) Access to information in other than standard form.

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

(2) If programming or manipulation of data is needed to access the information, the governmental body shall inform the requestor before assembling the information and shall provide the requestor with an estimate of charges.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902877
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Chapter 167. Business Enterprises Program

40 TAC §167.3

The Texas Commission for the Blind proposes an amendment to §167.3 of Chapter 167 pertaining to the Business Enterprises Program. The amendment updates the date on which the federal government approved revisions to the Business Enterprises Manual in the form of revised procedures for the promotion and transfer system and revised procedures pertaining to eligibility for promotion and assignment. The procedures for selecting an assignment screening committee add a panel member who is not a member of the Elected Committee of Managers. The method of scoring has been changed from eliminating the lowest and highest panel member scores to a method of all five panel members having an equal vote.

Ernest Pereyra, Deputy Director of Administration and Finance, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government.

Mr. Pereyra has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of the rules will be a fairer system for scoring applicants for promotion assignments. There will be no effect on small businesses. There is no anticipated economic cost to individuals as a result of the amendment.

Questions about the content of this proposal or requests for copies of the Business Enterprises Manual may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas, 78711, within 30 days from the date of this publication.

The amendment is proposed under Human Resources Code, Title 5, Chapter 94, §94.012, which authorizes the commission to promulgate rules and initiate procedures necessary to implement the chapter.

No other statutes are affected by this proposal.

§167.3. Business Enterprises Manual.

The Texas Commission for the Blind adopts by reference the rules contained in its Business Enterprises Manual, as amended and federally approved on February 11, 1999 [~~on September 9, 1992~~]. This document is published by and available from the Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

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

Filed with the Office of the Secretary of State, on May 21, 1999.

TRD-9902985
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459-2611

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Chapter 171. Cooperative Activities

40 TAC §§171.1–171.4

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

The Texas Commission for the Blind proposes the repeal of Chapter 171, §§171.1-171.4 pertaining to Cooperative Activities. The repeals are necessary to allow the Commission to rename and rewrite the chapter. The references to the memoranda have been revised if necessary to reflect the current TAC location of the lead agency's rules where the full text of the memorandum is published.

The purpose of each memorandum is to define the individual responsibilities of signatory agencies when certain populations can benefit from services from multiple state agencies.

Ernest Pereyra, Deputy Director of Administration and Finance, has determined that for the first five years the rules as proposed are in effect there will be no fiscal implications for state and local government as a result of the proposals.

Mr. Pereyra has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of the rules will be notice to the public of ongoing interagency cooperative activities for the benefit of the state's citizens with multiple needs. There will be no effect

on small businesses. There is no anticipated economic cost to individuals as a result of the proposal.

Written comments on the proposal may be submitted to Jean Crecelius, Policy and Rules Coordinator, P. O. Box 12866, Austin, Texas, 78711. Comments should be received within 30 days of the publication of this proposal.

The repeals are proposed under Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The repeal of §§171.1, 171.2, and 171.3 affect no other statutes. The repeal of §171.4 affects Human Resources Code §22.011; Family Code, §264.003; Texas Education Code §29.011; and Health and Safety Code, §614.015.

§171.1. Coordination with Other Organizations.

§171.2. Alternative Resources (Similar Benefits).

§171.3. Memoranda of Understanding between Agencies.

§171.4. Public Access to Internal Procedural Documents.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902879
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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Chapter 171. Memoranda of Understanding

40 TAC §§171.1–171.4

The Texas Commission for the Blind proposes new Chapter 171, §§171.1-171.4 pertaining to Memoranda of Understanding. The new rules are necessary to allow the Commission to rename and rewrite the chapter. The references to the memoranda have been revised if necessary to reflect the current TAC location of the lead agency's rules where the full text of the memorandum is published.

The purpose of each memorandum is to define the individual responsibilities of signatory agencies when certain populations can benefit from services from multiple state agencies.

Ernest Pereyra, Deputy Director of Administration and Finance, has determined that for the first five years the rules as proposed are in effect there will be no fiscal implications for state and local government as a result of the proposals.

Mr. Pereyra has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of the rules will be notice to the public of ongoing interagency cooperative activities for the benefit of the state's citizens with multiple needs. There will be no effect on small businesses. There is no anticipated economic cost to individuals as a result of the proposal.

Written comments on the proposal may be submitted to Jean Crecelius, Policy and Rules Coordinator, P. O. Box 12866, Austin, Texas, 78711. Comments should be received within 30 days of the publication of this proposal.

The new rules are proposed under the Human Resources Code, Title 5, §91.011, which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs and §91.021, which requires the Commission to negotiate interagency agreements with other state agencies to extend and improve the regular services provided by the agencies.

Section 171.1 of the proposal affects Human Resources Code §22.011. Section 171.2 of the proposal affects Family Code, §264.003. §171.3 of the proposal affects Texas Education Code §29.011. §171.4 of the proposal affects Health and Safety Code, §614.015.

§171.1. Coordination of Services to Disabled Persons.

The Commission adopts by reference the memorandum of agreement contained in 40 TAC §§ 72.201-72.212. The sections contain the financial and service responsibilities of the Texas Commission for the Blind, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Deaf and Hard of Hearing, and the Texas Education Agency in relation to disabled persons and address how each agency will share data relating to services delivered to disabled persons. The memorandum of agreement is required under the provisions of the Human Resources Code §22.011.

§171.2. Coordinated Services for Children and Youths.

The Commission adopts by reference the memorandum of agreement contained in 40 TAC §736.701. The memorandum of agreement is between the Texas Department of Human Services, the Texas Interagency Council on Early Childhood Intervention, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Department of Protective and Regulatory Services, the Texas Education Agency, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, and the Texas Youth Commission. The memorandum of agreement provides for the implementation of a system of community resource coordination groups to coordinate services for children and youths.

§171.3. Transition Planning for Students Receiving Special Education.

The Commission adopts by reference the memorandum of understanding contained in 19 TAC §89.110. The memorandum of understanding has been executed by the Texas Education Agency, the Texas Commission for the Blind, the Texas Department of Human Services, the Texas Employment Commission, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission. The purpose of the memorandum of understanding is to establish the respective responsibility of each agency for the provision of the services necessary to prepare students enrolled in special education programs for a successful transition to life outside the public school system.

§171.4. Continuity of Care System for Offenders with Physical Disabilities.

The Commission adopts by reference 37 TAC § 159.5, which sets forth the terms of a memorandum of understanding between the Texas Department of Criminal Justice, the Texas Commission for the Blind, the Texas Commission for the Deaf and Hearing Impaired, the Texas Department of Human Services, the Texas Rehabilitation Commission, and the Texas Department of Health. The memorandum provides for a continuity of care system for offenders with physical disabilities.

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

Filed with the Office of the Secretary of State, on May 18, 1999.

TRD-9902881
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: July 4, 1999
For further information, please call: (512) 459–2611

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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 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans-Standards

1 TAC §251.5

The Advisory Commission on State Emergency Communications (ACSEC) has withdrawn from consideration for permanent adoption the proposed amendment to §251.5, which appeared in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2546).

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903049
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: May 24, 1999
For further information, please call: (512) 305–6933

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1 TAC §251.8

The Advisory Commission on State Emergency Communications (ACSEC) has withdrawn from consideration for permanent adoption the proposed new §251.8, which appeared in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1699).

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903055
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: May 24, 1999
For further information, please call: (512) 305–6933

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1 TAC §251.10

The Advisory Commission on State Emergency Communications (ACSEC) has withdrawn from consideration for permanent adoption the proposed new §251.10, which appeared in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2549).

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903058
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: May 24, 1999
For further information, please call: (512) 305–6933

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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 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans–Standards

1 TAC §251.3

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §251.3, concerning guidelines for addressing funds, without changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2545) and will not be republished.

The amendments is necessary to reflect reporting requirements that call for more timely, structured, and quantitative reports from the Councils of Governments to the ACSEC. The amendment will specifically require the councils of governments to submit 9-1-1 program and addressing performance reports at least quarterly to ACSEC or upon request.

No comments were received regarding adoption of the amendments.

The amendment is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902890
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: June 8, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 305-6933

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1 TAC §251.6

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §251.6, concerning guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation, without changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2548) and will not be republished.

The amendment clarifies the reporting requirements which are necessary to evaluate the implementation of the various 9-1-1 regional plans throughout the state.

No comments were received regarding adoption of the amendments.

The amendment is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902891
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: June 8, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 305–6933

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Chapter 255. Finance

1 TAC §255.3

The Advisory Commission on State Emergency Communications (ACSEC) adopts the repeal of §255.3, concerning Dates and Areas of Implementation of the 9-1-1 equalization surcharge, without changes to the proposal as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1701) and will not be republished.

The section is being repealed to reflect consistency with the Texas Legislature's modification of Health and Safety Code, Chapter 771, which made the surcharge statewide.

Elsewhere in this issue of the *Texas Register*, the Advisory Commission on State Emergency Communications, contemporaneously adopts the rule review of Chapter 255, Finance.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the Health and Safety Code, Chapter 771, §771.051, §771.072.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902892
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: June 8, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 305–6933

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1 TAC §255.4

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §255.4, concerning the Definition of an Equivalent Local Exchange Access Line, without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1701) and will not be republished.

The section is amended to reflect consistency with the Texas Legislature's modification of Health and Safety Code, Chapter 771. The amendment provides that the definition of an equivalent local exchange access line does not include a "wireless telecommunications connection" subject to Texas Health and Safety Code, §771.0711.

The Greater Harris County 9-1-1 Emergency Network was the only entity to submit comments. The Network supports the ACSEC in its intent to review the rule relating to modifications to the definition of "local exchange access line" and an "equivalent local exchange access line." The Network encourages the formation of a task force to study and offer input on this rule review, which would include the carrying out of certain provisions of Senate Bill 484.

Elsewhere in this issue of the *Texas Register*, the Advisory Commission on State Emergency Communications, contemporaneously adopts the rule review of Chapter 255, Finance.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.071, and 771.0711.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902893
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: June 8, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 305–6933

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter D. Texas Bred Incentive Programs

Division 2. Programs for Horses

16 TAC §303.92

The Texas Racing Commission adopts an amendment to §303.92 concerning the rules for the Texas Bred Incentive Program for thoroughbred horses without changes to the proposed text as published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3003). The amendment was first presented to the commission as a rulemaking petition under 16 Texas Administrative Code §307.33 by the Texas Thoroughbred Association, the officially designated breed registry for thoroughbred horses in Texas. According to the petition, the amendment is necessary to conform current operating procedures to the centralized bookkeeping system operated by the horsemen's bookkeeper. The amendment clarifies that the accredited Texas-bred incentive awards are not a part of the purse, but are an added incentive under the statute.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.08, which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program; and §9.01, which authorizes the commission to approve and adopt rules developed by the breed registries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903024
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: July 1, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 833–6699

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Subchapter E. Use of Departmental Facilities by Public Health Related Organizations and Public Employee Organizations

The Texas Department of Health (department) adopts the repeal of §§1.71-1.74, and adopts new §1.71, concerning the use of departmental facilities without changes to the proposed text as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12078); therefore the section will not be published. Specifically, the new section addresses the use of departmental facilities by public health-related organizations and public employee organizations. The repeal is necessary in order to reorganize the four current sections into a new section.

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). Sections 1.71-1.74 has been reviewed and the department has determined that the reasons for adopting the sections continue to exist; however, the sections are reorganized into a single section.

The Administrative Procedure Act, §2001.021 requires each state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Section 2001.003 defines the term "rule" to include a state agency statement of general applicability that implements or prescribes policy or describes the procedure or practice requirements of a state agency but does not include a statement regarding only the internal management of an agency not affecting private rights or procedures. New §1.71 fits within the definition of a "rule". This section informs readers that there are procedures for public health- related organizations and public employee organizations to obtain approval for limited use of departmental facilities. The rule is further supplemented and explained in the department's Administrative Policy Executive Order XO-1003.

The department published a notice of intention to review the four sections as required by Rider 167 in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received by the department following that notice. In addition, no comments were received during the comment period for this repeal and new section.

25 TAC §§1.71–1.74

The repeal is adopted under the Administrative Procedure Act, §2001.004 which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and the Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903014
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: December 4, 1998
For further information, please call: (512) 458–7236

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Subchapter E. Use of Departmental Facilities

25 TAC §1.71

The new section is adopted under the Administrative Procedure Act, §2001.004 which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and the Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903015
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: December 4, 1998
For further information, please call: (512) 458–7236

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Subchapter F. Petition for the Adoption of a Rule

25 TAC §1.81

The Texas Department of Health (department) adopts an amendment to §1.81, concerning petitions for the adoption of a rule without changes to the proposed text as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12079); therefore, the section will not be republished.

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 1.81 has been reviewed and the department has determined that the reasons for adopting the section continue to exist.

The Administrative Procedure Act, §2001.021 requires each state agency to adopt rules relating to the form of a petition for adoption of rules and the procedures for submission, consideration, and disposition of the petition. The law also requires that a state agency shall deny the petition in writing or initiate rulemaking procedures not later than the 60th day after the date of submission of a petition. Section 1.81 describes the form of a petition which would be accepted by the commissioner of health. The amendment states that the commissioner may refuse to accept a petition which is not in the correct form, rather than requiring board action to deny an unacceptable petition. The amendment also provides that the commissioner shall submit an accepted petition to the board and that the board shall deny the petition or institute rulemaking procedures within 60 days after receipt of an accepted petition.

The department published a Notice of Intention to Review this section as required by Rider 167 in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received by the department following that notice. In addition, no comments were received during the comment period for this amendment.

The amendment is adopted under the Administrative Procedure Act, §2001.021 which requires state agencies to adopt rules relating to petitions for adoption of rules and the Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and

the commissioner of health. The General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903013
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: December 4, 1998
For further information, please call: (512) 458–7236

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Subchapter I. Reimbursement Programs

25 TAC §1.111

The Texas Department of Health (department) adopts the repeal of §1.111, concerning the State Legalization Impact Assistance Grant (SLIAG) without changes to the proposed text as published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 486), and therefore will not be republished.

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 1.111 has been reviewed and the department has determined that the reasons for the existence of this rule no longer exists and the grant under this rule is no longer funded.

The department published a Notice of Intention to Review the section as required by Rider 167 in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received concerning the notice for review of this section.

No comments were received on the proposed rule during the comment period.

The repealed section implemented Federal Legislation to alleviate the financial impact on state and local government that might result from the adjustment of immigration status of certain groups of aliens residing in the states through grant use of reimbursement of or payments for cost incurred by state or local governments in providing public assistance, public health assistance and educational services to eligible legalized aliens.

The repeal is adopted under Administrative Procedure Act, Government Code §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Section 2001.003(6)(B) provides that the repeal of a prior rule is a "rule" and the Health and Safety Code, §12.001, provides that the Texas Board of Health (board) has authority to adopt rules for its procedures for the performance of each duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903045
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 458–7236

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Subchapter L. Medical Advisory Board

The Texas Department of Health (department) adopts the repeal of §1.151 and new §1.151 and §1.152 concerning the operation of the Medical Advisory Board (MAB) without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1554) and therefore the sections will not be republished.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, required that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.151 has been reviewed and the department has determined that reason for adopting the section continues to exist in that a rule on this subject is needed; however, revisions needed are reflected in new §1.151 and §1.152.

The department published a Notice of Intention to Review §1.151 which was published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9076). No comments were received.

New §1.151 and §1.152 became necessary due to legislation in the 75th Legislature, Regular Session. Specifically, House Bill 2909 amended §12.092 and §12.095 of the Health and Safety Code to additionally require the MAB to assist the Department of Public Safety in determining whether an applicant for or a holder of a license to carry a concealed handgun is capable of exercising sound judgment with respect to the proper use and storage of a handgun. References to the Medical Standards on Motor Vehicle Operations Division have been replaced with language referring to the Medical Advisory Board or the bureau. New §1.152 creates a department physician to serve as permanent chair of the MAB for quality improvement, to ensure stability and to increase the efficiency of the panel.

No comments were received by the department on the proposed rules.

25 TAC §1.151

The repeal is adopted under the Health and Safety Code, §§12.001, 12.092, 12.094, and 12.095, which provide the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903019
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 458-7236

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25 TAC §1.151, §1.152

The new sections are adopted under the Health and Safety Code, §§12.001, 12.092, 12.094, and 12.095, which provide the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903020
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 458-7236

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Subchapter M. Payment of Franchise Taxes by Corporations Contracting with the Department or Applying for a License from the Department.

25 TAC §1.161

The Texas Department of Health (department) adopts an amendment to §1.161 concerning Delinquent Corporate Franchise Taxes with changes to the proposed text published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12081).

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature (1997), 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 1.161 has been reviewed and the department has determined that the reasons for adopting the section continue to exist.

The Business Corporation Act, Article 2.45 states that a corporation that is delinquent in a franchise tax owed to the state may not be awarded a contract by a state agency and may not be granted a permit or license by any state agency. While the state law does not require the department to adopt rules, it is appropriate to have rules to clarify the requirements of the department for applicants and contractors and to provide consistency throughout department programs. The section incorporates the requirement of the General Services Commission that certain bids submitted by a corporation must contain the required certification. The amendment also incorporates the current legal requirement that a limited liability company, as well as any type of corporation, file the certification. One minor change was made to the final rule text as described in this adoption preamble.

The department published a notice of intention to review the section as required by Rider 167 in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received by the department following that notice. In addition, no comments were received during the comment period for this amendment.

The department is making the following minor change due to a staff comment to clarify the intent and improve the accuracy of the section.

Change: Concerning §1.161(b), language was added to recognize that the location of the General Service Commission requirement may be renumbered or revised. The department will not have to amend the reference if the commission should revise its requirement.

The amendment is adopted under the Business Corporation Act, Article 2.45 which requires state agencies to not award contracts or grant permits or licenses to corporations that are delinquent in the payment of their franchise tax and the Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature (1997) is implemented by this adoption.

§1.161. Delinquent Corporate Franchise Taxes.

(a) Each corporation contracting with the department or each corporate applicant for an original or renewal license or permit issued by the department shall certify:

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

(b) The department must have the certification on file before the department will enter into the contract or issue the license or permit. When required by the General Services Commission under 1 Texas Administrative Code §113.5(a)(13) (relating to Bid Submission, Bid Opening, and Tabulation) or other applicable General Services Commission requirement, a bid submitted by a corporation must contain the certification.

(c) (No change.)

(d) If the corporation makes a false statement as to corporate franchise tax status on any contract, the statement is grounds for cancellation of the contract by the department at the sole option of the department.

(e) The term "corporation" includes a limited liability company.

(f) This section covers any contract, permit, or license issued by the department. However, the Texas Board of Health may adopt rules covering delinquent franchise taxes for individual programs within the department. In such cases, the individual program section will prevail over this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903011

Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: December 4, 1998
For further information, please call: (512) 458–7236

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Subchapter O. Procurement of Professional Services

25 TAC §1.181

The Texas Department of Health adopts an amendment to §1.181 concerning Grants and Contracts for Professional Services without changes to the proposed text published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 487); therefore the section will not be republished.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature (1997) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.181 has been reviewed and the department has determined that reasons for readopting this section continue to exist; however, §1.181 requires an amendment as adopted herein.

The department published a Notice of Intention to review this section as required by Rider 167 in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received concerning the review.

Section 1.181 implements Health and Safety Code, §12.0121 which requires the Board of Health (board) to adopt a list of categories of licensed, certified, registered, or otherwise authorized providers by rule to whom the department may award a grant for professional services or with whom the department may contract or otherwise engage to perform these types of professional services. The rule was originally adopted in 1991. This amendment updates the list of licensed, certified, or registered health or allied health professionals that have been licensed, certified or registered as professionals since 1991.

Specifically, the amendment adds chemical dependency counseling, contact lens dispensing, marriage and family therapy, medical radiologic technology, orthotist, perfusionist, podiatry, professional medical physics, prosthetics, physician's assistant, sex offender treatment, spectacle dispensing, and any other category for which an individual is licensed, certified, registered or otherwise authorized by the state and who is acting within the scope of the individual's license, certification, registration, or other authorization in the practice of a health or allied health professional.

The following comments were received concerning the proposed section. Following the comments are the department's responses.

Comment: Concerning §1.181, the Texas Osteopathic Medical Association (TOMA) requested that a reference be added to Health and Safety Code, Chapter 12.0121.

Response: The department disagrees. The reference to the Health and Safety Code, §12.0121 is correct and no change was made as a result of this comment.

Comment: Concerning §1.181, TOMA requested that "Osteopathic Manipulative Treatment" be added to the list of Professional Services.

Response: The department disagrees. "Osteopathic Manipulative Treatment is included in the definition of "practicing medicine" under the Medical Practice Act, Article 4495, PRCS. The department has had the authority to contract with osteopathic physicians to provide this service since 1991. No change was made as a result of this comment.

The comments were received from the Texas Osteopathic Medical Association. TOMA was neither for nor against rules and offered comments for clarification purposes.

The amendment is adopted under the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health, and Health and Safety Code, §12.0121, authorizing the department to contract for professional services. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature (1997) is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903023
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date:January 29, 1999
For further information, please call: (512) 458–7236

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Subchapter Q. Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons

25 TAC §§1.203–1.205, 1.207

The Texas Department of Health adopts amendments to §§1.203-1.205 and 1.207, concerning investigations of abuse, neglect, or exploitation of children or elderly or disabled persons without changes to the proposed text as published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 488); therefore, the sections will not be republished.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 1.201-1.207 have been reviewed and the department has determined that reasons for readopting these sections continue to exist; however, §§1.203-1.205 and 1.207 require amendments as adopted herein.

The department published a Notice of Intention to Review the sections as required by Rider 167 in the *Texas Register* (23 TexReg 9075) on September 4, 1998. No comments were received.

The adopted admendments implement Acts 1997, 75th Legislature, Chapter 1022 (Senate Bill 359), amending the Human Resources Code, Chapter 48, and the Family Code, Chapter 261, which authorize the department to conduct investigations of abuse, neglect, or exploitation of children or elderly or disabled persons and to adopt rules relating to such investigations.

Specifically, the amended sections cover definitions; abuse, neglect, and exploitation defined; reports and investigations; and confidentiality of the investigative process and reports.

Section 1.203 defines words and terms used throughout the rules. The definitions are numbered in compliance with *Texas Register* format requirements (1 TAC §91.1, effective February 17, 1998). The definition of "facility" was amended to add "youth camps" to the list of facilities and to update the description of the hospitals operated by the department. The definition of "sexual abuse" was amended to correct the spelling of "nonconsensual."

Section 1.204 defines abuse, neglect and exploitation. Subsection (a)(1)(H) was amended to comply with *Texas Register* form and style requirements. New language was added to subsection (a)(1)(I) and (J) and subsection (a)(2)(A) and (B) to conform to changes to the Human Resources Code, Chapter 48 in accordance with Senate Bill 359.

Section 1.205 covers reports and investigations. New language in subsection (i)(1) and new subsection (o) were added to conform to changes to the Family Code, Chapter 261 in accordance with Senate Bill 359.

Section 1.207 covers confidentiality of investigative process and report. New subsections (h)-(j) were added to conform to changes to the Family Code, Chapter 261 in accordance with Senate Bill 359.

No comments were received during the comment period for the proposal of these amendments.

The amendments are adopted under the Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health; the Family Code, §261.401 which requires rules relating to the investigation of abuse or neglect of a child; and the Human Resources Code, §48.083 which requires rules relating to the investigation of abuse, neglect, or exploitation of an elderly or disabled person. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903041
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 458–7236

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Chapter 3. Memorandums of Understanding With Other State Agencies

25 TAC §3.41

The Texas Department of Health (department) adopts the repeal of §3.41, concerning the contract with the Texas Health Care Information Council (council) without changes to the proposed text as published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 491), and therefore the section will not be republished.

The Texas Legislature created the council through passage of its enabling legislation, Chapter 108 of the Health and Safety Code, in 1995. Section 108.008(b)(2), as originally enacted, required the department to provide assistance to the council in accordance with rules adopted by the board (Board of Health) after consulting with the council and set out in the contract with the council. Senate Bill 788, 75th Legislature, 1997, removed the wording from the law requiring the board to adopt rules. The department and the council currently have a memorandum of understanding in place as required by Senate Bill 788. The department and council will continue to have a contract although it will no longer be adopted by board rule.

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 3.41 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 the section as required by Rider 167 in the *Texas Register* (23 TexReg 9077) on September 4, 1998. No comments were received concerning the notice for review of this section.

No comments were received on the proposal during the comment period.

The repeal is adopted under the Health and Safety Code, §12.001 which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th legislature, is implemented by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903017
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: January 29, 1999
For further information, please call: (512) 458–7236

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Chapter 14. County Indigent Health Care Program

Subchapter F. Advisory Committee

25 TAC §14.501

The Texas Department of Health (department) adopts an amendment to §14.501, concerning the Indigent Health Care Advisory Committee (committee) without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1556), and therefore the section will not be republished. The committee provides advice to the Texas Board of Health (board) in the area of the Indigent Health Care Program.

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 committee. The rule stated that the committee will automatically be abolished on July 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until July 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 July 1, 2003; to change the composition of the committee; to clarify that members holdover until their replacement is appointed; to standardize the time of the appointment process at every two years instead of every year; to require that the presiding officer and the assistant presiding officer of the committee will be selected 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 July rather than January; and reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. These changes clarify procedures for the committee and emphasize the advisory nature of the committee.

No comments were received on the proposal during the comment period.

The amendment 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903043
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 458–7236

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Chapter 39. Primary Health Care Services Program

Subchapter B. State Primary Care Program Advisory Committee

25 TAC §39.41

The Texas Department of Health (department) adopts the repeal of §39.41, concerning the Community Oriented Primary Care Advisory Committee (committee) without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1560). The committee has provided advice to the Texas Board of Health (board) and the department in planning, coordinating, and administering the development of a community-based comprehensive system of primary care, encompassing a full spectrum of psychosocial, preventive, acute/urgent, case management, and dental 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 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 Community Oriented Primary Care Advisory Committee. The rule stated that the committee will automatically be abolished on July 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.

No comments were received on the proposal during the comment period.

The repeal 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903022
Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: June 13, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 458–7236

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Chapter 115. Home and Community Support Services Agencies

Subchapter F. Advisory Committee

25 TAC §115.71

The Texas Department of Health (department) adopts an amendment to §115.71 concerning the Home and Community Support Services Advisory Committee (committee) without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1560), and therefore the section will not be republished. The committee provides advice to the Texas Board of Health (board) in the area of licensing of home and community support services agencies and was established under the Health and Safety Code, §142.015.

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 committee. The rule stated that the committee will automatically be abolished on July 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until July 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Government Code; to add the task of advising the department on enforcement provisions as specified in the Health and Safety Code, §142.015(c); to continue the committee until July 1, 2003; to clarify who may call a meeting; 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 July rather than January; and to reference reimbursement of a member's expenses if authorized by the General Appropriations Act or budget execution process. These changes clarify procedures for the committee and emphasize the advisory nature of the committee.

No comments were received on the proposal during the comment period.

The amendment 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903010
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 458–7236

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25 TAC §115.72

The Texas Department of Health (department) adopts an amendment to §115.72 concerning the Texas Department of Health/Board of Nurse Examiners (TDH/BNE) Memorandum of Understanding Advisory Committee (committee) with changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1562). The committee provides advice to the Texas Board of Health (board) and the Board of Nurse Examiners (BNE) regarding circumstances under which the provision of health-related tasks or services provided by a home and community support services agency are not considered to be the practice of professional nursing under the personal assistance services licensure category. The committee was established under the Health and Safety Code, §142.016(b).

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 committee. The rule stated that the committee will automatically be abolished on July 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until July 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 July 1, 2003; 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, the BNE, or the committee except with certain approval; to require the committee's annual report in July rather than January; and to address reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. These changes clarify procedures for the committee and emphasize the advisory nature of the committee.

No comments were received on the proposal during the comment period; however, the department is making the following

minor changes due to staff comments to improve the accuracy of the section.

Change: Concerning §115.72 (f)(2), the language was revised to correct references to other provisions in the section.

The amendment 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.

§115.72. Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(a) (No change.)

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c)-(d) (No change.)

(e) Review and duration. By July 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.

(1) The committee shall be composed of ten members. The members of the committee shall be appointed as follows:

(A) one representative from the BNE and one representative from the Texas Department of Health (department);

(B) one representative from the Texas Department of Mental Health and Mental Retardation;

(C) one representative from the Texas Department of Human Services;

(D) one representative from the Texas Nurses Association;

(E) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(F) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(G) one representative of the Texas Respite Resource Network or its successor; and

(H) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(2) The representatives from the organizations listed in paragraph (1)(A)-(G) may serve without further approval of the board or the BNE. The representatives of organizations described in paragraph (1)(H) must be approved by the board and the BNE before serving.

(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 January 31 of each even-numbered year.

(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 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.)

(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, the BNE, 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 and the BNE.

(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) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board and the BNE each July. It shall be signed by the co-chairmen and appropriate department staff.

(p) Reimbursement for expenses. Except in accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member shall be reimbursed for 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903042
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 458–7236

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Chapter 229. Food and Drug

Subchapter N. Chemical and Pesticide Tolerance Levels in Food

25 TAC §229.221, §229.222

The Texas Department of Health (department) adopts the repeal of §§229.221 - 229.222, concerning chemical and pesticide tolerance levels in food. The repealed sections are adopted without changes to the proposed repeal as published in the April 2, 1999, *Texas Register* (24 TexReg 2629), and therefore will not be republished.

These sections established tolerance levels for ethylene dibromide in food and the effective date for tolerance levels of ethylene dibromide in food. The repeal of these rules is necessary because any tolerance for the pesticide in food was revoked in 1984 by federal regulations.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, enacted by the 75th Texas Legislature, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The sections have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

The department published a Notice of Intention to Review §§229.221-229.222 as required by Rider 167 in the *Texas Register* (24 TexReg 831) on February 5, 1999. No comments were received on the Notice of Intention to Review these sections.

No comments were received on the proposed repeal of the rules during the comment period.

The repeal is adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, is implemented by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903018
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 458-7236

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Chapter 295. Occupational Health

Subchapter C. Texas Asbestos Health Protection

25 TAC §295.32, §295.61

The Texas Department of Health (department) adopts amendments to §295.32 and §295.61 concerning the reduction of asbestos project notification fees for schools. Section 295.32 is adopted with changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2630). Section 295.61 is adopted without changes and therefore will not be republished.

Section 295.32 adds new definitions for public school, school, and school building. These definitions were added to define the entities which will be affected by this change.

Section 295.61 reduces the maximum notification fee for schools to $300 per notification. This reduction is proposed to relieve the burden on schools which are required by the Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA) to take additional steps beyond those required of a public or commercial building owner to address the asbestos in their buildings.

The department is making the following minor change due to a staff comment to clarify the intent and improve the accuracy of the section.

Concerning §295.32(80), in the second sentence "Any gymnasium of other facility...", the word "of" was deleted and the word "or" was inserted.

A public hearing was held in Austin, Texas on April 9, 1999. Written comments were also received. The following is a summary of comments received. Following each comment is the department's response.

Comment: Concerning the rule changes in general, two commenters made favorable statements. One expressed full support of the notification fee changes. The other thanked the department for being receptive to their concerns regarding the fee system and expressed that the changes would relieve a financial burden from the schools in Texas.

Response: The department agrees that these changes will help schools to save money. It is the intent of the department to lessen the cost of notification in the hopes that the money will be used to perform abatement properly when needed and other savings would benefit the education of the students. No change was made as a result of the comments.

Comment: One commenter stated that he felt the notification fees should be the same for all entities.

Response: The department agrees that the fee schedule should be equitable throughout the regulated community. Kindergarten through 12th grade schools are uniquely disadvantaged, under the previous notification fee schedule, because they do not have the option of consolidating their facilities into one campus as do universities or manufacturing entities. As a result, they pay more fees to complete their projects because their buildings are distributed on many campuses. Kindergarten through 12th grade schools, by their nature, must serve local communities

within a school district. This excludes them from taking advantage of the reduced notification fee schedule afforded the rest to the regulated community who are generally consolidated into one campus or facility. The department believes that these changes place the schools on even footing with the rest of the regulated community with respect to notification fees. No change was made as a result of this comment.

The amendments are adopted under Texas Civil Statutes, Article 4477-3a, which provides the Board of Health (board) with the authority to adopt rules regarding asbestos removal, encapsulation or enclosure, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, House Bill 1680 and House Bill 1826, 73rd Legislature, 1993, which amended Article 4477-3a; and by 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.

§295.32. Definitions.

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

(1)-(73) (No change.)

(74) Public school - Any elementary or secondary school operated by publicly elected or appointed school officials in which the program and activities are under the control of these officials and which is supported primarily by public funds.

(75) Regulated area - The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits (PEL) for the concentrations of airborne asbestos exists.

(76) Renovation - Additions to or alterations of the building for purposes of restoration by removal, repairing, and rebuilding.

(77) Response action - A method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable ACBM.

(78) Responsible person - The individual that is designated by the licensed Asbestos Abatement Contractor, Asbestos Operations and Maintenance Contractor, Asbestos Laboratory, Asbestos Consultant Agency, or Asbestos Management Planner Agency, as responsible for their operations and compliance with these rules.

(79) School - Any public or private, non-profit, elementary or secondary (kindergarten through grade 12) school as defined in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(80) School building - Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food. Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education. Any other facility used for the instruction or housing of students or for the administration of educational or research programs. Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building." Any portico or covered exterior hallway or walkway. Any exterior portion of a mechanical system used to condition interior space.

(81) Small-scale, short-duration activities (SSSD) - Are tasks such as, but not limited to removal of asbestos-containing insulation on pipes; removal of small quantities of asbestos-containing insulation on beams or above ceilings; replacement of an asbestos-containing gasket on a valve; installation or removal of a small section of drywall; installation of electrical conduits through or proximate to asbestos-containing materials. These tasks, when performed in a commercial building, do not require accreditation. SSSD can be further defined by the following considerations.

(A) Removal of small quantities of ACM only if required in the performance of another maintenance activity not intended as asbestos abatement.

(B) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

(C) Minor repairs to damaged thermal system insulation which do not require removal.

(D) Repairs to a piece of asbestos-containing wallboard.

(E) Repairs, involving encapsulation, enclosure, or removal, to small amounts of friable ACBM only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work areas, in order to perform its intended containment function.

(82) Start date - The dates defined as:

(A) asbestos abatement start date - The date on which the disturbance of asbestos begins;

(B) demolition/renovation start date - The date on which the demolition or renovation process begins.

(83) Stop date - The dates defined as:

(A) asbestos abatement stop date (completion date) - The date upon which air monitoring clearance of asbestos abatement has been achieved. Where air clearance is not required, such as roofing removal, the date upon which the removal of asbestos-containing material is completed.

(B) demolition/renovation stop date - The date on which the demolition or renovation is complete.

(84) Survey - An activity undertaken in a school building, or a public and commercial building to determine the presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed ACBM which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed ACBM;

(B) inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(C) visual inspections of the type described in 40 CFR §763.90(i) solely for the purpose of determining completion of response actions.

(85) TEM - Transmission Electron Microscopy.

(86) Transportation of asbestos containing material (ACM) - Moving asbestos materials from one site to another.

(87) Working days- Monday through Friday including holidays which fall on those days.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903044
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 13, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter A. Automobile Insurance

Division 3. Miscellaneous Interpretations

28 TAC §5.205

The Commissioner of Insurance adopts amendments to 28 TAC §5.205, concerning the Automobile Theft Prevention Authority pass-through fee. Section 5.205 is adopted without changes to the proposed text as published in the March 5, 1999 issue of the *Texas Register* (24 TexReg 1572) and will not be republished.

The amendments are necessary to harmonize 28 TAC §5.205 with recent amendments to 43 TAC §57.48 adopted by the Automobile Theft Prevention Authority (ATPA). Pursuant to Texas Civil Statutes, Article 4413(37) §10, the ATPA adopted amendments to 43 TAC §57.48 to clarify the types of motor vehicles and the types of insurance policies that are subject to the statutory fee of $1 per motor vehicle year of insurance. The ATPA added paragraphs (3) and (4) to 43 TAC §57.48 to define the term "motor vehicle" as referenced in Texas Civil Statutes, Article 4413(37) §10, and to clarify that all "motor vehicle insurance" policies (as those terms are defined in the Insurance Code), with certain exceptions, are subject to the $1 fee. The Texas Department of Insurance in 28 TAC §5.205(c) had previously specified that the $1 fee was to be assessed only on "primary liability" motor vehicle insurance policies. However, ATPA's recently adopted amendments to 43 TAC §57.48 did not restrict the fee to only primary liability policies. The ATPA's amendments defined "motor vehicle insurance," as it is defined in Article 5.06 of the Insurance Code, to mean "every form of insurance on any automobile, or other vehicle hereinafter enumerated and its operating equipment or necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motorbicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running upon fixed rails or tracks." While ATPA's amendments significantly broadened the definition of motor vehicle insurance because they did not restrict the assessment of the $1 fee to only primary liability insurance, the department recognizes that Article 4413(37) §6 gives the ATPA authority to adopt rules and implement its powers and duties including the authority to interpret and define the terms "motor vehicle" and "motor vehicle insurance," as these terms relate to the assessment of the $1 fee. Accordingly, the department's amendments to §5.205 delete the conflicting provisions and harmonize the remaining provisions with those changes made by the ATPA to their rules. Specifically, the adopted section deletes §5.205 (c) to remove the restriction on the assessment of the $1 fee to only primary liability insurance policies. The adopted section also deletes §5.205 (d), which specified the types of motor vehicle insurance that were exempt from the fee assessment, because the types of motor vehicle insurance that are exempt from the fee assessment are now specified in APTA's rule, 43 TAC §57.48 (a)(4). The adopted section further deletes the reference to primary liability insurance in §5.205 (b) and adds a reference to motor vehicle insurance "as defined in APTA's rule, 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations)."

Section 5.205(b) provides the manner in which the notice to consumers of the fee is to be included on motor vehicle insurance policies and the section has been amended to exclude the limitation of assessing the $1 fee only on primary liability insurance policies and has included a reference to the definition of motor vehicle insurance as it is defined in the ATPA's amended rule.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

Comment: Commenters express concern that the broadening of the definition of auto insurance in the ATPA rule to charge the $1.00 fee on a per policy basis will cause consumers who must purchase more than one policy in order to obtain the desired coverage to be overcharged. Specifically, TAIPA insureds who buy a separate physical damage policy will pay the assessment twice.

Agency Response: Staff agrees that some consumers will pay a $2.00 assessment, however, staff believes that it is within the APTA's authority granted in Article 4413 (37) to define auto insurance and charge the resulting assessments.

Comment: Commenters have requested that TDI not adopt the proposed amendments that conform §5.205 to the recent amendments to 43 TAC §57.48 that were adopted by the ATPA.

Agency Response: The agency disagrees with the commenter's requested course of action because a failure to amend §5.205 to conform to the recent changes by the ATPA to §57.48 would create conflicting administrative code provisions that would be extremely confusing to the insurers who are required to collect and remit the assessments. The department recognizes that Article 4413(37) §6 gives the APTA the primary authority to adopt rules and implement its powers and duties including the authority to interpret and define the terms "motor vehicle" and "motor vehicle insurance" as these terms relate to the assessment of the $1.00 fee.

Against: Office of Public Insurance Counsel.

The amendments to §5.205 are adopted pursuant to Texas Civil Statutes, Article 4413(37) §10; the Insurance Code, Articles 5.06, 5.98, and 1.03A; and the Government Code §§2001.001 et seq. Texas Civil Statutes, Article 4413(37) §10 requires insurers to pay to the ATPA a fee equal to $1 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery or renewed by the insurer during the calendar year. Article 5.06 §(1) authorizes the commissioner to adopt a policy form and endorsements for each type of motor vehicle insurance. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt reasonable rules and regulations, which must be for general and uniform regulation, for the conduct and execution of the duties and functions of the department only as authorized by a statute. The Government Code, §§2001.001 et seq. (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state administrative agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 18, 1999.

TRD-9902885
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 7, 1999
Proposal publication date: March 5, 1999
For further information, please call: (512) 463-6327

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Chapter 7. Coporate and Financial Regulation

Subchapter A. Examination and Financial Analysis

28 TAC §7.83

The Texas Department of Insurance adopts the repeal of §7.83 concerning procedures for the filing, hearings, appeal and adoption of examination reports of insurance companies and other entities examined under the authority of Insurance Code, Article 1.15. The adoption of the repeal of the section is made without changes as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12179).

Insurance Code, Article 1.15, directs the commissioner of insurance to adopt procedures for the filing and adoption of examination reports and for hearings to be held under the article and guidelines for orders issued under the article. Section 7.83 was adopted in 1992 in response to this legislative directive. The repeal of the section is necessary to facilitate the simultaneous adoption of a new §7.83 concerning the filing and adoption of examination reports and for hearings to be held under the article and guidelines for orders issued under the article.

The repeal of the section will eliminate provisions relating to the appeal of examination reports which are unnecessary as a result of the adoption of the new provisions concerning hearings, filing and adoption of examination reports. Notification of the adoption of the new section appears elsewhere in this issue of the *Texas Register*.

No comments were received regarding the adoption of the repeal of this section.

The repeal of the section is adopted under the Insurance Code, Articles 1.15, 20A.17 and 1.03A. Article 1.15 authorizes the commissioner of insurance to adopt procedures for the filing and adoption of examination reports. Article 20A.17 provides that Article 1.15 shall be construed to apply to health maintenance organizations, except to the extent that the commissioner of insurance determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 1999.

TRD-9902995
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 10, 1999
Proposal publication date: December 4, 1998
For further information, please call: (512) 463–6327

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The Texas Department of Insurance adopts new §7.83 concerning procedures for the filing, hearings, appeal and adoption of examination reports of insurance companies and other entities examined under the authority of Insurance Code, Article 1.15. The existing §7.83 is repealed elsewhere in this issue of the Texas Register. The new section is adopted with one change to the proposed text as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12179).

Insurance Code, Article 1.15, directs the commissioner of insurance to adopt procedures for the filing and adoption of examination reports and for hearings to be held under the article and guidelines for orders issued under the article. Section 7.83 was adopted in 1992 in response to this legislative directive. The new section is adopted as a result of the department's experience with the previous §7.83 which is repealed elsewhere in this issue of the *Texas Register*. Under the previous §7.83 the examination report appeal process had been interpreted to include a contested case hearing under the Administrative Procedure Act (APA)(Texas Government Code §2001.001-2001.902). The new section delegates the adoption of an examination report to an associate commissioner at the conclusion of two levels of appeals before management level employees. The department believes a formal adjudicative hearing, like the contested case hearing provided for under the APA, is not well suited to the review of examination reports nor is it required by Insurance Code, Article 1.15. An examination report involves the exercise of professional judgment by a qualified examiner. Re-

view by the examiner who prepares the report, the examiner's supervisor and the supervisor of the examiner's supervisor provide substantial procedural safeguards to assure an accurate and complete examination report. If the department proposes to take regulatory or other enforcement action against the company as a result of information and findings in the examination report, the company is entitled to a contested case hearing on the action under the APA. By providing for a multi-level internal review process in the new §7.83 the appeals process for examination reports should be simplified and shortened, yet will comply with the statutory directive to adopt procedures for the filing and adoption of examination reports and for hearings to be held under the article and guidelines for orders issued under the article.

The new section replaces the existing §7.83 which is repealed elsewhere in this issue of the *Texas Register*. The new section applies to all examinations conducted of any entity examined under the authority of Insurance Code, Article 1.15. The new §7.83 will streamline the appeals process while giving examined companies ample opportunity for review of an examination report to assure the report is complete, unbiased and accurate. Subsection (a) of the new section describes the purpose and scope of the section. Subsection (b) defines terms used in the section. Subsection (c) describes how to calculate the deadlines in the section. Subsection (d) provides that the examiner-in-charge shall hold an exit conference with the company at the conclusion of the examination. At, or prior to the exit conference, the company will be provided a draft copy of the examination report to review and discuss with the examiner-in-charge. Following the exit conference, the examiner-in-charge shall complete the examination report and transmit it to the appropriate department personnel. Subsection (e) provides for the examination report to be reviewed by the appropriate personnel and transmitted to the company with a transmittal letter describing the appeal process available to the company. If a company receives a final examination report that it believes is inaccurate, subsection (f)(1) provides that the company has 14 days to file with the department a rebuttal to the examination report, along with documentation. If it chooses, the company has the right under the section to request a hearing with the chief examiner or the deputy commissioner-HMO/URA division, depending on the type of examination. Following notification of the results of the review of the examination report by the chief examiner or the deputy commissioner-HMO/URA division, depending on the type of examination, if the examined company believes the examination report is still inaccurate, subsection (f)(3) provides that the company has 14 days to file with the department another rebuttal to the examination report, documentation and a request for a hearing before the associate commissioner-financial program or the associate commissioner-life, health, managed care depending on the type of examination. The review of the examination report by the associate commissioner-financial program or the associate commissioner-life, health, managed care depending on the type of examination, is the final agency review of the report. Under subsection (g) the examination report is adopted at the conclusion of this review and the examined company is furnished a copy of the adopted report. Subsection (g) also provides that the examination report is deemed adopted if there is no appeal following a company's initial receipt of a final report or if there is no appeal from the first level appeal. Because the appropriate associate commissioner's authority to adopt a final examination report will be prescribed through a commissioner's delegation order pursuant to Insurance Code, Article 1.09, proposed subsection (g) is modified for purposes of clarity.

Subsection (h) of the new subsection formalizes the department's requirement that the each member of the board of directors of an examined company review an examination report by requiring the board of directors of an examined company to note that fact in the minutes of the board of directors. Subsection (i) continues the practice of previous §7.83 of deeming the examination reports issued by other states on foreign and alien insurers as adopted by the department when they are received by the department. The department does not have the authority to change examination reports prepared by other jurisdictions, so no purpose would be served by providing an appeals process for these examination reports. Subsection (j) provides for the extension of deadlines in the section. Subsection (k) states that the section is not intended to encumber regulatory action by the commissioner based on information or findings in the examination report nor does the section prohibit the commissioner from disclosing the examination report in the furtherance of any legal or regulatory action.

One commenter stated that the proposed rules appear to complicate and not streamline the appeals process, and that they limit the department's discretion to hold informal discussions or move directly to a contested case. The commenter contends that this could delay the point at which the report is adopted by the department and, as a result, withhold information about a company's financial condition for a longer period of time.

The department disagrees. The new section does streamline the appeals process by setting forth deadlines and procedures for a two-tiered appeal process designed to efficiently and promptly air and resolve disagreements and result in a timelier adoption of a final report. This process, the department believes, will result in a quicker and more efficient resolution of disputes than occurred under the previous rule, which had been interpreted to allow resolution following a contested case hearing. With regard to the rule allowing the withholding of information, Insurance Code, Article 1.15 provides that a final or preliminary examination report, and any information obtained during the course of an examination is confidential and not subject to open records requirements.

Another commenter stated that the section provides insufficient appellate rights. The commenter also said the procedure should include an appeal to the commissioner, as well as an appeal under Insurance Code, Article 1.04

The department disagrees with the comments. The purpose of the section is to assure that an examination report is accurate and unbiased, not to replace the judgment of the examiner who prepares the examination report. Insurance Code, Article 1.15 directs the commissioner, either in person or by one or more examiners, to examine each insurer authorized to do business in this state. Insurance Code, Article 1.09(f) directs the commissioner to appoint deputies to carry out the duties and functions of the commissioner and department under the Insurance Code. The department believes that delegating the adoption of an examination report to an associate commissioner is consistent with these statutory provisions.

In addition, the department believes a formal adjudicative hearing, like the contested case hearing provided for under the APA, is not well suited to the review of examination reports. An examination report involves the exercise of professional

judgment by a qualified examiner. Hearings before the examiner who prepares the report, the examiner's supervisor and the supervisor of the examiner's supervisor provide substantial procedural safeguards to assure an accurate, unbiased and complete examination report. The department further believes a formal contested case hearing is not required by Insurance Code, Article 1.15, the state constitutional right to due course of law and the federal constitutional right to due process, nor is a formal contested case hearing necessary to protect a company's interest in an accurate and complete examination report. If the department determines to take regulatory or other enforcement action against the company as a result of information or findings in the examination report, the company is entitled to a contested case hearing on the action under the APA. The information and findings in an examination report are not determinative of any action by the department for a civil monetary penalty or other regulatory action. They are only the basis of a proposed action for which there must be notice and opportunity for a contested case hearing.

With regard to a company's appeal rights following adoption of an examination report under the new section, Insurance Code, Article 1.15, §4 provides that "Any rule, regulation, order, decision or finding of the Board now department or commissioner; see Insurance Code, Article 1.01(c)) under this Act shall be subject to review in accordance with Article 1.04 of this code." Accordingly, a company that has exhausted its administrative remedies through the appeal process of §7.83, may appeal the final adoption of the exam report to Travis County district court.

A commenter recommended that the provision in the previous §7.83(c)(1), which states "A factual rebuttal by company management shall be noted in the completed examination report along with written comments to the factual rebuttal by the examiner-in-charge," should be included in the new §7.83.

The department disagrees with the comment. The examination report is the work product of the examiner-in-charge. Under the previous §7.83, the requirement to note the company rebuttal in the examination report often resulted in the attachment of a company's response to the examination report because the examiner-in-charge and company management could not reach agreement on the examiner-in-charge's summary of the company's disagreements with the examination report. This requirement resulted in a burden being placed on the examiner-in-charge and the department that is not required by Insurance Code, Article 1.15. An examined company has the opportunity to present its rebuttal in the appeal process. The department believes that the appeal process is the appropriate time for a written rebuttal by a company, not as an attachment to the examination report.

Another commenter requested that the new section include a requirement that the examiner give the company a copy of the examination report at the exit conference. The department does not believe additional clarification is needed. The purpose of the exit conference is to provide a forum for the examiner-in-charge and company management to discuss the examination report. A draft of the examination report is routinely made available to a company for such conference. Similarly, the company management may provide documentation at that time. The department does not believe a description of the material to be available for an exit conference is necessary. The purpose of subsection (d) is to identify the exit conference as the initial step in the process to resolve any remaining differences over the content of an examination report between the examiner-in-charge and the examined company.

Another commenter expressed concern that the use of the word "hearings" in the section could require a contested case hearing pursuant to the Administrative Procedure Act.

The department does not agree with the comment. The APA requirements only apply to contested case hearings as defined therein. Since the adoption of an examination report is not a proceeding in which the legal rights, duties, or privileges of a party are to be determined by a state agency, the department believes the provisions of the APA would not apply to hearing under the new section. The term "hearings" is used in the new section since Insurance Code, Article 1.15, §6 uses the term "hearings."

Another commenter recommended subsection (h) be changed since it appears to require all directors to attend a meeting of the board of directors, something not otherwise required by state law. The department replies by noting that subsection (h) requires all directors to read the report and that fact be reflected in the minutes. The subsection does not require that all directors attend the meeting. A company may poll directors to determine that the report has been read. If a director chooses not to read the report that fact should be noted in the minutes. The purpose of the subsection is to document for the department that the report has been reviewed by the directors.

Commenting against the rule was The Office of Public Insurance Counsel. Commenting on various provisions of the rule were, Thompson, Coe, Cousins and Irons, L.L.P. and Texas Life Insurance Company.

The new section is adopted under the Insurance Code, Articles 1.15, 20A.17 and 1.03A. Article 1.15 authorizes the commissioner of insurance to adopt procedures for the filing and adoption of examination reports. Article 20A.17 provides that Article 1.15 shall be construed to apply to health maintenance organizations, except to the extent that the commissioner of insurance determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

§7.83. Appeal of Examination Reports.

(a) Purpose and Scope. This section implements Insurance Code, Article 1.15 which directs the commissioner of insurance to adopt procedures for filing and adoption of examination reports and for hearings to be held under Insurance Code, Article 1.15 and guidelines governing orders issued under Insurance Code, Article 1.15. The section provides an appeals process to preserve both the right of a company to a fair and impartial examination and promote respect for the independence and the importance of the on-site examiner who actually observes the conditions being reported. The purpose of an appeal process is not to replace the examination in the field, nor is it to substitute the judgment of the supervisory or management personnel for that of the examiner. It is to properly weigh the examination report, and to determine whether there is any error or bias which should be corrected. This section applies to all examinations conducted of any entity examined under the authority of Insurance Code, Article 1.15.

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

(1) Adopted examination report-An examination report that has been adopted by the department pursuant to this section.

(2) Company-Any entity examined by the department under the authority of Insurance Code, Article 1.15.

(3) Examination report-A report prepared by or on behalf of the department as a result of an examination under Insurance Code, Article 1.15. An examination report does not include work papers related to the examination.

(4) Final examination report-An examination report that has been reviewed by the chief examiner or, for quality of care examination reports, the deputy commissioner, HMO/URA division, and transmitted to the examined company.

(5) Department-Texas Department of Insurance.

(c) Computation of Time. A day is a calendar day. In computing any period of time prescribed or allowed by these sections, by order of the agency, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(d) Exit Conference. At the conclusion of an examination, the examiner-in-charge shall hold an exit conference with company management on the findings and conclusions of the examination. Following the exit conference, the examiner-in-charge shall complete the examination report and file it with the chief examiner, or the deputy commissioner, HMO/URA division, as appropriate.

(e) Transmittal of Final Examination Report. After the chief examiner or, for quality of care examinations, the deputy commissioner, HMO/URA, has reviewed an examination report, the final examination report shall be transmitted to the examined company with a cover letter identifying the report as a final examination report and notifying the company that it has the right to appeal the report under subsection (f) of this section.

(f) Appeal of Examination Report.

(1) First Level Appeal. The first level of appeal is to the chief examiner or, for quality of care examinations, the deputy commissioner, HMO/URA division. Within 14 days of the receipt by the company of a final examination report, the company may file with the chief examiner or, for quality of care examinations, the deputy commissioner, HMO/URA division:

(A) a written rebuttal to the final examination report specifying the error or bias in the examination report,

(B) documentation demonstrating the error or bias, and

(C) a request for a hearing before the chief examiner or, for quality of care examinations, the deputy commissioner, HMO/URA.

(2) Consideration of First Level Appeal. The chief examiner or deputy commissioner, HMO/URA division shall consider the written rebuttal and documentation submitted by the company and any information received at a first level appeal hearing, if the examined company requests one. No later than 14 days following receipt of a written rebuttal pursuant to paragraph (1) of this subsection or the conclusion of a first level appeal hearing, the chief examiner or deputy commissioner, HMO/URA division may make changes to the report to correct error or bias. After any such changes are made, the chief examiner or deputy commissioner, HMO/URA division shall transmit a copy of the amended examination report to the company or notify the company that no changes have been made.

(3) Second Level Appeal. Second level appeals shall be made to the associate commissioner-financial program or, for quality of care examinations, to the associate commissioner-life, health, managed care (regulation and safety program) only after a company has completed an appeal under paragraph (2) of this subsection. Within 14 days of the receipt by the company of the amended examination report or notice described in paragraph (2) of this subsection, the company may file with the appropriate associate commissioner:

(A) a written rebuttal to the final examination report specifying the error or bias in the examination report,

(B) documentation demonstrating the error or bias, and

(C) a request for a hearing before the associate commissioner

(4) Consideration of Appeal by Associate Commissioner. The associate commissioner shall consider the written rebuttal and the documentation submitted by the company and any information received at a second level hearing, if the examined company requests one. No later than 14 days following receipt of a written rebuttal to the examination report under paragraph (3) of this subsection or the conclusion of a second level hearing, the associate commissioner may make changes to the examination report to correct error or bias. After any such changes are made, the associate commissioner shall cause a copy of the amended examination report to be transmitted to the company or the company shall be notified that no changes have been made.

(g) Adoption of Examination Reports. An examination report is deemed adopted if no appeal is pursued under subsection (f)(1) or (3) of this section. An examination report appealed to the associate commissioner shall be adopted by the appropriate associate commissioner pursuant to the provisions of subsection (f)(4).

(h) Review of Report by Board of Directors. The board of directors of the company shall review the adopted examination report. The minutes of the meeting of the board of directors at which the adopted examination report is considered shall reflect that each member of the board of directors has reviewed the adopted examination report.

(i) Examination Reports of Foreign and Alien Companies.

(1) Examination reports of foreign and alien insurance companies authorized to transact business in this state which are prepared by other jurisdictions and filed with the department may be accepted by the department in lieu of examining such foreign or alien company.

(2) Examination reports of foreign or alien insurance companies authorized to transact business in this state which are filed with the department under paragraph (1) of this subsection are deemed adopted when received.

(j) Extensions of Time. Any of the deadlines in this section may be extended by mutual agreement of the company and the department's employee assigned to conduct that portion of the appeal.

(k) Other Matters.

(1) Commissioner's authority. Notwithstanding this section the commissioner may take regulatory action at any time

against a company, using any information obtained during the course of any examination. Nothing contained in this section shall be construed to limit the commissioner's authority to use any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner of insurance may, in his or her sole discretion deem appropriate.

(2) Disclosure by commissioner. Nothing contained herein shall be construed to prohibit the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country in which the examined company does business, or to law enforcement officials of this or any other state, or to an agency of the federal government at any time. The commissioner may request any recipient of such reports or matters relating thereto to agree in writing to hold it confidential in a manner consistent Insurance Code, Article 1.15.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 1999.

TRD-9902994

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 10, 1999

Proposal publication date: December 4, 1998

For further information, please call: (512) 463–6327

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Chapter 11. Health Maintenance Organizations

Subchapter V. Standards for Community Mental Health Centers

28 TAC §§11.2101-11.2104

The Commissioner of Insurance adopts new Subchapter V to Chapter 11 concerning standards for community mental health centers. Section 11.2102 and §11.2103 are adopted with changes. Section 11.2101 and §11.2104 are adopted without changes to the proposed text as published in the December 18, 1998 issue of the *Texas Register* (23 TexReg 12866) and will not be republished.

The new subchapter is necessary to implement legislation enacted by the 75th Legislature in House Bill 587. This legislation, which in pertinent part is codified at Section 534.101 et seq. of the Health and Safety Code, enables community centers to create nonprofit corporations to provide health care services through health maintenance organizations (HMOs). The legislation further directs the department to establish requirements concerning the procedures an entity must follow and the standards an entity must meet to obtain a certificate of authority as a limited health care service plan providing behavioral health care services. This new subchapter will enable entities to increase availability and accessibility to mental health/mental retardation services in settings other than large residential facilities.

After reviewing public comment on the proposed amendments, the department changed §11.2102 to substitute the word "treatment" for "work." The department changed §11.2103 to correct a typographical error.

Section 11.2101 defines terms used in the subchapter. Section 11.2102 describes general provisions regarding these community health maintenance organizations (CHMOs). Section 11.2103 outlines the procedures a CHMO must follow to obtain a certificate of authority. Section 11.2104 details the standards a CHMO must meet to obtain a certificate of authority.

General. A commenter recommended that the department require limited service HMOs, which include CHMOs, to disclose their benefit limits in marketing materials to employers.

Agency Response: The department agrees that it is important for employers to be aware of benefit limits in any plan they are considering purchasing. The department believes 28 TAC §11.2402(a) and (b), which require limited service HMOs to describe covered services, benefits, and corresponding copayments, adequately address this concern.

Comment: A commenter supported the adoption of these rules.

Agency Response: The department appreciates this comment.

Section 11.2102(b): A commenter noted that the meaning of "work" is unclear and suggested "treatment" as a possible substitute.

Agency Response: The department agrees and has substituted the suggested word.

Section 11.2104: A commenter noted that capitated fee arrangements may result in savings for CHMOs and suggested the rule require them to state that any savings would be spent only on expanding services for public sector mental health clients.

Agency Response: The department appreciates this comment; however, since this standard was not a part of the published rule proposal, this recommendation could be considered a substantive change which could require republication. Therefore, the department declines to make this change at this time, but will consider this suggestion in future amendments to this subchapter. In the interim, the department notes that CMHOs are somewhat financially constrained by the fact that they are nonprofit entities (Health and Safety Code §534.101). In addition, existing provisions of the Health and Safety Code give the Texas Department of Mental Health/Mental Retardation (TDMHMR) authority to monitor and regulate CMHOs, including §534.001, which gives TDMHMR the responsibility of approving a community center's plan for delivery of mental health or mental retardation services appropriately, effectively, and efficiently.

For: Texas Association of Health Plans.

For with changes: Office of Public Insurance Counsel, Mental Health Association In Texas.

The new subchapter is adopted under Section 534.101(b), Health and Safety Code, and Insurance Code Article 1.03A. Section 534.101(b), Health and Safety Code, directs nonprofit organizations to obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization. House Bill 587, the legislation creating these nonprofit CHMOs, at Section 4 directs the Texas Department of Insurance to adopt rules that describe the procedures an entity must follow and the standards an entity must meet to obtain a certificate of authority as a limited health care service plan. 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.

§11.2102. General Provisions.

(a) Each CHMO must comply with all requirements for a limited health care service plan specified in this subchapter.

(b) Each CHMO shall provide coverage for treatment in progress and must clearly specify that the enrollee must agree to have the treatment completed by a participating provider in the HMO delivery network, as defined under Article 20A.02(w) Insurance Code, or as otherwise arranged by the limited service HMO.

§11.2103. Requirements for Issuance of Certificate of Authority to a CHMO.

(a) Prior to obtaining a certificate of authority under Section 534.101, Health and Safety Code (concerning Health Maintenance Organizations Certificate of Authority), an applicant CHMO must comply with each requirement for the issuance of a certificate of authority imposed on a limited health care service plan under the Insurance Code Chapter 20A; Chapter 11 of this title (relating to Health Maintenance Organizations); and applicable insurance laws and regulations of this state.

(b) A CHMO with a certificate of authority must comply with all the appropriate requirements that a limited health care service plan must comply with under the Insurance Code, Chapter 20A; Chapter 11 of this title; and applicable insurance laws and regulations of this state to maintain a certificate of authority. A CHMO shall be subject to the same statutes and rules as a limited service HMO and considered a limited service HMO for purposes of regulation and regulatory enforcement.

(c) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), to provide services on a risk-sharing or capitated basis as permitted under Article 21.52F Insurance Code.

(d) This subchapter does not apply to an activity exempt from regulation under Article 20A.26(f) Insurance Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 1999.

TRD-9902986
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 10, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 463-6327

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Chapter 34. State Fire Marshal

Subchapter H. Storage and Sale of Fireworks

28 TAC §34.818, §34.826

The following is a republication of an Adopted Rule concerning Subchapter H. Storage and Sale of Fireworks, 28 TAC §34.818 and §34.826, and originally published in the April 9, 1999, issue of the Texas Register at 24 TexReg 2949. This republication corrects the inadvertent use of outdated language in the text of the adopted rule. The April 13, 1999, effective date of the adopted rule will remain the same.

ORDER CORRECTING COMMISSIONER'S ORDER NUMBER 99-0448 NUNC PRO TUNC

General remarks and official action taken:

Upon the motion of the Commissioner of Insurance on this day came on for consideration the amendment nunc pro tunc of Commissioner's Order No. 99-0448, entitled "Subchapter H. Storage and Sale of Fireworks 28 TAC §§34.818 and 34.826," as of the date of entry thereof. The Commissioner, after due consideration, finds and determines that the wording of Commissioner's Order No. 99-0448, entered and dated March 24, 1999, is not in conformity with the intent of the judgment as rendered herein on March 24, 1999, and that the entry of Commissioner's Order No. 99-0448 should be reformed to reflect the actual judgment. Specifically, Commissioner's Order No. 99-0448 inadvertently used outdated language in a portion of the text of §34.826 instead of the then current text of §34.826 which was adopted effective September 14, 1998, as published in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9571) and which portion was unchanged by Commissioner's Order No. 99-0448 except as to the subsection number; accordingly, Commissioner's Order No. 99-0448 contains a clerical error in which the words, "permitted by a licensed manufacturer, or licensed distributor," and "direct on-site" were left out of the text of §34.826, which was erroneously cited as follows:

(g) Testing. Testing of fireworks and components of fireworks intended for public displays shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure. Such testing shall be conducted under the supervision of a licensed pyrotechnic operator, and no public display permit is required.

Therefore, the Commissioner of Insurance hereby amends Commissioner's Order No. 99-0448 nunc pro tunc to correct the text of §34.826 as follows:

(g) Testing. Testing of fireworks and components of fireworks intended for public displays shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure. Such testing shall be permitted by a licensed manufacturer, or licensed distributor, conducted under the direct on-site supervision of a licensed pyrotechnic operator, and no public display permit is required.

IT IS, THEREFORE, ORDERED by the Commissioner of Insurance that Commissioner's Order No. 99-0448 previously entered herein be amended nunc pro tunc as of the date of entry thereof, to read as follows:

The Commissioner of Insurance adopts amendments to Subchapter H, Storage and Sale of Fireworks, by amending §§34.818 and 34.826. Section 34.826 is adopted with changes to the proposed text as published in the December 18, 1998 issue of the *Texas Register* (23 TexReg 12867). Section 34.818 is adopted without changes and will not be republished.

These amendments are necessary, in part, to implement legislation enacted by the 75th Legislature in Senate Bill 371. Senate Bill 371 stated that the commissioner shall adopt by reference the provisions of two National Fire Protection Association (NFPA) standards - NFPA 1123, applicable to public fireworks displays, and NFPA 1126, applicable to pyrotechnic

displays before proximate audiences. The amendments are also necessary to delete the old standard for public displays that has been replaced by the current standard, NFPA 1123. In a previous rulemaking procedure, the Commissioner adopted NFPA 1126 as an amendment to §34.826; however, it was determined at that time to consider NFPA 1123 in a separate rulemaking procedure.

On October 9, 1998 the advisory council on fireworks met and subsequently recommended that NFPA 1123 be adopted by reference, with exceptions concerning the use of high density polyethylene (HDPE) pipe and concerning mortar spacing requirements. The council also recommended adoption of NFPA 1123 without its appendices.

The amendment to §34.826 adopts by reference NFPA 1123, Code For Fireworks Display, with modifications to the proposed rule, based on comments regarding the use of equivalent material of high density polyethylene or equivalent distances where a mortar is six inches in diameter or less. The amendment also provides that the Appendix to NFPA 1123 is to be used for informational purposes only, which is stated in NFPA 1123. Additionally, as also recommended by the council, §34.818(b)(2) is amended to clarify that the point of power interruption required of retail fireworks stands may be located either inside or outside the stand.

Comment: Commenters expressed concern that the department was proposing the adoption of NFPA 1123 without the changes recommended by the fireworks advisory council. According to the commenters the modifications to NFPA 1123 recommended by the advisory council were designed in a manner to address the department's concerns of equivalency and suggested adoption of NFPA 1123 with the recommended modifications. Having served on the advisory council the commenters are convinced that the council's recommendations on modifying NFPA 1123 are reasonable and can stand alone on their merit, even though they meet the equivalency standard. A commenter states that the changes recommended by the council represent a clarification of NFPA 1123 as to what should be considered equivalent to meet the requirements of NFPA 1123. The commenter argues that the legislature would have never required adoption of rules of a private rulemaking organization without assuming that the regulatory body had the authority to make proper modification to the rules. The commenter points out that industry practice is consistent with the suggested modifications. A commenter expressed the reason for equivalency is to provide a guideline for setting up a fireworks display program which provides safety for both the viewing public and the pyrotechnic operator. The commenter also cited justification for creation of equivalency standards. Another commenter states that if the recommendations are not adopted, the rule as proposed would cause a severe impact upon firms in the fireworks industry. A commenter states that the Insurance Code Art. 5.43-4 Sec. 5B(b) gives the department two options: adopt as proposed by the fireworks advisory council, or send the rules back for further development. A commenter believes that all parties, including department personnel, agree that use of HDPE pipe is not only an acceptable industry standard material, but also a preferred alternative in many instances. Refusal to accept HDPE pipe as equivalent material would mean that Texas would be the only state not allowing use of this material for display shows. The commenter believes that the use of HDPE pipe improves the safety of the industry and that not allowing members of the industry to utilize the material would result in an unacceptable cost to those that currently utilize the material. Commenters pointed out that permission for the use of HDPE pipe and the spacing modifications to NFPA 1123 as suggested by the advisory council needs to be stated in the rules so that local authorities will have the guidelines clearly spelled out and unequal local enforcement will not result. The commenter provided suggested "equivalent" provisions to the rule. The commenter also encourages adoption of the rules without the appendix to NFPA 1123, since its inclusion is not mandated by statute, is not an official part of the rules, and is for informational and advisory purposes only. Another commenter enclosed the statement of an expert in the fireworks safety area concurring with commenter's system of equivalency.

Agency Response: At the time the rule was proposed, the department noted that NFPA 1123 provides that it is not intended to prevent the use of systems, methods or devices that provide protections equivalent to the provisions of that code, provided that equivalency can be demonstrated to the authority having jurisdiction. Because, at the time of the rule proposal, there had been no showing of equivalency the department declined to propose the changes as recommended by the council. As noted in comments responding to the proposed rule, commenters provided information and materials, including the opinion of an industry expert, concerning equivalency of HDPE pipe and the proposed alternative spacing methodology. Commenters also worked with agency staff in drafting detailed rule language that strictly prescribes the manner and method by which alternative spacing may be allowed. Based on these comments, the department believes that equivalency has been adequately demonstrated, and has changed the rule accordingly. The department also agrees, as proposed in the comments, to change the rule to state that the appendix to NFPA 1123 is to be used for informational purposes only; this is the language currently contained in NFPA 1123.

For, with changes: Atlas Enterprises, Inc., Public Strategies Inc., and the Fireworks Advisory Council.

The amendments are adopted under the Insurance Code, Articles 5.43-4 and 1.03A. The Insurance Code Article 5.43-4, section 16(a), directs the commissioner to adopt rules the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (2) the conduct of public fireworks displays; and (3) the safe storage of Fireworks 1.4G and Fireworks 1.3G. Section 5 of Article 5.43-4 provides that the commissioner, in promulgating rules, may use standards recognized by federal law or regulation, and those published by a nationally recognized standards-making organization. Section 9 of Article 5.43-4 requires the commissioner to adopt by reference certain NFPA standards as rules governing public displays. Article 1.03A provides that the commissioner may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute.

§34.826. Preparing and Conducting Public Displays.

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

(c) Public display criteria. Public displays shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 1995 Edition, except as modified by paragraphs (1)-(3) of this subsection. The

Appendix to NFPA 1123 is not considered a part of the requirements of NFPA 1123 and should be used for informational purposes only.

(1) Equivalent material. High density polyethylene (HDPE) pipe shall be a permissible equivalent material for mortars if of sufficient strength and durability to fire aerial shells safely.

(2) Equivalent distance. The separation distance of NFPA 1123 paragraph 2-3.3.3 between mortars, buried in the ground or in a trough, shall not apply to a mortar where the mortar is 6 inches (150 mm) in diameter or less, constructed of high density polyethylene (HDPE), and shells are fired using electrical ignition.

(3) Equivalent distance. The separation distance of NFPA 1123, paragraph 2-3.3.3.2 between a mortar and the wall of a trough shall not apply to a mortar where the mortar is 6 inches (150 mm) in diameter or less and constructed of high density polyethylene (HDPE), shells are fired using electrical ignition and the adjacent trough wall is braced with sufficient strength and durability to safely fire the shells. The trough wall bracing and support shall meet or exceed the following:

(A) two exterior horizontal braces, one along the bottom of the trough, and a top brace at a distance above the bottom brace that is at least one half the length of the shortest mortar in the trough, but not exceeding its top, where bracing consists of angle iron, with a minimum dimension of one and one half inch by one and one half inch by three sixteenths of an inch, or other shaped steel of equivalent strength;

(B) a vertical brace attached between the bottom and top brace spaced no greater than four feet on center along the length of the trough, where the bracing consists of angle iron, with a minimum dimension of one and one half inch by one and one half inch by three sixteenths of an inch, or other shaped steel of equivalent strength; and

(C) a traverse support between the two walls of the trough, consisting of not less than three eighths of an inch threaded rod or equivalent material, located approximately half way up the side walls and located at least every four feet on center along the length of the trough.

(d) Firing mortars. All firing shall be done upon order or signal of the licensed pyrotechnic operator directing the public display.

(e) Public display safety precautions.

(1) A display must be conducted in accordance with all local regulations and conditions prescribed by the fire prevention officer at the time of the site inspection.

(2) During the display, at least one approved Class A type 2 1/2 gallon fire extinguisher or charged garden hose connected to a water line or equivalent means of fire protection shall be provided.

(f) Proximate audience display criteria. Public displays before a proximate audience shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition. Public displays conducted in accordance with this section shall include pyrotechnic devices, including 1.3G, 1.4G, and 1.4S, as defined in NFPA 1126, and individuals conducting such displays shall be regulated by the provisions of this subchapter as pyrotechnic operators.

(g) Testing. Testing of fireworks and components of fireworks intended for public displays shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure. Such testing shall be permitted by a licensed manufacturer, or licensed distributor, conducted under the direct on-site supervision of a licensed pyrotechnic operator, and no public display permit 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 May 21, 1999.

TRD-9902991
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 13, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 463–6327

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 21. Purpose and Scope

34 TAC §21.1

The Teacher Retirement System of Texas (TRS) adopts an amendment to §21.1 relating to the purpose and scope of TRS, without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24TexReg1748).

This amendment was part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. This Chapter and others were previously reviewed in an open meeting by the TRS Policy Committee. This Chapter and others were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendment deletes a specific date reference in the rules and indicates that policy is codified in the TRS rules. The broader wording clarifies the purpose and scope of the TRS rules.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902861
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 12, 1999

For further information, please call: (512) 391-2115

♦ ♦ ♦

34 TAC §21.2

The Teacher Retirement System of Texas (TRS) adopts the repeal of §21.2, relating to TRS rules that had been previously approved and ratified, without changes to the proposal as published in the March 12, 1999, issue of the *Texas Register* (24TexReg1749).

The repeal was part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. This Chapter and others were previously reviewed in an open meeting by the TRS Policy Committee. This Chapter and others were posted for comments regarding whether the reason for adopting the rules continued to exist.

The repeal of the rule was adopted as the rule is no longer needed as its purpose has been fulfilled and the language is useful only as an historical footnote. Rules are approved and ratified in accordance with law.

No comments were received regarding the adoption of this repeal.

The repeal is adopted under §825.102 of the Government Code, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and the transaction of the business of the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902862
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 391-2115

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Chapter 23. Administrative Procedures

34 TAC §§23.1, 23.4-23.8

The Teacher Retirement System of Texas (TRS) adopts amendments to §23.1 concerning grievances and complaints, §23.4 concerning public participation in adoption of rules, §23.5 concerning nomination for appointment to the Board of Trustees, §23.6 concerning trustee to trustee transfers; §23.7 concerning the code of ethics for consultants and agents, and §23.8 concerning expenditure reporting by consultants, advisors, and brokers, without changes to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24TexReg1749).

These amendments are a part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. This Chapter and others were previously reviewed in an open meeting by the TRS Policy Committee. This Chapter and others were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendments to §23.1 make it clear that grievances and complaints are covered by this rule and the term "executive secretary" is updated in §§23.1 and 23.4 to the current title of "executive director" as the title was changed by law in 1993. The proposed amendments to §23.5 substitute the term "member" for the word "teacher" to more accurately reflect that retirees are not required to be teachers. In addition, future terms to be served by trustees are more accurately reflected with changed years. The proposed amendment to §23.6 deletes an effective date which no longer has meaning for the distributions that can be paid to an eligible retirement plan by a direct trustee to trustee transfer. Sections 23.7 and 23.8 are amended by deleting two specific dates and giving a more general reference of "as amended from time to time." In addition, the most recent effective date of the documents referenced is updated.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Sections of the law affected by these amendments are:

§23.4 – Government Code, Chapter 2001, Subchapter B, §2001.021

§23.5 – Government Code, Chapter 825, Subchapter A

§23.7 – Government Code, Chapter 825, Subchapter C, §825.212

§23.8 – Government Code, Chapter 825, Subchapter C, §825.212

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902863
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 12, 1999
For further information, please call: (512) 391-2115

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Chapter 27. Termination of Membership and Refunds

34 TAC §§27.1, 27.7, 27.9

The Teacher Retirement System of Texas (TRS) adopts the repeal of §27.1 concerning Termination of Membership Because of Absence, §27.7 concerning Termination of Membership and Retired Members, and §27.9 concerning Reinstatement of Transferred ERS Covered Service, without changes to the

proposal as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1965).

The repeals are part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections reviewed in an open meeting by the TRS Policy Committee and the Board of Trustees. These sections were posted for comments regarding whether the reason for adopting the rules continued to exist.

The repeals eliminate sections of the rules that are obsolete. The repeal of §27.1 deletes language that is included in the TRS law at §822.003 of the Government Code. The repeal of §27.7 is adopted as it is a duplication of language included in 34 TAC, Part III, Chapter 31, §31.11 of the TRS rules. §27.9 is no longer needed as the transfer law to which it refers was repealed. A new law found in Chapter 805 of the Government Code allows a transfer of credit at retirement and rules covering those situations are found in 34 TAC, Part III, Chapter 25, Subchapter H.

No comments were received regarding the repeal of these rules.

The repeals are adopted under §825.102 of the Government Code, which authorizes the Board of Trustees Teacher Retirement System to adopt rules for the administration of the retirement system and for the transaction of the business of the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902864
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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34 TAC §27.3, §27.6

The Teacher Retirement System of Texas (TRS) adopts amendments to §27.3 concerning a False Affidavit for a Refund and §27.6 concerning the Reinstatement of a Withdrawn Account, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1966). The text of the rules will not be republished.

These amendments were a part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections were reviewed in an open meeting by the TRS Policy Committee and the Board of Trustees. These sections were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendment to §27.3 changes the date for making an affidavit from the date that the person receives the refund to the date a refund is mailed due to changes is the law. The adopted amendment to §27.6 eliminates membership fees from the amounts required to reinstate a withdrawn account as the requirement was deleted from the law.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902865
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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Chapter 29. Benefits

Subchapter A. Retirement

34 TAC §§29.8, 29.9, 29.22

The Teacher Retirement System of Texas (TRS) adopts amendments to §29.8 concerning retirement payment plans, §29.9 concerning survivor benefits, and §29.22 concerning approval of disability retirements, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1967). The text of the rules will not be republished.

These amendments were a part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections and others were previously reviewed in an open meeting by the TRS Policy Committee. These sections were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendment to §29.8 changes the date that benefit payments to the member cease in the event of the death of the retired member and adds language addressing an additional retirement option, Option 5 which was added by law in 1995. In addition, language restricting those eligible to elect the pop-up option has been deleted in accordance with the changes in the law. The adopted amendment to §29.9 reflects increases in the survivor benefits paid and outlined in recent law. The adopted amendment to §29.22 changes the title of "executive secretary" to "executive director" which was changed in the law.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902866
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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Subchapter B. Death Before Retirement

34 TAC §29.33, §29.34

The Teacher Retirement System of Texas (TRS) adopts amendments to §29.33 concerning absence from service and §29.34 concerning limitations with respect to death before retirement, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1968). The text of the rules will not be republished.

These amendments were a part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections were previously reviewed in an open meeting by the TRS Policy Committee. These sections were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendment to §29.33 substitutes a reference to a rule that was repealed with a reference to the current law and clarifies the date when absence from service begins. The adopted amendment to §29.34 changes the title of the "executive secretary" to "executive director" as this has been changed in the law.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. .

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 1999.

TRD-9902867
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 6, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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Chapter 31. Employment After Retirement

34 TAC §§31.3, 31.7, 31.8, 31.10, 31.11, 31.13

The Teacher Retirement System of Texas (TRS) adopts amendments to §31.3 concerning permissible substitute employment after retirement, §31.7 concerning regular employment having no effect on annuity, §31.8 concerning employment on one-half time basis, §31.10 concerning monthly certified statements, §31.11 concerning requirements to become an active member after retirement, and §31.13 concerning employment up to three months on a one-time only trial basis for disability retirees, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24TexReg1968).

These amendments were part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections were previously reviewed in an open meeting by the TRS Policy Committee. These sections were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendment to §31.3 removes language limiting substitute service to 120 days for service retirees as the law was changed in 1995 to remove the limit. In addition, the adopted amendment to the rule reflects new law allowing a disability retiree to work 90 days as a substitute or one-half time. The adopted amendment to §31.7 adds language to reflect the limitation in the law on disability retirees for 90 days as a substitute or one-half time. The adopted amendment to §31.8 makes it clear that the employment after retirement laws apply to public schools, not just high schools. It also clarifies that the reference to 12 days with respect to one-half time employment for bus drivers is determined on a monthly basis. The adopted amendment to §31.10 changes the title of "executive secretary" to "executive director" as the title was changed by law in 1993. The adopted amendment to §31.11 eliminates the language requiring payment of membership fees for each year of service when becoming an active member after retirement. Additional language adopted in §31.13 clarifies that references to §31.7 and §31.12 deal with service retirees only. The language requiring an advance designation with respect to work that occurred in three consecutive months of a school year as that requirement was deleted from the law. Finally, language is added to make clear that the law permits a 3 month exception with respect to employment for disability retirees in addition to the 90 days of work per school year provided in Title 34, TAC, §31.3.

No comments were received regarding the adoption of these amendments

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system.

Government Code, Chapter 824, Subchapter G is affected by these proposals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902947

Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 8, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391-2115

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Chapter 33. Legal Competence

34 TAC §33.1, §33.2

The Teacher Retirement System of Texas (TRS) adopts amendments to §33.1 concerning legal competence in the approval of an optional settlement related to a minor and §33.2 concerning legal competence and the payments for the account of a minor child, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24TexReg1970).

These amendments were part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections and others were previously reviewed in an open meeting by the TRS Policy Committee. These sections were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendments to §33.1 and §33.2 remove a specific reference to the Probate Code and insert a reference to "law". The broader wording allows reference to all Texas laws dealing with minors, rather than only those found in the Probate Code.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system.

No other laws are affected by these adopted changes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902948
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 8, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391-2115

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Chapter 41. Insurance

34 TAC §41.11

The Teacher Retirement System of Texas (TRS) adopts the repeal of §41.11, concerning active member insurance contingency reserve fee, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1972).

The repeal was part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included, as a minimum, an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. This section was previously reviewed in an open meeting by the TRS Policy Committee. This section was posted for comments regarding whether the reason for adopting the rule continued to exist.

The repeal eliminates a section of the rules that is obsolete. The Legislature deleted the contingency reserve fee from the law.

No comments were received regarding the repeal of this rule

The repeal is adopted under §825.102 of the Government Code, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and under the Insurance Code, Article 3.50-4, §5 , which authorizes the Teacher Retirement System to adopt rules for the administration of the TRS insurance program. In addition, §7A(g) of Article 3.50-4 provides that the fee in question expires after the 1996-1997 school year.

Insurance Code, Article 3.50-4, §7A(g) is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 1999.

TRD-9902950
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 8, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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Chapter 43. Adjudicative Hearings

34 TAC §§43.1, 43.3–43.6, 43.8–43.13, 43.16, 43.25, 43.36–43.39, 43.43, 43.45–43.47

The Teacher Retirement System of Texas (TRS) adopts amendments to §43.1, concerning administrative review of individual complaints, §43.3, concerning definitions related to adjudicative hearings, §43.4, concerning decisions subject to review by an adjudicative hearing, §43.5, concerning a request for adjudicative hearing, §43.6, concerning filing of documents, §43.8, concerning extensions, §43.9, concerning docketing of adjudicative hearing, §43.10, concerning the authority of executive secretary to grant relief, §43.11, concerning classification of pleadings, §43.12, concerning form of petitions and other pleadings, §43.13, concerning filing of pleadings and amendments, §43.16, concerning notice of hearing, §43.25, concerning conduct of hearing, §43.36, concerning ex parte consultations, §43.37, concerning reporters and transcripts, §43.38, concerning dismissal without hearing, §43.39, concerning summary judgment, §43.43, concerning subpoenas, §43.45, concerning final decisions and appeals to the Board of Trustees, §43.46, concerning rehearing and §43.47, concerning procedures not otherwise provided. These amendments are adopted

without changes to the proposed text published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1972).

These adopted amendments are a result of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included an assessment by TRS as to whether the reason for adopting or readopting the rule continues to exist. These sections have been previously reviewed in an open meeting by the TRS Policy Committee and were posted for comments regarding whether the reason for adopting the rules continue to exist.

These specific amendments recognize an administrative reorganization where the chief officer rather than a division head makes the decision that may be appealed within the agency; change the title of executive secretary to executive director as the law was changed; add the duties set in law for the State Office of Administrative Hearings (SOAH); delete some unneeded language; add a section on dismissal and SOAH authority; allow service by electronic means; update a statutory reference; allow a hearing to be held in Austin, but not necessarily at the retirement building; clarify ex parte consultations in accordance with the law; clarify the final decision area and the rehearing area by changing some of the deadlines in compliance with the law and for consistency.

No comments regarding the proposed amendments were received.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system.

No other laws are affected by these proposed amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9902979
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 9, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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34 TAC §43.22

The Teacher Retirement System of Texas (TRS) adopts the repeal of §43.22, relating to the appointment of a hearing officer for an adjudicative hearing, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1976).

The repeal was part of the review process by TRS of all the rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. This section was previously reviewed in an open meeting by the TRS Policy Committee. This section was posted for comments regarding whether the reason for adopting the rules continued to exist.

The repeal of §43.22 will eliminate language regarding the appointment of hearing officers. A separate submission includes the adoption of amendments to §43.9 concerning docketing of an adjudicative hearing that will address the appointment of hearing officers.

No comments were received regarding the adoption of this repeal

The repeal is adopted under §825.102 of the Government Code, which authorizes the Board of Trustees of Teacher Retirement System to adopt rules for the administration of the retirement fund.

No other laws are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9902980
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 9, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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Chapter 47. Qualified Domestic Relations Orders

34 TAC §§47.3, 47.5, 47.6

The Teacher Retirement System of Texas (TRS) adopts amendments to §47.3 concerning review of qualified domestic relations orders, §47.5 concerning orders not qualified and §47.6 concerning the appeal of notice that an order is not qualified, without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24TexReg1976).

These amendments were part of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included an assessment by TRS as to whether the reason for adopting or readopting the rule continued to exist. These sections were previously reviewed in an open meeting by the TRS Policy Committee. These sections and others were posted for comments regarding whether the reason for adopting the rules continued to exist.

The adopted amendments to each of these sections changes the title of head of the agency from "executive secretary" to "executive director". The title was changed by law in 1993.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. In addition, the Acts of the 73rd Legislature, 1993, Chapter 812, §16 authorized the title changes.

No other laws are affected by these proposed changes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9902981
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 9, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391-2115

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Chapter 49. Collection of Debts

34 TAC §§49.1, 49.3, 49.5, 49.7

The Teacher Retirement System of Texas (TRS) adopts amendments to §49.1 concerning administrative procedures for the collection of debts, §49.3 concerning referrals of matters to attorney general for collection, §49.5 concerning records pertaining to persons or entities liable for delinquent obligations, and §49.7 concerning certain obligations excepted from the procedures in the rule without changes to the proposed text as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1977).

The adoption is a result of the review process by TRS of all the Rules in compliance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The review process included an assessment by TRS as to whether the reason for adopting or readopting the rule continues to exist. These sections were previously reviewed in an open meeting by the TRS Policy Committee and were posted for comments regarding whether the reasons for adopting the rules continue to exist.

The adopted amendments to §49.1, §49.3, §49.5, and §49.7 change the title of head of the agency from executive secretary to executive director. The Legislature in 1993 changed the title of "executive secretary" to "executive director". These amendments clean up the language of the rules.

No comments were received regarding the adopted amendments.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. In addition, 1993, 73rd Legislature, Chapter 812, §16 authorized the title change.

No other laws are affected by these proposed changes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9902982
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: June 9, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 391–2115

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 151. General Provisions

37 TAC §151.53

The Texas Department of Criminal Justice adopts the repeal of §151.53 concerning Multiple Employment with the State without changes as proposed and published in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2866). The Department is simultaneously adopting new §151.53, which better covers procedures regarding applications for and administration of multiple employment with the State of Texas by employees of the Texas Department of Criminal Justice (TDCJ).

Repealing the existing section and replacing it with the new section will enable clearer and more complete guidelines for TDCJ employees in the application and administration of multiple employment with the State of Texas.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and the Texas Constitution, Article XVI, §40, and Texas Government Code, Chapter 574, which specifically authorizes this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903003
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: June 13, 1999
Proposal publication date: April 9, 1999
For further information, please call: (512) 463–9693

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The Texas Department of Criminal Justice adopts new §151.53, concerning Multiple Employment with the State, without changes to the proposed text as published in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2866). The text of the rule will not be republished.

The purpose of the new section is to provide procedures regarding applications for and administration of multiple employment with the State of Texas by employees of the Texas Department of Criminal Justice (TDCJ).

The new section will enable clear and complete guidelines for TDCJ employees in the application and administration of multiple employment with the State of Texas

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the

Board and the Texas Constitution, Article XVI, §40, and Texas Government Code, Chapter 574, which specifically authorizes this new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903004
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: June 13, 1999
Proposal publication date: April 9, 1999
For further information, please call: (512) 463–9693

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Chapter 155. Reports and Information Gathering

Subchapter B. Site Selection and Facility Names

37 TAC §155.23

The Texas Department of Criminal Justice adopts new §155.23 concerning site selection process for the location of additional facilities with changes to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 683).

The new section defines Agency policy for determining the location of new TDCJ facilities in a manner that is fair and open, and that results in facilities sites that are cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited.

The new section will enable the construction of additional facilities designed to house and support offenders, as needed, considering all logistical support requirements, operational concerns, and legal mandates, on State-owned property or on land acquired at no cost to the State.

No public comments were received regarding adoption of the new section, however, internal staff comments led to the addition of subsection (c)(6) and the corollary deletion of the last sentence of proposed definition in subsection (b)(3); these changes clarify the handling of additions to existing facilities as items to be decided upon by the Board, but that are not subject to the other procedures set out in the rule.

The new section is adopted under Texas Government Code, §492.013, which grants general rulemaking authority; and Texas Government Code, §496.007.

§155.23. Site Selection Process for the Location of Additional Facilities.

(a) Purpose. This rule establishes Agency policy for determining the location of new TDCJ facilities in a manner that is fair and open, and that results in facilities sites that are cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility (standalone facility or expansion of an existing facility) designed to house and support offenders is a process requiring the review and analysis of a number of factors, including cost-effectiveness, logistical support requirements, operational concerns, and legal mandates. Generally, funding priorities will dictate that such facilities be located on State-owned property, or on land acquired at no cost to the State.

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

(1) Agency - The Texas Department of Criminal Justice.

(2) Board - The Texas Board of Criminal Justice.

(3) Facility - A substantially self-contained, permanently constructed correctional facility for housing offenders. This includes prison units, State jails, Substance Abuse Felony Punishment (SAFP) facilities, and transfer facilities, but does not include intermediate sanction facilities, community corrections facilities, as defined in §509.001, or facilities defined in §§508.118, 508.119, or 508.320, of the Texas Government Code.

(4) Prison unit - Includes a private prison under Texas Government Code, Chapter 495, Subchapter A, a psychiatric unit, or a facility the capacity of which will be determined under, and regulated by Texas Government Code, Chapter 499, Subchapters E (Unit and System Capacity), and B (Population Management).

(5) SAFP facility - A substance abuse felony punishment facility authorized by Texas Government Code, §493.009.

(6) State jail - A State jail felony facility authorized by Texas Government Code, Chapter 507.

(7) TDCJ - The Texas Department of Criminal Justice.

(8) Transfer facility - A facility authorized by Texas Government Code, Chapter 499, Subchapter G.

(c) Procedures. It is the policy of the Board that the location of any additional facility operated by the TDCJ be carefully considered in accordance with this policy.

(1) The Texas Criminal Justice Policy Council is the State agency responsible for projecting the demand for prison, State jail, SAFP and transfer facility beds. Based on these projections, a plan shall be developed by staff and adopted by the Board that details how any additional bed needs will be met. This plan will be presented to the legislature with a request for appropriations. With respect to facilities requiring siting, the plan adopted by the Board will include:

(A) recommendations for specific types of facilities needed by the TDCJ, the approximate size of each facility, and regional distribution by facility type that is needed;

(B) a description of the mission of the recommended facilities;

(C) a description of the type of offenders to be housed in each facility and the programming requirements for that population; and

(D) any recommendations for redesignation and renovation of existing facilities.

(2) Site selections will be made in accordance with and through a Request for Proposals (RFP) process, published in the Texas Register. The RFP shall be formulated and issued under the direction of the Board beginning immediately after the legislature has completed the appropriations bill. The RFP will be based on the array of facilities authorized and appropriated for by the legislature. For each round of site selections, an RFP will be developed that specifies:

(A) types of facilities needed;

(B) minimum acreage and site characteristics requirements for each facility type;

(C) requirements for geotechnical information based on drilling matrix and site preparation requirements;

(D) requirements for verified documentation of the absence of any environmental problems and historical preservation conditions;

(E) requirements for supporting information such as easement, utility and topographical maps;

(F) requirements for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs and other issues affecting the timely transferability of a site;

(G) transportation and utility requirements; and

(H) the requirements for solicited citizen input and State and local elected official input regarding a specific site.

(3) Staff review will be conducted under the direction of the TDCJ Executive Director. Planning and Programming within the Facilities Division will have the responsibility to coordinate the site selection process for the Executive Director. In accordance with the Board approved criteria and process, staff will be responsible for the development of the RFP, devising and completing scoring instruments and cost analysis for Board review and action. Information presented to the Board shall:

(A) be structured in a uniform format as illustrated in the Facilities Division policies and procedures;

(B) include data from a weighted scoring evaluation system that was developed before any review, and based on the Facilities Division policies and procedures as well as on the requirements as outlined in an RFP, that objectively assesses each site based on the proposal, site visit and support information;

(C) include life-cycle cost calculations for a specific time period for each responsive proposal; and

(D) identify and explain any deviations from the approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:

(A) in close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;

(B) cost-effectively with respect to its proximity to other facilities in TDCJ;

(C) in close proximity to an area that would facilitate release of offenders or persons to their area of residence;

(D) in close proximity to an area that provides adequate educational opportunities and medical care;

(E) in close proximity to an area that would be capable of providing hospital and specialty clinic medical services, as well as a sufficient pool of medical personnel from which to recruit and contract; and

(F) on State-owned or donated land.

(5) The Board is responsible for site selection, but may request that the staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be based on scoring of the information contained in each submitted proposal based on RFP requirements, actual site assessment, and information obtained from external and internal sources for each site.

(6) Additions to existing facilities subject to Board decision under this subsection are not governed by the procedures in this rule for new facilities. Staff shall make recommendations, and the Board shall make the site selection decision, for additions to existing facilities if the Board would not otherwise be responsible for the decision under this rule or §152.12 of this title (relating to Methodology for Changing Maximum Unit and System Population), and:

(A) the addition will increase the monthly gross payroll of the facility it is added to by $500,000 or more; or

(B) staff has reason to know that the Board should make the site selection decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 1999.

TRD-9903005
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: June 13, 1999
Proposal publication date: February 5, 1999
For further information, please call: (512) 463-9693

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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

Advisory Commission on State Emergency Communications

Title 1, Part XII

The Advisory Commission on State Emergency Communications (ACSEC) proposes to readopt the following Sections from Chapter 251, concerning Regional Plans - Standards, with changes, in accordance with the Appropriations Act, Article IX, Section 167.

251.1 - Regional Plans for 9-1-1 Service

251.2 - Guidelines for Changing or Extending 9-1-1 Service Arrangements

251.3 - Guidelines for Addressing Funds

251.4 - Guidelines for the Provisioning of Accessibility Equipment

251.5 - Guidelines for the Maintenance and Replacement of 9-1-1 Equipment

251.6 - Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation

251.7 - Guidelines for Implementing Integrated Services

251.9 - Guidelines for Addressing Maintenance Rule

Previosuly, the proposed rule review of Chapter 251 was published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2747).

Elsewhere in this issue of the *Texas Register*, the ACSEC is contemporaneously proposing amendments to §§251.1, 251.2, 251.4, 251.5, 251.7, 251.9 and new §§251.8, 251.10 and 251.11. These proposals are a result of the rule review process.

Also in this issue of the *Texas Register*, the ACSEC is contemporaneously withdrawing the proposed amendment to §251.5 and new §251.8 and §251.10.

The report of the rule review of this Chapter was presented at the May 14, 1999 Commission meeting.

The Advisory Commission on State Emergency Communications will accept comments on the proposed changes for 30 days following the publication of this rule review in the *Texas Register*. Comments on the proposal may be submitted to: James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701; phone 512-306-6911; or fax 512-305-6937.

TRD-9903061
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Filed: May 24, 1999

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Texas Alcoholic Beverage Commission

Title 16, Part III

The Texas Alcoholic Beverage Commission files its notice of intention to review its rules contained in Title 16, Texas Administrative Code, Chapter 35, governing enforcement. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will receive comments on whether the need for any rule contained within this chapter still exists and whether any of these rules require amendment. Amendments or repeal of existing rules proposed by the commission will appear in the proposed rules section of the Texas Register and will be acted on in accordance with normal state rule making procedures.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

TRD-9903065
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: May 25, 1999

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The Texas Alcoholic Beverage Commission files its notice of intention to review its rules contained in Title 16, Texas Administrative Code, Chapter 36, governing gun regulation. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will receive comments on whether the need for any rule contained within this chapter still exists and whether any of

these rules require amendment. Amendments or repeal of existing rules proposed by the commission will appear in the proposed rules section of the Texas Register and will be acted on in accordance with normal state rule making procedures.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

TRD-9903066
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: May 25, 1999

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Texas Department of Public Safety

Title 37, Part I

The Texas Department of Public Safety (DPS) files this notice of intention to review Chapter 6 - License to Carry Concealed Handgun, Chapter 11 - Commercial Vehicle Registration, and Chapter 17 - Administrative License Revocation pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

As part of this review process, the DPS is proposing amendments to Chapter 6: §§6.1, 6.3-6.5, 6.11, 6.14-6.18, 6.31, 6.43-6.45, 6.61, 6.63, 6.82, 6.84, 6.95, 6.114, and 6.118. Section 6.21 is proposed for repeal with simultaneous filing of new §6.21. Chapter 11 amendments include §§11.1, 11.5, 11.51, and 11.52. §§11.28 and 11.41-11.44 are proposed for repeal. Chapter 17, §§17.1-17.16 are proposed for repeal with simultaneous filing of new §§17.1-17.16. The proposed amendments, repeals, and new sections may be found in the Proposed Rules section of the *Texas Register*. The DPS will accept comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist in the comments filed on the proposed amendments.

The DPS is not proposing any changes to Chapter 6: §§6.2, 6.12, 6.13, 6.19, 6.20, 6.32, 6.41, 6.42, 6.46, 6.47, 6.51-6.54, 6.62, 6.71-6.81, 6.83, 6.85-6.94, 6.96, 6.111-6.113, 6.115-6.117, and 6.119; and to Chapter 11: §§11.2-11.4, 11.53, and 11.61. The DPS's reason for adopting these sections continues to exist. Comments regarding the Section 167 requirements as to whether the reason for adopting these sections of Chapters 6 and 11 continues to exist may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890 within 20 days after publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

TRD-9902928
Dudley M. Thomas
Director
Texas Department of Public Safety
Filed: May 19, 1999

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State Securities Board

Title 7, Part VII

The State Securities Board (Agency), beginning June 1999, will review and consider for readoption, revision, or repeal Chapter 105, Rules of Practice in Contested Cases, and Chapter 106, Guidelines for the Assessment of Administrative Fines, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature. The rules to be reviewed are located in Title 7, Part VII, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Rules Proposed" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the Texas Register, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-9902960
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: May 20, 1999

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Texas Water Development Board

Title 31, Part X

The Texas Water Development Board files this notice of intent to review 31 TAC, Part X, Chapter 359, Water Banking, in accordance with the General Appropriations Act, House Bill 1, Article IX, Section 167. The board finds that the reason for adopting the chapter continues to exist.

As required by Section 167, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 359 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Suzanne Schwartz, General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to sschwart@twdb.state.tx.us or by fax @ 512/463-5580.

TRD-9902925
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: May 19, 1999

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Adopted Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part III

The Texas Alcoholic Beverage Commission adopts the review of Title 16, Texas Administrative Code, Chapter 36, governing gun regulation as published in the February 12, 1999, edition of the *Texas Register*, (24 TexReg 999).

The commission finds that the reasons for adopting the rule contained within this chapter continues to exist and this rule is hereby readopted.

No comments were received regarding the review of Chapter 36.

TRD-9903068
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: May 25, 1999

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Teacher Retirement System of Texas

Title 34, Part III

The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 31. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 31. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continues to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2034), the full Board reviewed Chapter 31 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. The final review was completed at the Board Meeting on April 23, 1999.

No comments regarding the review of Chapter 31 were received.

TRS finds that the reasons for adopting Chapter 31 continue to exist. As part of this review process, TRS is concurrently adopting amendments to § 31.3 concerning permissible substitute employment, §31.7 concerning regular employment having no effect on annuity, §31.8 concerning one-half time employment, §31.10 concerning monthly certified statements, §31.11 concerning requirements to become an active member after retirement, and §31.13 concerning employment up to three months on a one time only trial basis for disability retirees.

TRS readopts §;31.1, 31.2, 31.6, 31.9, and 31.12.

TRD-9902951
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 19, 1999

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The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 33. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 33. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2034), the full Board reviewed Chapter 33 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. The final review was completed at the Board Meeting on April 23, 1999.

No comments regarding this Chapter were received.

TRS finds that the reasons for adopting Chapter 33 continue to exist. As part of this review process, TRS concurrently adopts amendments to §33.1 concerning approval of an optional settlement involving a minor and §33.2 concerning payments for the account of a minor child.

TRS readopts §§33.3-33.6.

TRD-9902952
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 19, 1999

♦ ♦ ♦

The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 35. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 35. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2034), the full Board reviewed Chapter 35 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. The final review was completed at the Board Meeting on April 23, 1999. No comments regarding this Chapter were received.

TRS finds that the reasons for adopting Chapter 35 continue to exist.

TRD-9902953
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 19, 1999

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The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 37. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 37. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 2035), the full Board reviewed Chapter 37 to make a determination as to whether the reasons for adopting or readopting these rules continue to exist. No comments regarding

this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons for adopting Chapter 37 continue to exist.

TRD-9902954
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 19, 1999

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The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 39. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 39. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 2035), the full Board reviewed Chapter 39 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments regarding this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons for readopting Chapter 39 continue to exist.

TRD-9902955
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 19, 1999

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The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 41. The review and consideration were accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 41. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 2035), the full Board reviewed Chapter 41 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments regarding this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons to adopt Chapter 41 continue to exist. As a result of the review process, TRS is concurrently adopting amendments to §41.1, concerning enrollment periods for the Texas Public School Employees Group Insurance Program and §41.3, concerning the group insurance advisory committee. Also as a result of the review process, TRS is adopting the repeal of §41.11, concerning active member insurance contingency reserve fee. TRS readopts §§41.5, 41.7-41.10, 41.12, and 41.13.

TRD-9902956
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 19, 1999

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The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 43. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 43. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2035), the full Board reviewed Chapter 43 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments regarding this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons to readopt Chapter 43 continue to exist. As part of this review process, TRS is concurrently adopting amendments to § 43. 1, §§43.3-43.6, §§43.8-43.13, §43.16, §43.25, §§43.36-43.39, §43.43, §§43.45-43.47. Also as part of the review process, TRS is adopting the repeal of §43.22. TRS readopts §43.2, §43.7, §43.14, §43.15, §§43.17-43.21, §43.23, §43.24, §§43.26-43.35, §§43.40-43.42, and §43.44.

TRD-9902974
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 20, 1999

♦ ♦ ♦

The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 45. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 45. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2036), the full Board reviewed Chapter 45 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments regarding this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons for adopting Chapter 45 continue to exist.

TRD-9902975
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 20, 1999

♦ ♦ ♦

The Teacher Retirement System of Texas (TRS) readopts Title 34, Part III, Texas Administrative Code, Chapter 47. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 47. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register*(24TexReg2036), the full Board reviewed Chapter 47 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments regarding this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons to adopt Chapter 47 continue to exist. As part of this review process, TRS is concurrently adopting amendments to § 47.3 concerning review of orders, §47.5 concerning orders that are not qualified, §47.6 concerning the appeal of notice that order is not qualified. TRS readopts §47.1,§47.2, §47.4, §§47.7-47.10, and §§47.13-47.16.

TRD-9902976
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 20, 1999

♦ ♦ ♦

The Teacher Retirement System of Texas (TRS) readopts Title 34, Part III, Texas Administrative Code, Chapter 49. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 49. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2036), the full Board reviewed Chapter 49 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons to readopt Chapter 49 continue to exist. As part of this review process, TRS is concurrently adopting amendments to § 49.1 concerning administrative procedures, §49.3 concerning referrals of matters to attorney general for collection, §49.5 concerning records, and §49.7 concerning exceptions. TRS readopts §§49.2, 49.4, and 49.6.

TRD-9902977
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 20, 1999

♦ ♦ ♦

The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 51. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 51. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continues to exist. In accordance with notice published in the March 19, 1999, issue of the *Texas Register* (24TexReg2033), the full Board reviewed Chapter 51 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments regarding this Chapter were received. The final review was completed at the Board Meeting on April 23, 1999.

TRS finds that the reasons for readopting this chapter continue to exist.

TRD-9902978
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: May 20, 1999

♦ ♦ ♦

Texas Veterans Commission

Title 40, Part XV

The Texas Veterans Commission re-adopts the review of the following sections from Chapter 450, Veterans County Service Officers Certificate of Training, Chapter 451, Veterans County Service Officers Accreditation and Chapter 452, Administration General Provisions, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167:

Chapter 450 – §§450.1, 450.2, 450.3;

Chapter 451 – §451.1, §451.3;

Chapter 452 – §452.1.

The proposed review was published in the February 26, 1999, issue of the *Texas Register*.

The agency's reason for re-adopting the rules contained in these chapters continues to exist.

No comments were received regarding re-adoption of the review.

This concludes the review of Chapters 450, 451 and 452.

TRD-9902983
James E. Nier
Executive Director
Texas Veterans Commission
Filed: May 20, 1999

♦ ♦ ♦

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.

Figure: 1 TAC §251.5(g)(1)

CAPITAL RECOVERY ASSET DISPOSAL NOTICE

Complete and submit with FSR for each Capital Recovery item removed from the Capital Asset Recovery Schedule.

Description: _____

Identifying Number: _____

Date Disposed: _____

Original Recovery Value: _____

Total Amount Recovered at Date of Disposal: _____

Cost of Item Purchased to Replace this Asset: _____

Surplus/(Shortage) of Recovered Funds: _____

How was asset disposed and were any funds generated by disposal?:

_____

_____

Reason for Disposal (Check One):

____ Scheduled Replacement

____ Unscheduled Replacement

____ Damaged/Destroyed

____ Failed prematurely

Completed By: _____

Date: _____

Regional Planning Commission: _____

Figure: 1 TAC 251.5(i)

ANNUAL CERTIFICATION OF 9-1-1 PROGRAM ASSETS

This form shall be completed once each fiscal year by the Regional Planning Commission (RPC) Executive Director (or their designee) and submitted to the Advisory Commission on State Emergency Communications (ACSEC). Included with the completed form shall be a Capital Asset Recovery Schedule.

By signing below, I certify that to the best of my knowledge the following statements are accurate and true:

1. The RPC has physically accounted for all 9-1-1 Program assets listed on the attached Capital Asset Recovery Schedule (as defined by ACSEC <*>251.6) or has received certification of a physical accounting from the responsible organization for each asset in their possession.

2. All listed capital assets are in the possession of the listed responsible person and are in working condition.

3. That the attached Capital Asset Recovery Schedule has been corrected to reflect an accurate listing of capital assets as of this date.

Signed: _____

Print Name: _____

Regional Planning Commission: _____

Date: _____

Figure: 4 TAC <*>35.81(c) (2)

Interpretation of Standard plate agglutination (SPT) test Results

Test Results			Test Interpretation
1:50	1:100	1:200	
-	-	-	Negative
I	I	-	Suspect
+	I	-	Suspect
+	+	+/-	Reactor

Key: - = no agglutination; I = incomplete agglutination; + = complete agglutination

Figure: 4 TAC <*>35.81(c)(3)

Interpretation of manual complement fixation test results

Test Results	Test Interpretation
1 + 1: 10 or lower	Negative
2+ 1:10, but less than 2+ 1:20	Suspect
2+ 1:20 or higher	Reactor

Key to degree of fixation of complement: 1 + = 25%; 2 + =50%: 3 + = 75%; 4 + = 100%

Figure: 4 TAC <*>35.81 (c)(4)

Interpretation of rivanol test results

Test Results	Test Interpretation
I 1:25 or lower	Negative
Not Applicable	Suspect
+ 1:25 or higher	Reactor

Key: I - incomplete agglutination; + = complete agglutination

Figure: 4 TAC 35.81(c)(5)

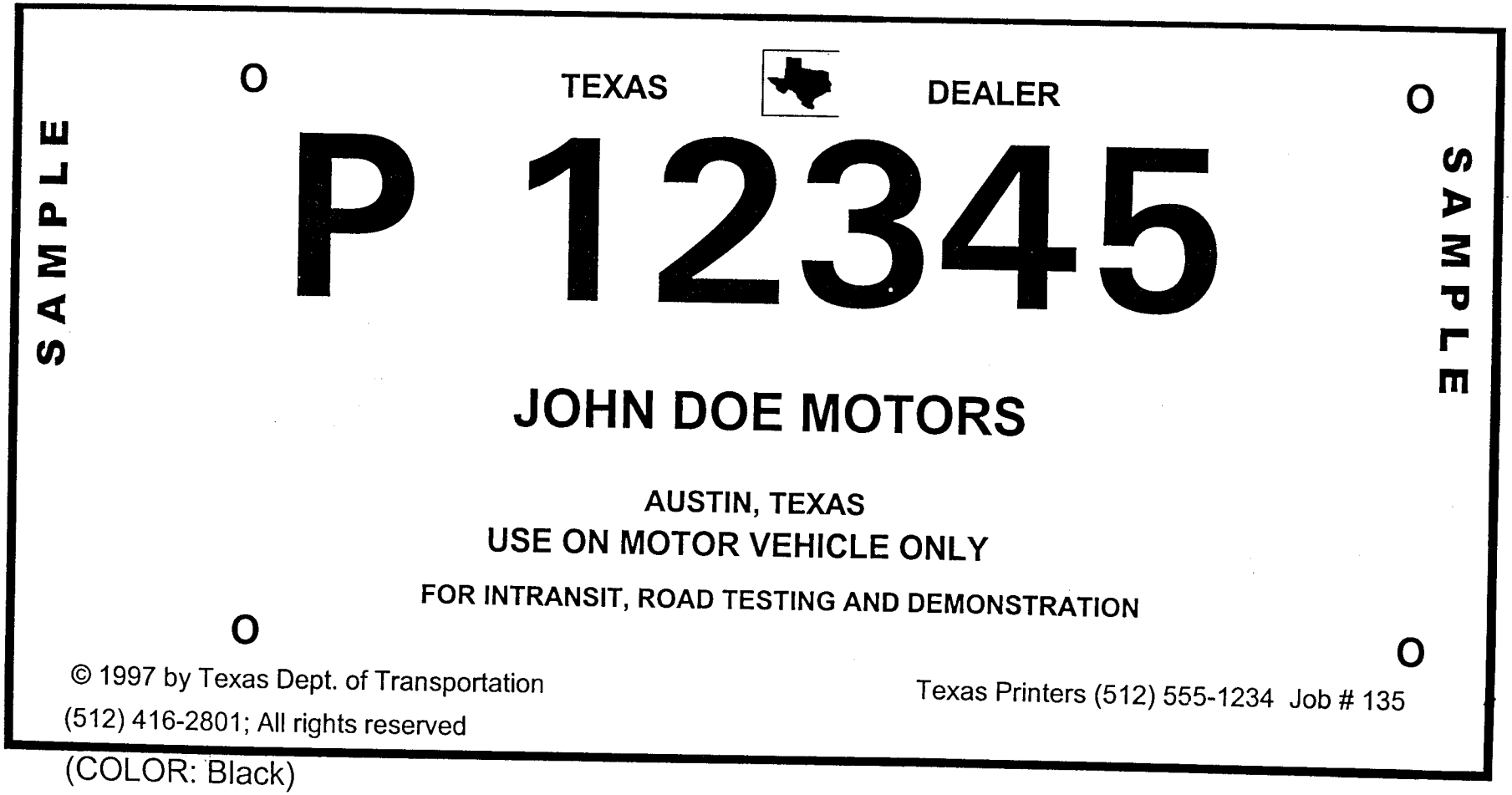
Interpretation of PCFIA test results

Test Results	Test Interpretation
S/N values greater than.6	Negative
S/N values less than or equal to 0.6 and greater than 0.3	Suspect
S/N values less than or equal to 0.3	Reactor

Figure 1: 16 TAC § 111.8(b)(1)

Appendix A-1

BLACK DEALER'S TAG
MOTOR VEHICLE



(COLOR: Black)

Figure 2: 16 TAC § 111.8(b)(1)

APPENDIX A-2

TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE

INSTRUCTIONS TO DEALER

This dealer's temporary cardboard tag may be used by the dealer to demonstrate or cause to be demonstrated his/her unregistered vehicles to prospective buyers only for the purpose of sale.

This tag may also be used to convey or cause to be conveyed a dealer's unregistered vehicles from his/her place of business in one part of the state to his/her place of business in another part of the state, or from his/her place of business to a place to be repaired, reconditioned, or serviced, or from the point in this state where such vehicles are unloaded to his/her place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing; and such vehicles displaying this tag while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.

The black and white dealer's temporary tag shall not be used to operate vehicles for the personal use of a dealer or his/her employees and shall not be used on commercial vehicles when carrying a load.

Under no circumstances will a homemade tag or unlicensed printer be permitted to be used.

INSTRUCTIONS TO PRINTER

The black and white dealer's temporary cardboard tags are to be cut 6" X 11". The tag shown on the reverse side shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The numerals and letters in the dealer number shall not be less than 2" high. These tags are to be printed with black letters and numerals on a white background. Printed matter on the tag must appear exactly as shown on the reverse side except that the dealer's number, name and address shall be the same as that shown on the General Distinguishing Number License.

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

Appendix B-2

Figure 3: 16 TAC § 111.8(b)(2)

RED INITIAL BUYER'S TAG
MOTOR VEHICLE

o BUYER TEXAS INITIAL o

JOHN DOE MOTORS **P12345**

EXPIRES:

Month Day Year

USE ON MOTOR VEHICLE ONLY **AUSTIN**

MAKE OF VEHICLE _____

VIN # _____

BUYER'S NAME _____

SALESPERSON _____

o DATE SOLD _____ o

GOOD FOR 21 DAYS ONLY FROM THE DATE SOLD

ALTERATIONS VOID THIS TAG

Texas Printers (512) 555-1234 Job # 135

(COLOR: PMS# 185)

Figure 4: 16 TAC § 111.8 (b) (2)

Appendix B-2

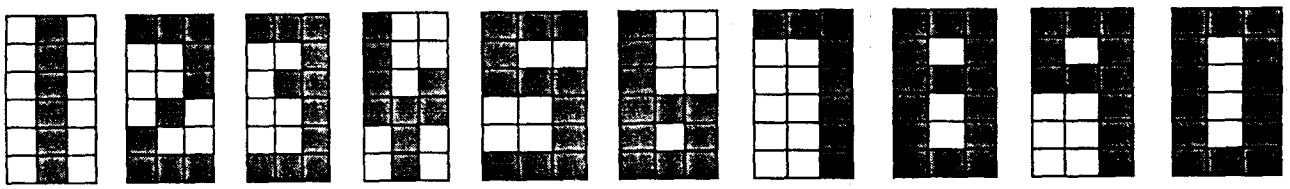
TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE (BUYER - INITIAL)

INSTRUCTIONS TO DEALER

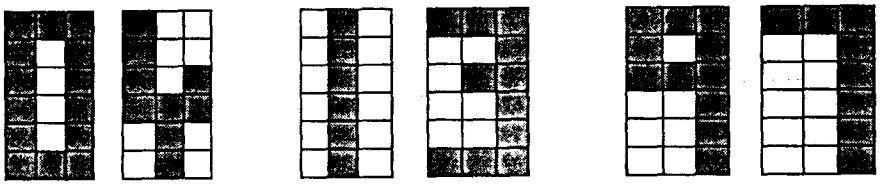
You are authorized under the Transportation Code, § 503.063, to provide each customer one red cardboard buyer's tag to be used on unregistered new or used vehicles for a period not to exceed twenty one (21) days from the date sold. You will note, however, as a dealer, it is your responsibility to see that the following information is placed on the tag:

1.	Make of Vehicle	2.	Buyer's Name
3.	VIN Number	4.	Date Vehicle Sold
5.	Salesperson's name	6.	Expiration date

Expiration dates shall be drawn in numerals with a black marking pen within the grids as shown in this sample:



Example:



Month Day Year

The Expiration Date shall be completely covered with one strip of 2" wide clear tape.

If a buyer operates an unregistered vehicle without the above information being shown, both the dealer and the buyer may be subject to a fine.

Under no circumstances will a homemade tag or an unlicensed printer be permitted to be used.

INSTRUCTIONS TO PRINTER

A licensing agreement in a form approved by the Director, must be signed and filed with the Motor Vehicle Division, TxDOT prior to printing temporary tags.

The cardboard buyer's tag is to be cut 6'' X 11''. The tag shown shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The grid for the expiration date shall not be less than 2" high. All initial buyer's tags are to be printed with RED numbers and letters on a white background. Printed matter on the plate must appear exactly as shown except that the dealer's number, name, and address shall be the same as that shown on the General Distinguishing Number License and the printer's name, telephone number and job number shall be printed as indicated.

Figure 5: 16 TAC § 111.8(b)(3)

BLUE SUPPLEMENTAL BUYER'S TAG
MOTOR VEHICLE

o BUYER TEXAS SUPPLEMENTAL o

JOHN DOE MOTORS **P12345**

EXPIRES:

Month	Day	Year

USE ON MOTOR VEHICLE ONLY **AUSTIN**

MAKE OF VEHICLE _____

VIN # _____

o DATE SOLD _____

BUYER'S NAME _____

SALESPERSON _____

o

GOOD FOR 21 DAYS ONLY FROM THE DATE ISSUED

ALTERATIONS VOID THIS TAG

Texas Printers (512) 555-1234 Job # 135

(COLOR: Reflex Blue)

Figure 6: 16 TAC § 111.8 (b)(3)

Appendix B-4

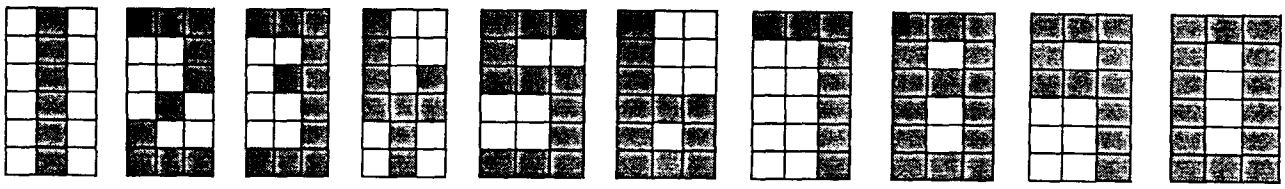
TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE (BUYER - SUPPLEMENTAL)

INSTRUCTIONS TO DEALER

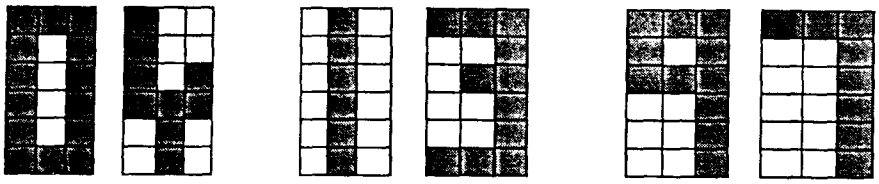
The Transportation Code § 503.063 (f), specifies conditions under which you authorized to provide a customer a blue supplemental temporary cardboard buyer's tag to be used on unregistered new or used vehicles for a period not to exceed twenty one (21) days from the date issued. You will note, however, as a dealer, it is your responsibility to see that the following information is placed on the tag:

1.	Make of Vehicle	2.	Buyer's Name
3.	VIN Number	4.	Expiration Date
5.	Salesperson's name	6.	Date Vehicle Sold

Expiration dates shall be drawn in numerals with a black marking pen within the grids as shown in this sample:



Example:



Month Day Year

The Expiration Date shall be completely covered with one strip of 2" wide clear tape.

If a buyer operates an unregistered vehicle without the above information being shown, both the dealer and the buyer may be subject to a fine.

Under no circumstances will a homemade tag or an unlicensed printer be permitted to be used.

INSTRUCTIONS TO PRINTER

A licensing agreement in a form approved by the Director, must be signed and filed with the Motor Vehicle Division, TxDOT prior to printing temporary tags.

The cardboard supplemental buyer's tag is to be cut 6'' X 11''. The tag shown shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The grid for the expiration date shall not be less than 2" high. All supplemental buyer's tags are to be printed with BLUE numbers and letters on a white background. Printed matter on the plate must appear exactly as shown on the reverse side except that the dealer's number, name, and address shall be the same as that shown on the General Distinguishing Number License and the printer's name, telephone number and job number shall be printed as indicated.

Figure 7: 16 TAC § 111.8(b)(4)

Appendix C-1

GREEN CHARITABLE ORGANIZATION TAG

MOTOR VEHICLE

o TEXAS DEALER o

JOHN DOE MOTORS P12345

EXPIRES:

Month Day Year

FOR USE ON MOTOR VEHICLE ONLY BY CHARITABLE ORGANIZATION AUSTIN

MAKE OF VEHICLE _____ CHARITABLE ORGANIZATION _____

VIN # _____ ADDRESS _____

o DATE ISSUED _____ o

GOOD FOR 30 DAYS FROM DATE ISSUED

ALTERATIONS VOID THIS TAG

Texas Printers (512) 555-1234 Job # 135

(COLOR: PMS# 339)

Figure 8: 16 TAC § 111.8 (b) (4)

Appendix C-2

TEMPORARY CARDBOARD TAG FOR CHARITABLE ORGANIZATION USE

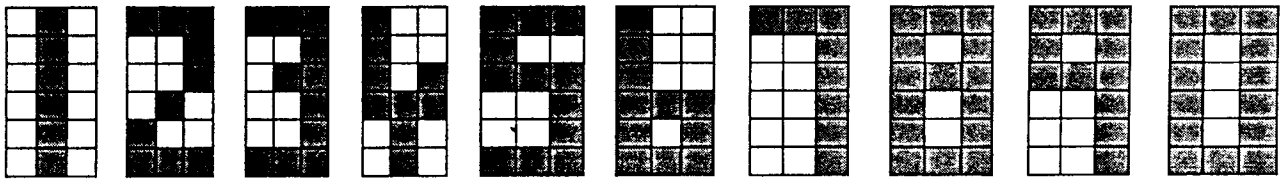
INSTRUCTIONS TO DEALER

You are authorized under the Transportation Code, § 503.062(a)(3) to use or allow the use of an unregistered vehicle by a charitable organization. A charitable organization is defined under this statute as "... one that is organized for the purpose of relieving poverty, the advancement of education, religion or science, the promotion of health, governmental or municipal purposes, or other purposes beneficial to the community without financial gain."

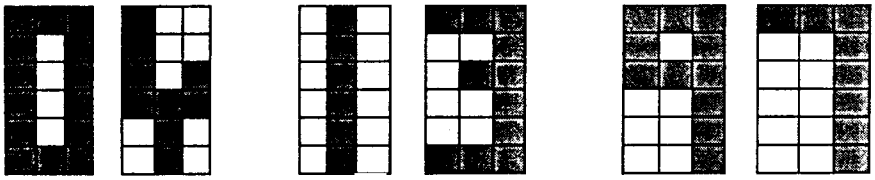
As a dealer it is your responsibility to see that the following information is shown on the front of the tag:

1. Make of Vehicle and VIN number
2. Name and Address of Charitable Organization
3. Date Tag issued
4. Expiration date

Expiration dates shall be drawn in numerals with a black marking pen within the grids as shown in this sample:



Example:



Month Day Year

The Expiration Date shall be completely covered with one strip of 2" wide clear tape.

If a charitable organization operates an unregistered vehicle without the above information being shown, both the charitable organization and the dealer may be subject to a fine.

Under no circumstances will a homemade tag or an unlicensed printer be permitted to be used.

INSTRUCTIONS TO PRINTER

A licensing agreement in a form approved by the Director, must be signed and filed with the Motor Vehicle Division, TxDOT prior to printing temporary tags.

The cardboard buyer's tag is to be cut 6'' X 11''. The tag shown shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4-1/2" centers. The grid for the expiration date shall not be less than 2" high. The tags are to be printed with GREEN numbers and letters on a white background. Printed matter on the plate must appear exactly as shown except that the dealer's number, name, and address shall be the same as that shown on the General Distinguishing Number License and the printer's name, telephone number and job number shall be printed as indicated.

Figure: 22 TAC §75.7(a)

FEE		BOARD FEE	§11B FEE	TOTAL FEE
(1)	License Renewal--Active	$125	$200	$325
(2)	Jurisprudence Examination/Re-examination	$125	$200	$325
(3)	License--Provisional (reciprocal)	$125	$200	$325
(4)	License--New	$125		
(5)	License Replacement	$25		
(6)	Annual Certificate Replacement	$10		
(7)	Certification of License	$25		
(8)	Continuing Education Course Registration (yearly fee per course)	$25		
(9)	Radiologic Technologist Application (biennial fee)	$70 [$35]		
(10)	Facilities Registration	$40		
(11)	Verification of Educational Courses/Grades	$50		
(12)	Verification of Texas Licensure (per request per chiropractor) plus $1 for postage and handling	$ 1		

[FIGURE 1: 37 TAC §6.16(b)(1)]

FEDERAL POVERTY GUIDELINES

Size of Family	Unit Poverty Guideline
1	$ 7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

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 on Aging

Service Providers for Area Agencies on Aging

The Texas Department on Aging oversees the delivery of services for the elderly of Texas through contracts with Area Agencies on Aging located throughout the state. These twenty-eight (28) Area Agencies on Aging are currently seeking qualified entities to contract with to provide services which may include, but are not limited to: Congregate Meals, Home Delivered Meals, Transportation Services, Personal Assistance, Homemaker as well as other related services.

Parties interested in providing services to the elderly must contact the Area Agency on Aging operating within their service area to obtain information relating to requests for proposals (RFP), the contract process, the types of services being considered and the actual funding available.

The following is a comprehensive list of all Area Agencies on Aging, contact information, addresses, telephone numbers and service areas:

Texas Area Agencies on Aging

Sal Almanza, Director
Alamo Area Agency on Aging
118 Broadway, Suite 400
San Antonio, TX 78205
Ph: (210) 362-5200 (800) 960-5201 (Nat'l)
Counties Served: Atascosa, Bandera, Comal, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson

Maratha Smith, Manager
Ark-Texas Area Agency on Aging
P.O. Box 5307
Texarkana, TX 75505
Ph: (903) 832-8636 (800) 372-4464 (Nat'l)
Counties Served: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus

Robert Zepeda, Director
Bexar County Area Agency on Aging
118 Broadway, Suite 400
San Antonio, TX 78205
Ph: (210) 362-5207 (800) 960-5201 (Nat'l)
Counties Served: Bexar

Ronnie Gipson, Director
Brazos Valley Area Agency on Aging
P.O. Drawer 4128
1706 East 29th Street
Bryan, TX 77805-4128
Ph: (409) 775-4244 (800) 994-4000 (State)
Counties Served: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington

Glenda Rogers, Manager
Capital Area Agency on Aging
2512 South IH 35, Suite 340
Austin, TX 78704
Ph: (512) 916-6062 (888) 622-9111 (Nat'l)
Counties Served: Bastrop, Burnet, Blanco, Caldwell, Fayette, Hays, Lee, Lano, Travis, and Williamson

H. Richard McGhee, Director
Central Texas Area Agency on Aging
302 East Central
P.O. Box 729
Belton, TX 76513
Ph: (254) 939-1886 (800) 447-7169 (Nat'l)
Counties Served: Bell, Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba

Betty Lamb, Director
Coastal Bend Area Agency on Aging
P.O. Box 9909
2910 Leopard
Corpus Christi, TX 78469
Ph: (361) 883-5743 (800) 817-5743 (State)
Counties Served: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Regugion and San Patricio

Betty Ford, Director
Concho Valley Area Agency on Aging
P.O. Box 60050
4850 Knickerbocker Road
San Angelo, TX 76906
Ph: (915) 944-9666 (800) 728-2592 (Nat'l))
Counties Served: Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton, and Tom Green

Norman Moorehead, Director
Dallas County Area Agency on Aging
400 N. St. Paul, Suite 200
Dallas, TX 75201
Ph: (214) 871-5065 (800) 548-1873 (Nat'l)
Counties Served: Dallas

Holly Anderson, Director
Deep East Texas Area Agency on Aging
274 East Lamar
Jasper, TX 75951
Ph: (409) 384-5704 (800) 435-3377 (Nat'l)
Counties Served: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler

Claude Andrews, Director
East Texas Area Agency on Aging
3800 Stone Road
Kilgore, TX 75662
Ph: (903) 984-8641 (800) 442-8845 (Nat'l)
Counties Served: Anderson, Camp, Cherokee, Gregg, Harrision, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, VanZandt, and Wood

Cindy Cornish, Director
Golden Crescent Area Agency on Aging
568 Big Bend Drive
P.O. Box 2028
Victoria, TX 77902
Ph: (512) 578-1587 (800) 574-9745 (Nat'l)
Counties Served: Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, and Victoria

Charlene Hunter-James, Director
Harris County Area Agency on Aging
8000 North Stadium Drive, 3rd Floor
Houston, TX 77054
Ph: (713) 794-9001 (800) 213-8471 (Nat'l)
Counties Served: Harris

John W. McCue, Sr., Director
Heart of Texas Area Agency on Aging
300 Franklin Avenue
Waco, TX 76701
Ph: (254) 756-7822 (800) 460-2121 (Nat'l)
Counties Served: Bosque, Falls, Freestone, Hill, Limestone, and McLennan

Curtis Cooper, Aging Programs Manager
Houston-Galveston Area Agency on Aging
P.O. Box 22777
Houston, TX 77227
Ph: (713) 627-3200 (800) 437-7396 (State)
Counties Served: Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Walker, Waller, and Wharton

Jose Gonzalez, Director
Lower Rio Grande Valley Area Agency on Aging
311 N. 15th
McAllen, TX 78501
Ph: (956) 682-3481 (800) 365-6131 (Nat'l)
Counties Served: Cameron, Hidalgo, and Willacy

Hector Flores, Director
Middle Rio Grande Valley Area Agency on Aging
307 W. Nopal St.
P.O. Box 1199
Carrizo Springs, TX 78834
Ph: (830) 876-3533 (800) 224-4262 (Nat'l)
Counties Served: Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde, Val Verde, and Zavala

Doni Van Ryswyk, Manager of Aging Programs
North Central
616 Six Flags Drive
P.O. Box 5888
Arlington, TX 76005-5888
Ph: (817) 695-9193 (800) 272-3921 (Nat'l)
Counties Served: Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, and Wise

Rhonda Pogue, Director
North Texas Area Agency on Aging
P.O. Box 5144
Wichita Falls, TX 76307
Ph: (940) 322-5281 (800) 460-2226 (Nat'l)
Counties Served: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young

Jamie Goldston, Director
Panhandle Area Agency on Aging
415 West 8th
P.O. Box 9257
Amarillo, TX 79105-9257
Ph: (806) 372-3381 (800) 642-6008 (Nat'l)
Counties Served: Armstrong, Briscoe, Carson, Castro, Childress, Colingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler

L. Cookie Wetendorf, Director
Permian Basin Area Agency on Aging
2910 Laforce Blvd.
P.O. Box 60660
Midland, TX 79711
Ph: (915) 563-1061 (800) 491-4636 (Nat'l)
Counties Served: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward and Winkler

Deborah Garcia, Director
Rio Grande Area Agency on Aging
1100 North Stanton, Suite 610
El Paso, TX 79902
Ph: (915) 533-0998 (800) 333-7082 (Nat'l)
Counties Served: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis an Presidio

Joyce Philen, Director
South East Texas Area Agency on Aging
P.O. Drawer 1387
Nederland, TX 77627
Ph: (409) 727-2384, ext. 220
(800) 395-5465 (Nat'l)
Counties Served: Hardin, Jefferson, and Orange

Robert Marshall, Director
South Plains Area Agency on Aging
1323 58th Street
P.O. Box 3730 / Freedom Station
Lubbock, TX 79452
Ph: (806) 762-8721 (800) 858-1809 (Nat'l)
Counties Served: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motely, Terry and Yoakum

Albert Rivera, Aging Services Director
South Texas Area Agency on Aging
1718 E. Calton Road
P.O. Box 2187
Laredo, Texas 78044-2187
Ph: (956) 722-3995 (800) 292-5426 (Nat'l)
Counties Served: Jim Hogg, Starr, Webb, and Zapata

Janet Pacatte, Director
Tarrant County Area Agency on Aging
210 East Ninth Street
Fort Worth, TX 76102-6494
Ph: (817) 258-8081 (877) 886-4833 (Nat'l)
Counties Served: Tarrant

Janis Thompson, Director
Texoma Area Agency on Aging
3201 Texoma Pkwy., Suite 220
Sherman, TX 75090
Ph: (903) 813-3580 or 813-3505
(800) 677-8264 (Nat'l)
Counties Served: Cooke, Fannin, and Grayson

Gail Kaiser, Director
West Central Texas Area Agency on Aging
1025 East North 10th Street
P.O. Box 3195
Abilene, TX 79604
Ph: (915) 672-8544
(800) 928-2262 (Nat'l)
Counties Served: Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Stonewall, Taylor and Throckmorton

TRD-9903115
Mary Sapp
Executive Director
Texas Department on Aging
Filed: May 26, 1999

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Office of the Attorney General

Notice of Proposed Agreed Final Judgment

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under the Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: HARRIS COUNTY, TEXAS, Plaintiff, and the STATE OF TEXAS, acting by and through the Texas Natural Resource Conservation Commission, a Necessary and Indispensable Party, v. GB BIOSCIENCES CORPORATION , Defendant, in the District Court of Harris County, Texas, 190th Judicial District.

Nature of Defendant's Operations: GB Biosciences Corporation owns and operates a chemical production plant located at 2239 Haden Road in Harris County, Texas, from which it released a chemical called Dowtherm G into the atmosphere on April 17, 1998.

Proposed Agreed Judgment: The settlement provides that GB Biosciences Corporation will implement an upgraded method for installing tubing fittings in its heat transfer fluid service and train its employees in that method to prevent recurrence of such releases. The settlement also provides that GB Biosciences Corporation will pay $25,000.00 in civil penalties and $2,000.00 in attorney's fees, to be split evenly between the State of Texas and Harris County.

For a complete description of the proposed settlement, contact Assistant Attorney General Grant Gurley at (512) 475-4009.

TRD-9903116
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: May 26, 1999

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for an electronic data processing security risk assessment. This RFP will provide a security risk assessment of network devices and resources, including identification of current vulnerable areas, the probabilities associated with each vulnerable area, and the recommended solutions, along with estimated costs associated with each of the vulnerable areas identified. Additionally, the Consultant must provide a review of the Comptroller's security infrastructure tool set, which will include identification of missing or inadequate components, a discussion of the threat or vulnerability posed by each deficiency, and recommended solutions, with estimated costs, for each inadequacy identified. Finally, the Consultant will recommend a security infrastructure for the agency's inter! net server so it can support secure financial or confidential transactions by taxpayers and vendors. The successful proposer will be expected to begin the security risk assessment on or about July 9, 1999, or as soon thereafter as practical.

Contact:

Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, June 4, 1999, between 2 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Friday, June 25, 1999.

Closing Date:

Proposals must be received in the Legal Counsel's Office no later than 2 p.m. (CZT), on Monday, July 5, 1999. Proposals received after this time and date will not be considered.

Award Procedure:

All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this

notice or the distribution of a RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows:

Issuance of RFP - June 4, 1999, 2 p.m. (CZT);

Mandatory Letter of Intent and Questions Due - June 25, 1999, 2 p.m. (CZT);

Proposals Due - July 5, 1999, 2 p.m. (CZT); and

Contract Execution - July 9, 1999, or soon thereafter as possible.

TRD-9903122
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: May 26, 1999

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 05/31/99 - 06/06/99 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 05/31/99 - 06/06/99 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.

TRD-9903103
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 25, 1999

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Texas Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on April 23, 1999, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND:Danielle Lea Bell-Odessa; Stephanie Renee Bleckner-The Colony; Nydia Mireya Cortez-Fort Worth; Jacqueline Ann Crayton-Richardson; Serena Pallett Davis-Arlington; Valerie Anneliese Dees-Mound; April Renee Eichelberger-Dallas; Bonda L. Elder-Abilene; Donna Lorraine Fisher-Dallas; Dalia Flores-Irving; Rosalinda H. Follman-Dallas; na Bernadine Garland-Grand Prairie; Cynthia Dyan Jacobs-Forney; Alicia Paulette Krajc- Mesquite; Javier De Los Santos Leal-Houston; Leslie D. Mayo-Tyler; Verne Bohdan-Mullins- Metaire, Louisiana; Jennifer Renae O'Neal-Garland; Janie Marie Pearson-Bridge City; Amy Marie Prihoda-Houston; Aimee Jacinda Rankins-Austin; Michelle Lynn Rotko-Lancaster; Joanne L. Sanchez-El Paso, Tami Lynn Slater-Cedar Hill; Jacci E. Walker-Grapevine; and Terri E. Wilson- Dallas.

ORAL STENOGRAPHY: Kyle Lynn Thomas-Houston.

TRD-9902990
Peg Liedtke
Executive Secretary
Texas Court Reporters Certification Board
Filed: May 21, 1999

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Texas Credit Union Department

Application(s) for Incorporation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a new charter was received for New Mount Zion Baptist Church Credit Union, Dallas, Texas. The proposed new credit union will serve the congregation of New Mount Zion Baptist Church of Dallas, Texas, Inc., spouses of members of New Mount Zion Baptist Church who died while within the field of membership of this credit union, employees and immediate family members of the New Mount Zion Baptist Church of Dallas, Texas, Inc., New Mount Zion Baptist Church Credit Union and New Mount Zion Baptist Church Day Care Center, Inc.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9903119
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: May 26, 1999

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Application(s) to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application for a name change was received for Galena Park Schools Credit Union, Houston, Texas. The proposed new name is GPS Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application.All information received will be weighed during consideration of the merits of an application.Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9903120
Harold E. Feeney
Commissioner

Texas Credit Union Department
Filed: May 26, 1999

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Texas Education Agency

Notice of Invitation

Eligible Proposers. The Texas Education Agency (TEA) is seeking to contract with individuals to conduct error reviews of instructional materials submitted for adoption under Proclamation 1997. Qualifications and experience required for proposers include: (1) Bachelor's or Master's degree with a concentration of courses in the specified subject area to be reviewed; (2) two or more years experience in teaching the specific subject area preferred; (3) demonstrated ability to evaluate instructional materials for accuracy preferred; and (4) in some cases, experience using instructional software such as laserdiscs and CD-ROMs (proposer must also have access to the equipment necessary to review such materials). Historically underutilized businesses (HUBS) are encouraged to participate. Each interested individual should submit a resume describing the qualifications listed in this paragraph and include information regarding awards, commendations, or other recognition of work in the specified subject areas. Prospective proposers should disclose whether they have had prior employment by publishing companies.

Description. A variety of instructional materials (e.g. textbooks, CD-ROMs, laserdiscs, etc.) have been submitted in the areas of: English Language Arts and Reading, Grades K-1; Spanish Language Arts, Grades K-1; Reading, Grades 2-3; Spanish Reading, Grades 2-3; Literature, Grades 9-12; Science, Grades 1-5; and Spanish Science, Grades 1-5. Selected proposers will review instructional materials for factual errors. The proposers will then compile a list of factual errors they have identified as well as suggested corrections and submit required reports on diskette and hard copy using an agency-specified format. Reports must be prepared on a 3.5-inch diskette in Microsoft Word 5.1 for Macintosh or Microsoft Word 6.0 for PC-compatible computer. Pre-formatted diskettes will be provided to individuals selected to conduct reviews.

The following tasks must be conducted for each set of instructional materials: (1) review instructional materials, identify factual errors, and determine suggested corrections; (2) produce a preliminary report, by July 30, 1999, using an agency-specified format, listing the identified factual errors and suggested corrections; (3) compare the preliminary report to lists of editorial changes and corrections submitted by publishers and eliminate any duplication from the preliminary report during the period of August 2, 1999, and August 20, 1999, (editorial changes and corrections are due from publishers on August 2, 1999); and (4) produce a final report, by August 20, 1999, using the agency-specified format, listing factual errors and suggested corrections that are in addition to the publishers' lists of editorial changes and corrections.

Reports are to be submitted by proposers on computer diskette and hard copy, using the agency-specified format. Proposers are required to hand deliver or use registered mail, United Parcel Service, Federal Express, or other overnight delivery services, if necessary, at the proposer's own expense, to ensure that preliminary and final reports arrive on or before July 30, 1999, and August 20, 1999, respectively. The first two to three pages of the preliminary report will be due within the first week after receipt of materials in order to confirm adherence to the required format. Instructional materials may be reviewed at the proposer's place of choice; however, proposers shall communicate in person or by phone as needed throughout the process with agency staff at the Division of Textbook Administration, (512) 463-9601, and Division of Curriculum and Professional Development, (512) 463-9581.

It is anticipated that the following numbers of individuals will be selected for each subject area: 10 for English Language Arts and Reading, Grades K-1, and Reading, Grades 2-3; nine for Spanish Language Arts and Reading, Grades K-1, and Spanish Reading, Grades 2-3; eight for Science, Grades 1-5; six for Spanish Science, Grades 1-5; and five for Literature, Grades 9-12. Assignments of materials will be made after selection of proposers is completed. Publishers will ship materials directly to the contractors after assignments have been determined.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than June 14, 1999, and an ending date of no later than August 20, 1999.

Project Amount. Payment shall be approved upon the TEA's acceptance of all work and after instructional materials have been returned to the agency. Payment amounts vary depending upon the volume of materials to be reviewed. Following are the payment ranges per set of materials (ranges are based upon the amount of material within each set): English Language Arts and Reading, Grades K-1, and Reading, Grades 2-3, will range from $150 - $300 per set; Spanish Language Arts and Reading, Grades K-1, and Spanish Reading, Grades 2-3, will range from $150 - $300 per set; Science, Grades 1-5, will range from $250 - $500 per set; Spanish Science, Grades 1-5, will range from $250 - $500 per set; Literature, Grades 9-12, will range from $100 - $500 per set.

Selection Criteria. Proposals will be selected based on the ability of each proposer to perform the evaluation tasks listed in this notice. The TEA will base its selection on the qualifications and experience listed in this notice regarding eligible proposers.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this invitation. This invitation does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this invitation does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Further Information. For clarifying information about this invitation, contact Monica Walker, Division of Textbook Administration, Texas Education Agency, (512) 463-9601.

Deadline for Receipt of Resumes. Resumes should be sent to Monica Walker, Division of Textbook Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494. Resumes should be received by Friday, June 18, 1999, to be considered. Resumes will be accepted until enough qualified proposers have been selected to fullfill TEA's obligations.

TRD-9903097
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: May 25, 1999

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Notice of Proposed Statewide Programmatic Waivers Under the Education Flexibility Partnership Demonstration Program

The Texas Education Agency (TEA) is considering adoption of proposed statewide programmatic waivers under the Education Flexibility Partnership Demonstration Program (Ed-Flex). The Texas Ed-Flex

Committee approved the proposed waivers at its May 12, 1999, meeting.

Pursuant to the Texas Ed-Flex Plan, the following waivers are to be published to elicit public comment. Comments received will be submitted to the commissioner of education for his consideration.

The proposed waivers under consideration for adoption are applicable to local education agencies (LEAs). An application for funds under the Title VI Class Size Reduction Program would constitute the application for a statewide Ed-Flex waiver. Approval of the application for funds would also constitute approval for the waiver. In some instances, final action on the waiver application might take longer than 30 days.

Waiver. Definition of "Early Elementary Grades" for the Title VI Class Size Reduction Program.

Provision(s) to be waived. Section 307(c)(2)(C)(i) of the Department of Education Appropriations Act of 1999 restricts the initial use of Title VI Class Size Reduction Program funds to early elementary grades, one through three.

Description of proposed waiver. This waiver would redefine "early elementary grades" as kindergarten through grade three for Texas school districts that will be hiring teachers under the Title VI Class Size Reduction Program.

Purpose of or rationale for proposed waiver. Research has shown that significant reductions in class size are particularly beneficial in improving student performance in the early grades. By reducing class size in kindergarten, rather than waiting until first grade, children may receive the greatest benefits.

Expected results of proposed waiver. Annual gain in Texas Assessment of Academic Skills (TAAS) reading statewide for all students and for each student group at the third grade; campus will achieve or maintain at least a rating of acceptable under the state accountability system.

Implications of proposed waiver. The effects of smaller class size will be maximized.

Waiver. Consortium requirement for application of funds for the Title VI Class Size Reduction Program.

Provision(s) to be waived. Section 307(b)(2) of the Department of Education Appropriations Act of 1999 requires an LEA with an entitlement that is less than a beginning teacher's salary to join a consortium or a shared services arrangement to participate in the Title VI Class Size Reduction Program.

Description of proposed waiver. This waiver would permit a smaller district to submit an individual application on the condition that the district use these funds in conjunction with other federal, state, or local funds to reduce class size by hiring a full- or part-time teacher to reduce class size for all or part of the day.

Purpose of or rationale for proposed waiver. The waiver will enable a smaller school district to apply for funds to hire a teacher without having to form a consortium. The teacher would be able to devote more time to instruction, instead of serving multiple districts on an itinerant basis.

Expected results of proposed waiver. Annual gain in TAAS reading for all students and each student group at the third grade; campus will achieve or maintain at least a rating of acceptable under the state accountability system.

Implications of proposed waiver. The waiver would increase the effectiveness of the services of the teacher made available through federal funds.

Additional information may be obtained from Madeleine Draeger Manigold, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, Telephone: (512) 463-9077, Facsimile: (512) 475-3666, Email: mmanigol@tmail.tea.state.tx.us.

TRD-9903098

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: May 25, 1999

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Requests for Applications

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-99-012 from public school districts, regional education service centers, institutions of higher education, and consortia of the foregoing for the development of projects that meet the educational needs for students and the skill needs of employers.

Description. The primary objective of the Career and Technology Education for State Programs: Leadership Activity Projects in Secondary Vocational and Technical Education (CATEFSP: LAPISVATE) is to develop: (1) state-wide leadership activities that support career and technology education (CATE) teachers through the continuous improvement, delivery, and implementation of the Texas Essential Knowledge and Skills (TEKS) curricula; and (2) research and professional development activities that assist CATE teachers (including those seeking certification) in planning and implementing quality instruction to students.

Dates of Project. The CATEFSP: LAPISVATE will be implemented during the 1999-2000 school year. Applicants should plan for a starting date of no earlier than September 1, 1999, and an ending date of no later than August 31, 2000.

Project Amount. The total amount of the CATESP: LAPISVATE for the fiscal year 1999 is $2,228,568. Funding will be provided for approximately 31 projects. TEA will fund projects in the following areas: up to $1,385,000 for TEKS Implementation Support Systems and up to $843,568 for projects in Research and Development. These projects are 100% federally funded.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements in the RFA established from scores awarded through a formal review process. Applicants must address all requirements set forth in the specific request for application. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and to negotiate portions thereof.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before this application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-99-012 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; or by faxing the request to (512) 463- 9811. Please refer to the RFA number in your request. For information purposes only,

a copy of the RFA may be found at the TEA web site at http://www.tea.state.tx.us. In order to be considered for funding, interested applicants must obtain an official copy of the RFA from the Document Control Center.

Further Information. For clarifying information about the RFA, contact Ward McCain, Division of Career and Technology Education, Texas Education Agency, (512) 463-9311.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday July 20, 1999, to be considered.

TRD-9903099
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: May 25, 1999

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Employees Retirement System of Texas

Request for Proposal-Actuarial Audit Services

The Employees Retirement System of Texas (ERS) is soliciting proposals from qualified firms to conduct an independent actuarial audit to determine the reasonableness, consistency and accuracy of ERS' current pension actuarial services. ERS consists of four retirement plans: three that are funded (Employees Retirement System of Texas, Judicial Retirement System of Texas - Plan Two, and Law Enforcement and Custodial Officer Supplemental Retirement Fund) and one pay-as-you-go plan (Judicial Retirement System of Texas - Plan One).

Firms wishing to respond to the Request for Proposal (RFP) must be professional actuarial services firms that provide actuarial valuation, experience investigations, actuarial audits, and pension consulting services. The firm must have been in existence as a business entity performing such services for a minimum of five years. The firm must have all necessary permits and licenses. Insurance must be in full force at the time the proposal is submitted and throughout the term of the contract. The primary principal actuary performing the work must be a Fellow of the Society of Actuaries and an enrolled actuary. Any supporting actuary must be either a Fellow; enrolled; or have ten years of pension consulting experience. The primary or principal actuary performing the work must have a minimum of ten years of experience as an actuary on pension consulting services, experience analysis, and valuation assignments for public retirement systems of at least 100,000 members and annuitants. Any supporting actuary who assists the primary or principal actuary in the performance of the work shall have five years of experience as an actuary on pension consulting services, experience analysis, and valuation assignments for public retirement systems with memberships of at least 10,000 members and annuitants. The firm must provide its own work facilities, equipment, supplies and support staff to perform the required services.

The ERS will base its evaluation and selection of vendor for the audit on the factors and criteria outlined in this notice and the RFP, including but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP; qualifications of the proposed actuarial staff; technical experience including experience with actuarial audits of other large public pension systems and experience in providing actuarial services to other large public pension systems; the quality of the proposal including a clear understanding of the scope of work and the appropriateness and adequacy of proposed procedures; and the cost of the audit.

The ERS reserves the right to reject any proposal submitted which does not meet the criteria specified in this notice and the RFP. The ERS is under no legal requirement to execute a contract on the basis of this notice. The RFP does not commit the ERS to pay any costs incurred prior to execution of a contract or to pay any costs incurred in the preparation of a response.

A copy of the complete RFP can be obtained on or after June 4, 1999. To request a copy of the RFP or for additional information, please contact Marci Sundbeck of ERS at (512) 867-7302 or email Marci at msundbeck@ers.state.tx.us.

DEADLINE:

The deadline for receipt of proposals by ERS is 3:00 p.m. CDT on July 1, 1999.

TRD-9903133
Williams S. Nail
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: May 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
BROWNSVILLE	VICTOREEN LLC	L05241	BROWNSVILLE	0	05/06/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
ARLINGTON	ARLINGTON CANCER CENTER	L03211	ARLINGTON	55	05/03/99
BURNET	DAUGHTERS OF CHARITY HEALTH	L03515	BURNET	21	05/06/99
CHILDRESS	CHILDRESS REGIONAL MEDICAL CENTER	L02784	CHILDRESS	23	05/07/99
CORPUS CHRISTI	CORPUS CHRISTI RADIOLOGY CENTER	L04493	CORPUS CHRISTI	7	05/07/99
DALLAS	MALLINCKRODT INC	L03580	DALLAS	35	05/12/99
DALLAS	PATTON BURKE & THOMPSON	L04900	DALLAS	3	05/07/99
DEL RIO	VAL VERDE REGIONAL MEDICAL CENTER	L01967	DEL RIO	16	05/11/99
DONNA	E I DUPONT DE NEMOURS & COMPANY	L04566	DONNA	4	05/12/99
EDINBURG	THE UNIVERSITY OF TEXAS PAN AMERICAN	L00656	EDINBURG	20	05/13/99
FORT WORTH	PROFESSIONAL SERVICE INDUSTRIES INC	L00931	FORT WORTH	109	04/29/99
FORT WORTH	PROBE TECHNOLOGY SERVICES	L05112	FORT WORTH	7	05/04/99
HEREFORD	HEREFORD REGIONAL MEDICAL CENTER	L03111	HEREFORD	8	05/10/99
HOUSTON	EXXON PRODUCTION RESEARCH COMPANY	L00205	HOUSTON	49	05/13/99
HOUSTON	UNIVERSITY OF HOUSTON CAMPUS SAFETY OFFICE	L01886	HOUSTON	44	05/05/99
HOUSTON	WHMC INC	L02224	HOUSTON	45	05/13/99
HOUSTON	HOUSTON NORTHWEST MEDICAL	L02253	HOUSTON	42	05/06/99
HOUSTON	HOUSTON COMMUNITY COLLEGE SYSTEM	L03099	HOUSTON	9	05/05/99
HOUSTON	CONAM INSPECTION	L05010	HOUSTON	19	05/11/99
HOUSTON	HEARD & KATZ ENGINEERING SERVICES	L05049	HOUSTON	4	05/12/99
LUBBOCK	CARDIOLOGIST OF LUBBOCK PA	L05038	LUBBOCK	2	05/06/99
LEVELLAND	COVENANT HOSPITAL LEVELLAND	L02925	LEVELLAND	14	05/05/99
LONGVIEW	LONGVIEW REGIONAL HOSPITAL INC	L02882	LONGVIEW	23	05/04/99
LUBBOCK	JOE ARRINGTON CANCER RESEARCH	L04881	LUBBOCK	13	05/04/99
LUBBOCK	CARDIOLOGIST OF LUBBOCK PA	L05038	LUBBOCK	3	05/11/99
TEXAS CITY	STERLING CHEMICAL INC	L03952	TEXAS CITY	13	05/11/99
THROUGHOUT TEXAS	CELANESE LTD	L04210	PAMPA	12	05/05/99
THROUGHOUT TEXAS	LONGVIEW INSPECTION INC	L01774	LA PORTE	147	04/12/99
THROUGHOUT TEXAS	WILSON INSPECTION X-RAY SERVICES INC	L04469	CORPUS CHRISTI	38	05/06/99
THROUGHOUT TEXAS	GULF COAST INSPECTION INC	L04934	INGLESIDE	7	05/06/99
THROUGHOUT TEXAS	GULF COAST INSPECTION INC	L04934	INGLESIDE	8	05/12/99
THROUGHOUT TEXAS	ASOMA INSTRUMENTS INC	L02788	AUSTIN	33	05/05/99
THROUGHOUT TEXAS	GOLBAL X-RAY & TESTING CORP	L03663	ARANSAS PASS	71	05/04/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
EL PASO	OUTPATIENT DIAGNOSTIC NUCLEAR MEDICINE INCORPORATED	L05199	EL PASO	2	05/03/99
SAN ANTONIO	MARTIN MARIETTA MATERIALS SOUTHWEST INC	L04768	SAN ANTONIO	3	05/13/99

SHERMAN	WILSON N JONES MEMORIAL HOSPITAL	L02384	SHERMAN	22	05/12/99
THROUGHOUT TEXAS	SMITH BROTHERS PIPE INC	L04275	MIDLAND	4	04/29/99
THROUGHOUT TEXAS	RAMEX CONSTRUCTION COMPANY	L04774	LAREDO	1	05/13/99

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-9903089
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 25, 1999

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Notice of Texas Department of Health 1999 Income Guidelines and Schedule of Charges for Clinical Health Services

Notice of Texas Department of Health 1999 Income Guidelines and Schedule of Charges for Clinical Health Services

Pursuant to Health and Safety Code, §12.032, the Texas Board of Health has adopted 25 Texas Administrative Code §1.91 concerning fees for clinical health services. Section 1.91(b) requires the Texas Department of Health to base its calculation of fees for personal health services provided directly or through contractors at public health clinics on current poverty income guidelines. Section 1.91(b) also requires the commissioner of health to adjust the income guidelines as needed to conform with changes in federal poverty income guidelines.

Under §1.91(b)(1), the commissioner of health has adopted the following adjusted income guidelines for assessment of fees for clinical health services. These income guidelines are derived from the 1999 Poverty Guidelines for the 48 Contiguous States and the District of Columbia issued by the Secretary of Health and Human Services on March 8, 1999, and published in Volume 64, Federal Register Number 52, page 13428, on March 18, 1999. For further information, please contact Linda Linville, Division Director, COPC Policy and Operations, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7771.

TEXAS DEPARTMENT OF HEALTH
1999 INCOME GUIDELINES AND SCHEDULE OF CHARGES
CLINICAL HEALTH SERVICES

Family Size	Annual Income 0 - 99% of Poverty Income	Annual Income 100 - 199% of Poverty Income	Annual Income 200 - 299% of Poverty Income	Annual Income 300% + of Poverty Income
1	0 - $8,239	$ 8,240 -$16,479	$16,480-$24,719	$24,720
2	0 - 11,059	11,060 - 21,119	22,120 - 33,179	33,180
3	0 - 13,879	13,880 - 27,759	27,760 - 41,639	41,640
4	0 - 16,699	16,700 - 33,399	33,400 - 50,099	50,100
5	0 - 19,519	19,520 - 39,039	39,040 - 58,559	58,560
6	0 - 22,339	22,340 - 44,679	44,680 - 67,019	67,020
7	0 - 25,159	25,160 - 50,319	50,320 - 75,479	75,480
8	0 - 27,979	27,980 - 55,959	55,960 - 83,939	83,940
Charges/Visit	$0.00	$5.00	$10.00	$30.00
Maximum Charge/Family	$0.00	$ 10.00	$30.00	No maximum

TRD-9903090
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 25, 1999

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Texas Department of Human Services

Notice of Consultant Contracts Amendments for Support of the Medicare Nursing Facility Case Mix and Quality Demonstration

In Accordance with the Texas Government Code, Chapter 2254, Subchapter B, Texas Department of Human Services (TDHS) publishes this notice of an amendment to one consultant contract. The notice of awards for the original contract was published in the August 17, 1993 issue of the *Texas Register* (18 TexReg 5522). The notice of the first amendment to the consultant contract was published in the July 26, 1994 issue of the *Texas Register* (19 TexReg 5784). Notice of the second amendment to the consultant contract was published in the August 11, 1995 issue of the *Texas Register* (20 TexReg 6134). Notice of the third amendment to the contract was published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7187). Notice of the fourth amendment to the contract was published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7182). Notice of the fifth amendment to the contract was published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9132).

The purpose of the contract was to provide expertise in information resources in support of automation projects administered by the Texas Department of Human Services, Office of Programs, Rate Analysis Department. The original contract and previous extensions were primarily for support of the Medicare Nursing Facility Case Mix and Quality Demonstration and related automation of resident assessment information. The state fiscal year 1999 extension included some support for development of an automated cost report evaluation system. The state fiscal year 2000 extension is for continued support of the automated cost report evaluation system.

The Texas Department of Human Services awarded the contract to Red Bluff Computing Consultants, P.O. Box 90892, Austin, Texas 78709. The total dollar amount of the original contract was $40,000, and was effective from September 1, 1993 through August 31, 1994. TDHS extended this contract through August 31, 1995 and increased the total amount of the contract by $54,000, for a revised total not to exceed $94,000. TDHS extended this contract through August 31, 1996 and increased the total amount of the contract by $54,000 for a revised total not to exceed $148,000. TDHS then extended the contract through August 31, 1997 and increased the total amount of the contract by $60,000 for a revised total not to exceed $208,000. TDHS extended this contract through August 31, 1998 and increased the contract by $46,000 for a revised total not to exceed $254,000. The Department extended this contract through August 31, 1999 and increase the contract by $66,000 for a revised total not to exceed $320,000. The Department now intends to extend the contract through August 31, 2000 and to increase the contract by $50,000 for a revised total not to exceed $370,000. The contract will be awarded to Red Bluff Computing Consultants unless a better offer is received.

Red Bluff Computing Consultants must provide all deliverables under the amended contract no later than August 31, 2000. For Information, contact Steve Lorenzen, Texas Department of Human Services, Rate Analysis Department, 701 West 51st Street MC: W-425, Austin, TX 78751, (512) 438-4951.

TRD-9903102
Paul Leche
Agency Liaison
Texas Department of Human Services

Filed: May 25, 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 do business in the State of Texas by TEXCARE HMO, INC. a domestic Health Maintenance Organization. The home office is in Richardson, Texas.

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-9903134
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 26, 1999

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The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of ARCADIA NATIONAL LIFE INSURANCE COMPANY to RELIANCE LIFE INSURANCE COMPANY, a foreign life company. The home office is in Phoenix, Arizona.

Application to change the name of BEST LIFE ASSURANCE COMPANY OF CALIFORNIA to BEST LIFE AND HEALTH INSURANCE COMPANY, a foreign life company. The home office is in Irvine, California.

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-9903129
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 26, 1999

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Third Party Administrator 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 Flexible Spending Systems, Inc., a domestic third party administrator. The home office is Grapevine, 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-9903132
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 26, 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 Mid-America Associates, Inc., a foreign third party administrator. The home office is Madison Heights, Michigan.

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-9903130
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 26, 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 American Group Administrators, Inc., a foreign third party administrator. The home office is Purchase, New York.

Application for incorporation in Texas of Southwest Medical I.P.A., P.A., a domestic third party administrator. The home office is Lubbock, Texas.

Application for incorporation in Texas of EBS Employee Benefit Services, Inc., a domestic third party administrator. The home office is San Antonio, 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-9903062
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 24, 1999

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Texas Natural Resource Conservation Commission

Consultant Proposal Request

This Consultant Proposal Request is filed under the authority of Texas Government Code, Chapter 2254, Subchapter B. The Texas Natural Resource Conservation Commission (commission) requests proposals for consulting services to: (1) identify and document, through process diagraming/flowcharting, the processes used by the commission, the Texas Parks and Wildlife Department, and the Texas Water Development Board (the agencies) to collect and manage water resource data in Texas; (2) recommend standard processes for collecting, managing, and presenting water resource data/information to the agencies; and (3) document and analyze the software/hardware architecture currently used at the agencies and recommend a future architecture that will facilitate the exchange of information between water-related entities in Texas.

To obtain a copy of the Consultant Proposal Request with specifications, please contact Mohammed Farooq, Applications Development Manager in the commission's Office of Water Resource Management, located at 12100 Park 35 Circle, Building F, Austin, TX 78753. Phone: (512) 239-6707, Fax: (512) 239-4303.

The closing date for the Consultant Proposal Request is June 23, 1999, at 3:00 p.m. The commission reserves the right to reject any and all proposals submitted, and to accept the proposal that is considered to be in the best interest of the commission. The commission may request additional information as necessary to clarify, explain, and verify any aspect of the proposal. The commission will be the sole judge of the acceptability of any proposal.

TRD-9903064
Kevin McCalla
Director, General Law Division
Texas Natural Resource Conservation Commission
Filed: May 25, 1999

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Enforcement Orders

An agreed order was entered regarding SUNPOINT AVIATION, INC., Docket Number 1998-0445-PST-E; Facility ID Numbers 34409 and 2275; Enforcement ID Number 12446 on May 19, 1999 assessing $13,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-2411 or 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 BROOKS OPERATING COMPANY, INC. DBA ROBERT'S DIAMOND SHAMROCK, Docket Number 1998-1153-PST-E; PST Facility ID Number 34726; Enforcement ID Number 5531 on May 19, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Frank Muser, Enforcement Coordinator at (512)239-6951, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. THANH DINH AND NEW SON TAN INC. CORPORATION, Docket Number 1998-1441-PST-E; PST 07306; Enforcement ID Number 13008 on May 19, 1999 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Paula Spears, Enforcement Coordinator at (512)239-4575, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SALEM G. ALI, Docket Number 1998-0226-PST-E; PST Facility ID Number 31633; Enforcement ID Number 12132 on May 19, 1999 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Tim Haase, Enforcement Coordinator at (512)239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF AMARILLO, Docket Number 1998-1288- AIR-E; Account Number PG-0176-Q; Enforcement ID Number 12812 on May 19, 1999 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLASSIC CHEVROLET, Docket Number 1998- 1145-AIR-E; Enforcement ID Number JE-0329-B; Enforcement ID Number 12954 on May 19, 1999 assessing $6,100 in administrative penalties with $1,220 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 SSRC, INCORPORATED, Docket Number 1998- 1008-AIR-E; Account ID Number EE-1980-N; Enforcement ID Number 12893 on May 19, 1999 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting 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 SILSBEE PLASTICS, INCORPORATED, Docket Number 1998-1119-AIR-E; Account Number HF-0034-K; Enforcement ID Number 12953 on May 19, 1999 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting 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 ALAMO RENT-A-CAR, INCORPORATED, Docket Number 1998-1179-AIR-E; Account Number EE-1308-F; Enforcement ID Number 12878 on May 19, 1999 assessing $1,250 in administrative penalties.

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 SAS SHOEMAKERS, INC., Docket Number 1998- 1273-AIR-E; TNRCC Air Account Number BG-1093-J; Enforcement ID Number 12915 on May 19, 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 EG & G AUTOMOTIVE RESEARCH, Docket Number 1998-1241-AIR-E; Air Account Number BG-0526-G; Enforcement ID Number 12824 on May 19, 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 MIDCON TEXAS PIPELINE OPERATOR, INC., Docket Number 1998-1328-AIR-E; Account Number FG-0200-R; Enforcement ID Number 12889 on May 19,

1999 assessing $10,200 in administrative penalties with $2,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KENNETH HADDAD DBA H & H CAR WASH, Docket Number 1998-0181-AIR-E; TNRCC Account Number EE-1091-H; Enforcement ID Number 313 on May 19, 1999 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Larry King, Enforcement Coordinator at (512)239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANGELINA COUNTY LANDFILL, Docket Number 1998-0798-MSW-E; MSW Permit Number 2105; Enforcement ID Number 12721 on May 19, 1999 assessing $26,000 in administrative penalties with $5,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512)239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B. C. UTILITIES CORPORATION DBA LAKESIDE MANOR, Docket Number 1998-0690-PWS-E; PWS Number 1010174; Enforcement ID Number 12649 on May 19, 1999 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W.D. WICKERSHAM DBA WICKS SPORTS BAR, Docket Number 1998-0597-PWS-E; PWS Number 1012793; Enforcement ID Number 12551 on May 19, 1999 assessing $469 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AUSTIN HIGHWAY WATER SUPPLY CORPORATION, Docket Number 1998-0429-PWS-E; PWS Number 0150041; Enforcement ID Number 6051 on May 19, 1999 assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM DILLON DBA ON-SITE WATER WORKS, Docket Number 1998-1220-PWS-E; PWS ID Number 2100018; Enforcement ID Number 12965 on May 19, 1999 assessing $563 in administrative penalties with $113 deferred.

Information concerning any aspect of this order may be obtained by contacting Julie Talkington, Enforcement Coordinator at (512)239-0439, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF HIDALGO, Docket Number 1998-0456- MWD-E; TNRCC WQ Permit Number 11080-001; Enforcement ID Number 9188 on May 19, 1999 assessing $15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512)239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LLANO ESTACADO WINERY, INCORPORATED, Docket Number 1998-0142-MWD-E; WQ Permit Number 03433-001 (Expired), WQ Permit Number 0003963-001; Enforcement ID Number 12142 on May 19, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512)239-3506 or 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 TRAVIS VISTA WATER & SEWER SUPPLY CORPORATION, Docket Number 1998-0116-MWD-E; TNRCC ID Number 11531-001; Enforcement ID Number 12116 on May 19, 1999 assessing $10,625 in administrative penalties with $8,185 deferred.

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 CITY OF VAN ALSTYNE, Docket Number 1998- 0513-MWD-E; Permit Number 10502-001; Enforcement ID Number 12508 on May 19, 1999 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UTILITY TECHNOLOGY, INC. & JEFFERY H. BRENNAN, Docket Number 1998-0974-MWD-E; Certificate of Competency Number 20140 (Expired); Enforcement ID Number 12323 on May 19, 1999 assessing $3,000 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 WILLIAM E. DIVIN, Docket Number 1998-0260- OSI-E; Installer Certification Number 2325; Enforcement ID Number 12285 on May 19, 1999 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512)239-5915 or Pamela Campbell, Enforcement Coordinator at (512)239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIANGLE INDUSTRIAL SERVICES, INC., Docket Number 1998-0713-IHW-E; EPA ID TXD982549008; Enforcement ID Number 12608 on May 19, 1999 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512)239-0677 or Julie McMasters, Enforcement Coordinator at (512)239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMERI-FORGE CORPORATION, Docket Number 1998-0977-IWD-E; WQ Permit Number 03767; Enforcement ID Number 8991 on May 19, 1999 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVID ALLEN COBLE, Docket Number 1998- 1248-OSS-E; OSSF Installer Certification Number 6719; Enforcement ID Number 12988 on May 19, 1999 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting 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 BILL C. HENDERSON, SR., Docket Number 1998- 0761-OSS-E; OSSF Installer Certification Number 1087; Enforcement ID Number 12626 on May 19, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Brian Lehmkuhle, Enforcement Coordinator at (512)239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GARRY HARDIN, Docket Number 1996-1871-LII- E; TNRCC License Number LI0005581; Enforcement ID Number 10120 on May 19, 1999 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512)239-4706 or Merrilee Gerberding, Enforcement Coordinator at (512)239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding JIMMY SMITH, Docket Number 1997-0963-PST-E; SOAH Docket Number 582-98-1699 on May 11, 1999 assessing $13,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney at (512)239-0682 or Seyed Miri, Enforcement Coordinator at (512)239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9903107
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 25, 1999

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Notice of Applications for Industrial Hazardous Waste Permits/Compliance Plans and Underground Injection Control Permits

Attached are Notices of Applications issued during the period of April 13, 1999 thru May 24, 1999.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 45 days (unless otherwise noted) after newspaper publication of the notice.

To request a 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 permit 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 application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application (new permit, amendment, renewal) and permit number.

COGEMA MINING, INC., West Cole Mine Paa 2, P.O. Box 228, Bruni, Texas 78344, an in situ uranium mine undergoing ground water restoration, has applied for a restoration table amendment to a production area authorization UR02463-021. The West Cole mine is in Webb County 40 miles east of Laredo and two miles north of Bruni on the west side of Farm Road 2050. Mining started in West Cole Production Area No. 2 in January 1982. Restoration began in December 1989 using groundwater sweep, reverse osmosis, and injection of water from an underlying aquifer. Since restoration started, 19.01 pore volumes or approximately 181 million gallons of aquifer water have been removed. One pore volume equals 9.6 million gallons. The proposed amendment would change the restoration table in accordance with 30 TAC 331.107. (30 days from date of newspaper publication.)

CHEMICAL WASTE MANAGEMENT INC. OF PORT AURTHUR (CWMPA), P.O. Box 2563, Port Arthur, Texas 77643-2563 has filed an application with the Texas Natural Resource Conservation Commission (TNRCC) for a new Underground Injection Control (UIC) Permit No: WDW-358 which authorizes the construction and operation of an industrial, noncommercial, hazardous and nonhazardous waste injection well. CWMPA facility is located on Texas Highway 73, 7 miles west of Port Arthur, Texas. The applicant currently operates an industrial, noncommercial, hazardous and nonhazardous waste management facility which includes a permitted waste injection well, WDW-160. CWMPA injects into WDW-160, hazardous and nonhazardous wastes generated by the permittee's onsite and company owned off-site facilities. WDW-358 will be used as a backup to WDW-160. The proposed injection zone is 5,140 to 7,200 feet below ground level.

ETHYL CORPORATION, located north of State Highway 225 on Ethyl Road near the intersection of South Street and Ethyl Road on a 420 acre tract of land (of which, Ethyl owns approximately 206 acres) in Pasadena, Harris County, Texas, has applied for a renewal/major

amendment of hazardous waste permit (Permit No. HW-50156) and renewal/major amendment of compliance plan (Compliance Plan No. CP-50156). Ethyl Corporation operates a terminal operation for the storage of lead antiknock compounds. The permit would authorize the continued operation of a non-hazardous industrial solid waste landfill and post-closure care for four surface impoundment areas closed as hazardous industrial waste landfills. The compliance plan renewal will require the permittee to continue to monitor the concentrations of hazardous constituents in groundwater and remediate ground-water to specific standards.

TRD-9903104
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 25, 1999

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Notice of District Application for Standby Fees

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 19 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for authority to adopt and impose an annual non-uniform operations and maintenance (O&M) standby fee ranging from $12 in the unimproved acreage in the District to $235 in Riverwood Village, Sections One and Three, per vacant single-family connection (ESFC) for the calendar years 1999 through 2001. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TNRCC.

The TNRCC may grant a contested case hearing on these applications if a written hearing request is filed within 30 days after the newspaper publication of this notice. The Executive Director may approve the applications unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and 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, Texas 78711-3087. For information concerning hearing process, 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-9903106
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 25, 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 **July 4, 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 July 4, 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: Mamie Dell Baker; DOCKET NUMBER: 1998-1129-MWD-E; IDENTIFIER: Permit Number 12962-001; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.127(17), §319.7(d), Permit Number 12962-001, and the Code, §26.121, by failing to submit monthly effluent reports; and THSC, §341.041, by failing to pay all required wastewater inspection fees and public health service fees; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239- 4482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Gene Thompson dba Big Bend Motor Inn; DOCKET NUMBER: 1998-1079- PWS-E; IDENTIFIER: Public Water Supply Number 0220027; LOCATION: Study Butte, Brewster County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(c)(1)(B), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.46(f)(1)(A) and (2), and (n), by failing to provide a free chlorine residual of 0.2 milligrams per liter (mpl), to maintain records of the chlorine and test results for at least three years, and to develop and maintain a continuously updated map of the distribution system; and 30 TAC §290.44(d) and §290.46(u), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system; PENALTY: $1,688; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(3) COMPANY: Jimmy Lenamond dba Big Creek West Subdivision Water System; DOCKET NUMBER: 1998-0521-PWS-E; IDENTIFIER: Public Water Supply Number 1470032; LOCATION: Groesbeck, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and (ii), by failing to satisfy the well capacity requirements of 1.5 gpm per connection and by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.39(g), by failing to provide written notification prior to the installation of a new pressure tank; 30 TAC §290.51 and the THSC, §341.041, by failing to pay public health service fees; and 30 TAC §291.76 and the Code, §13.541,

by failing to pay the water regulatory assessment fees; PENALTY: $300; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Circle Ten Council of the Boy Scouts of America dba Camp Cherokee; DOCKET NUMBER: 1998-1450-PWS-E; IDENTIFIER: Public Water Supply Number 1070210; LOCATION: Athens, Henderson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(b)(1), by failing to collect repeat bacteriological samples at active service connections; and 30 TAC §290.105 and the THSC, §341.33(d), by exceeding the maximum contaminant level for total coliform bacteria; PENALTY: $938; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: City of Conroe; DOCKET NUMBER: 98-1349-MSW-E; IDENTIFIER: Municipal Solid Waste Number 81A; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.281(b) and §330.283(b), by failing to establish financial assurance for closure and post-closure care; PENALTY: $8,800; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Corpus Christi; DOCKET NUMBER: 1998-1391-PWS-E; IDENTIFIER: Public Water Supply Number 1780003; LOCATION: Corpus Christ, Nueces County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(l)(B) and (U), by failing to maintain a chloramine residual of 0.5 mpl and by failing to maintain a minimum pressure of 35 psi through the distribution system; 30 TAC §290.45(b)(2)(G) and (H), by failing to meet the elevated storage capacity requirement of 100 gallons per connection and by failing to provide the required emergency power on a system which serves more than 250 connections and does not meet the elevated storage requirements; 30 TAC §290.43(c)(6), by failing to maintain potable water storage tanks tight against leakage; 30 TAC §290.42(d) and Paragraph (2)(B), by failing to prevent the potential for mixing filtered and unfiltered water within the filtration plant and by failing to have sufficient height of the air relief piping, extending vertically through the filters from the under drain levels; and 30 TAC §290.44(h), by failing to provide the executive director with evidence of compliance with the requirement of testing, certification, and installation of backflow prevention assemblies by a backflow prevention tester; PENALTY: $14,175; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(7) COMPANY: Farco Mining, Inc.; DOCKET NUMBER: 1999-0103-IWD-E; IDENTIFIER: Permit Number 03595; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: mine; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by failing to apply for a permit renewal prior to the permit expiration date; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Eric Reese, (512) 239-2611; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(8) COMPANY: Granite Investments, Ltd. dba Oasis Texaco #1; DOCKET NUMBER: 98-1183-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 53301; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72, by failing to report within 24 hours the monitoring results from a release detection method that indicates a release may have occurred and by failing to follow procedures in 30 TAC §334.74, relating to release investigation and confirmation steps; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Lori R. Haynie, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79606-7833, (915) 698- 9674.

(9) COMPANY: Charles Burgin dba Kar Korral; DOCKET NUMBER: 1998-1341-AIR-E; IDENTIFIER: Account Number KF-0073-I; LOCATION: Kerrville, Kerr County, Texas; TYPE OF FACILITY: used auto sales; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale to the public a vehicle with a missing emission control device; PENALTY: $400; ENFORCEMENT COORDINATOR: Patrick Casey, (210) 403-4037; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(10) COMPANY: Nations Way Transport Service, Incorporated; DOCKET NUMBER: 1998- 1443-AIR-E; IDENTIFIER: Account Number EE-1956-K; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: trucking service; RULE VIOLATED: 30 TAC §115.252(2) and the THSC, §382.085(b), by transferring gasoline from a storage vessel which may ultimately be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure greater than 7.0 psi absolute; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(11) COMPANY: The City of Needville; DOCKET NUMBER: 1998-1457-MWD-E; IDENTIFIER: Permit Number 10343-001; LOCATION: Needville, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10343-001 and the Code, §26.121, by failing to comply with the effluent limits of the permit; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Phillips 66 Company; DOCKET NUMBER: 1998-1356-IWD-E; IDENTIFIER: Registration Number L-111185; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §321.133(c)(2)(A) and the Code, §26.121, by failing to meet the 0.25 mpl maximum effluent limitation for lead and 0.05 mpl for benzene; and the Texas Pollutant Discharge Elimination System General Permit Number TXG83000 (Registration Number TXG830002), by failing to meet the 0.005 mpl maximum effluent limitation for benzene; PENALTY: $1,360; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Pineland; DOCKET NUMBER: 1998-1374-MSW-E; IDENTIFIER: Municipal Solid Waste Registration Number 40054; LOCATION: Pineland, Sabine County, Texas; TYPE OF FACILITY: transfer station; RULE VIOLATED: 30 TAC §330.150(3) and (12), by failing to obtain the required containers in accordance with the site operating plan prior to acceptance of scrap tires and white goods, maintain the sump drain area in a manner so as to prevent the on-site population of disease vectors, and install a pad and bumper at the hopper; and 30 TAC Chapter 285 and the Code, §26.121, by failing to prevent the discharge of transfer station wash water and sewage and by disposing of the wash water and sewage into the on-site sewer system which is not authorized or permitted to receive these wastes; PENALTY: $4,375; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Prewash and Pressing Services, Incorporated; DOCKET NUMBER: 1999-0050-AIR-E; IDENTIFIER: Account Number EE-1515-V; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: laundry; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by discharging air contaminants in such concentration and of such duration as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Carol Dye, (512) 239-1504; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(15) COMPANY: Reynolds Metals Company; DOCKET NUMBER: 1998-1343-AIR-E; IDENTIFIER: Account Number TA-0236-L; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: metal can manufacturing plant; RULE VIOLATED: 30 TAC §122.121, §122.130(b), and the THSC, §382.085(b) and §382.054, by continuing to operate without a federal operating permit and by failing to submit a timely and complete abbreviated initial federal operating permit application; and 30 TAC §335.323 and the THSC, §361.134, by failing to pay the required hazardous and non-hazardous waste generation fees; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(16) COMPANY: Safety-Kleen Systems, Incorporated; DOCKET NUMBER: 1998-1344-AIR-E; IDENTIFIER: Account Number DF-0042-K; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: solvents recovery plant; RULE VIOLATED: 30 TAC §122.121, §122.130(b), and the THSC, §382.085(b) and §382.054, by continuing to operate without a federal operating permit and by failing to submit a timely and complete abbreviated initial federal operating permit application; and 30 TAC §;335.324, 335.323, 335.325, 335.331, 334.21, 334.128(a), the Act, §361.135 and §361.134, and the Code, §26.358(d), by failing to pay outstanding hazardous waste facility fees, underground storage tank registration annual fees, above ground storage tank registration annual fees, hazardous waste generation fees, and management fees; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(17) 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, §330.5, 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.

(18) COMPANY: Craton Taylor dba 4-T Water Company dba Heritage Oak Addition; DOCKET NUMBER: 1999-0254-PWS-E; IDENTIFIER: Public Water Supply Number 2200090; LOCATION: Mansfield, Tarrant County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1), (f)(2)(B), (j), and (p)(2), and the Code, §341.033(a), by failing to ensure that the system is operated under the direct supervision of a "D" certified water works operator, perform chlorine residual tests at representative locations in the distribution system, perform an annual pressure tank inspection, and complete customer service inspection certifications; 30 TAC §290.44(d) and §290.46(u), by failing to provide a minimum operating pressure of 35 psi throughout the distribution system; 30 TAC §290.106(a)(1), by failing to develop a sample siting plan; 30 TAC §290.45(b)(1)(A), by failing to provide minimum water system capacity requirements of a well capacity 1.5 gpm per connection and a pressure tank capacity of 50 gallons per connection; and 30 TAC §290.41(c)(1)(F), (3)(J), and (K), by failing to obtain and record at the county courthouse a sanitary easement for the well site, provide a concrete sealing block extending at least three feet in all directions from the well, and seal the well head; PENALTY: $2,188; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(19) COMPANY: Tetco Stores, L.P. and North Dallas Petroleum, Inc.; DOCKET NUMBER: 1999-0016-PST-E; IDENTIFIER: PST Facility Identification Number 17533; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(2) and the Code, §26.039, by failing to report, within 24 hours of the discovery, a suspected release when unusual operating conditions of underground storage tank systems were observed by owners or operators; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239-2142; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(20) COMPANY: Mr. James Williams; DOCKET NUMBER: 1998-1323-SLG-E; IDENTIFIER: Sludge/Septage Transporter Number 21121; LOCATION: Silsbee, Hardin County, Texas; TYPE OF FACILITY: sludge transportation; RULE VIOLATED: 30 TAC §312.143 and the Code, §26.121, by failing to dispose of septic tank sludge at a designated facility; 30 TAC §312.144(f), by failing to label discharge valves and ports on transporter tank; 30 TAC §312.145(b)(2), by failing to maintain trip tickets for five years; 30 TAC §312.147(a), by failing to dispose of stored septic tank sludge within four days; and 30 TAC §312.142(b), by failing to submit a complete transporter registration application; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-9903088
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 25, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of May 19, 1999 through May 24, 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.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 191 has applied for a renewal of TNRCC Permit Number 12556-001, which authorizes the discharge of treated domestic wastewater at a daily flow nto to exceed 600,000 gallons per day. The plant site is located 2,000 feet south of Farm-to-Market Road 1960 and 2,000 feet west of Cutten Road in Harris 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.

CITY OF MERKEL has applied for a renewal of TNRCC Permit Number 10786-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The plant site is located approximately 2,500 feet north and 3,800 feet east of the intersection of Interstate Highway 20 and Farm-to-Market Road 126 in Taylor County, Texas.

CITY OF SINTON has applied for a renewal of TNRCC Permit Number 10055-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The plant site is located south of Chiltipin Creek between Highway 77 and the Missouri Pacific Railroad tracks in San Patricio County, Texas.

CITY OF TEAGUE has applied for a renewal of TNRCC Permit Number 10300-001, 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 near the intersection of West 11th Street and Fillmore Street; approximately 4,000 feet west of the intersections of Farm-to-Market Road 80, Jackson Street and Mulberry Street in Freestone County, Texas.

SOUTHWESTERN PUBLIC SERVICE COMPANY has applied for a major amendment of Permit Number 01842 to authorize an increase in the daily average flow from 1,500,000 gallons per day to 4,176,000 gallons per day. The current permit authorizes a discharge of cooling tower blowdown, low volume waste sources, metal cleaning wastes and stormwater which will remain the same. The applicant operates an electric power plant. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located on the east side of Farm-to-Market Road 1055 approximately four miles south of the City of Earth. The plant site and disposal area are located in the drainage basin of Blackwater Draw which is a tributary of the North Fork of the Double Mountain Fork Brazos River in Segment Number 1241 of the Brazos River Basin, Lamb County, Texas.

SCHENECTADY INTERNATIONAL, INC., FM 523, Freeport, Texas 77541, has applied for a major amendment to TNRCC Permit Number 01961 to authorize increased mass- based effluent limitations for oil and grease, phenols, and biochemical oxygen demand applicable to discharges via internal Outfall 101 and to remove the single grab value for phenols applicable to discharges via internal Outfall 101. The current permit authorizes the discharge of treated process wastewater at a daily average flow not to exceed 1,400,00 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0067946 issued on July 31, 1987 and TNRCC Permit Number 01961 issued on December 8, 1995. The applicant operates an alkyl phenol/petrochemical plant.

SPRING INDEPENDENT SCHOOL DISTRICT, has applied for a renewal of TNRCC Permit Number 11811-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The plant site is located at 922 Wunsche Loop Road west of the City of Spring in Harris County, Texas.

TEXAS ELECTRIC COOPERATIVES, INC. has applied for a renewal of TNRCC Permit Number 01766, which authorizes the discharge of storm water and previously monitored effluents (non-contact cooling water, boiler blowdown, and storm water) on an intermittent and flow variable asis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0006351 issued on December 9, 1988 and TNRCC Permit Number 01766. The applicant operates a wood pole preserving plant. The plant site is located on Bevil Loop Road approximately 0.6 miles south of U.S. Highway 190 and southeast of the City of Jasper, Jasper County, Texas.

CITY OF CLEBURNE, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0002267 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10006-002. The draft permit authorizes the discharge of filter backwash at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on County Road 1111, approximately two miles southwest of the City of Cleburne, in Johnson County, Texas.

SOUTHWEST UTILITIES, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10694-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on the east side of Sellers Road, approximately 700 feet north of the intersection of Hollyvale and Sellers Road in Harris County, Texas

TEXAS PARKS AND WILDLIFE DEPARTMENT, 4200 Smith School Road, Austin, Texas 78744, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11722001, 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 about 3,000 feet northwest of the intersection of Farm-to-Market Road 1988 and Farm-to-Market Road 3126 and 300 feet east of Farm-to-Market Road 3126 in Polk County, Texas.

CITY OF FULSHEAR has applied for a renewal of TNRCC Permit Number 13314-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The plant site is located on a tract of land bounded by Farm to Market Road 1093 and Sante Fe Pacific Railroad, approximately 1,000 feet west southwest of the intersection of Farm to Market Road 1093 and Farm to Market Road 359, in the City of Fulshear in Fort Bend County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 81 has applied for a renewal of TNRCC Permit Number 13051-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The plant site is located approximately ten miles northwest of Rosenberg, Texas and three miles south southwest of Fulshear in Fort Bend County, Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 49 has applied for a renewal of TNRCC Permit Number 11919-001, 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 14907 Ralston Road approximately 400 feet north of the Beltway 8 and approximately 2,500 feet east of Garners Bayou in Harris County, Texas.

Harris County Municipal Utility District Number 276 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12927- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site for Interim I is located approximately 800 feet west of the intersection of State Highway 6 and West Little York Road and approximately 100 feet south of West Little York Road in Harris County, Texas. The Interim II and Final

site is located approximately 2,500 feet west of the intersection of State Highway 6 and West Little York Road and approximately 1,000 feet south of West Little York Road in Harris County, Texas.

JHR ENTERPRISES INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14035-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 1500 feet southwest of the intersection of U.S. Highway 59 and Farm-to-Market Road 2914 and on the west side of US Highway 59, approximately 4.2 miles south of Shepherd in San Jacinto County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TNRCC Permit Number 13412-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 380 gallons per day. The plant site is located approximately 3,000 feet northwest of the intersection of U.S. Highway 181 and Farm-to-Market Road 1074 and approximately 1.5 miles southeast of the intersection of the U.S. Highway 181 and Farm-to-Market Road 881 at the Texas Department of Transportation Area Engineering and Maintenance Office Site in San Patricio County, Texas.

WEST HOUSTON AIRPORT CORPORATION has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0089907 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12516-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. The plant site is located on Lakeside Airport property at 18000 Groeschke Road in Harris County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Noumber 11967-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located approximately 2,300 feet west of State Highway 105 and approximately 4,500 feet northwest of the intersection of State Highway 105 and Farm-to-Market Road 1131 in Orange County, Texas.

MOVIMEX COMPANY,has applied for a renewal of TNRCC Permit Number 12527-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located at 14718 Kuykendahl Road between Farm-to-Market Road 1960 and Interstate Highway 45 in Harris County, Texas

HUFFMAN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 11518-001, 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 in the southeast corner of the Willie J. Hargrave Senior High School site, approximately 0.5 mile west of the intersection of Huffman-Eastgate Road and Farm-to-Market Road 1960 in Harris County, Texas.

PRESTONWOOD FOREST UTILITY DISTRICT has applied for a major amendment to TNRCC Permit Number 11089-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The plant site is located at 14210 Prestonwood Forest Drive, approximately 3,100 feet east of the intersection of Cypress Creek and Farm-to- Market Road 149, nine miles southeast of the City of Tomball in Harris County, Texas.

BISHOP CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11754-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located northeast of the intersection of County Road 23 and Farm-to-Market Road 665 in the Town of Petronila in Nueces County, Texas.

MIDWAY LANDOWNERS ASSOCIATION, INC. has applied for a renewal of TNRCC Permit Number 12455-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on the southern bank of Turkey Creek, approximately 1,500 feet north of Farm-to-Market Road 1960, approximately 1.5 miles east of Aldine Westfield Road in Harris County, Texas.

PALMER PLANTATION MUD NUMBER 1 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12937-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located approximately 6,000 feet south-southeast of the intersection of State Highway 6 and Senior Road, 2.2 miles southeast of the intersection of State Highway 6 and Farm-to-Market Road 1092 (Stafford-De Walt Road), south of the City of Missouri City in Fort Bend County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 148 has applied for a renewal of TNRCC Permit Number 11818-001, 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 at 11750 Currin Forrest Drive, approximately 1,600 feet south-southeast of the intersection of North Lake Houston Parkway and Kings Lake Forrest Drive in Harris County, Texas

U.S. ARMY CORPS OF ENGINEERS has applied for renewal of an existing wastewater permit. The applicant has an existing national pollutant discharge elimination system (NPDES) permit number Tx0057991 and an existing texas natural resource conservation commission (TNRCC) permit number 12087-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000 gallons per day. The plant site is located at whitney lake dam powerhouse approximately 1.0 mile east of the intersection of state highway 22 and farm-to-market road 56 in Bosque county, Texas.

POLONIA WATER SUPPLY CORPORATION, P.O. Box 778, Lockhart, Texas 78644, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14033-001, to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 6,000 gallons per day. The plant site is located at the northwest side of Farm-to-Market Road 1854 at its junction with Caldwell County Road Noumber 189, 0.25 mile southeast of the community of Dale and one mile northwest of the intersection of Farm-to-Market Road 1852 and State Highway 20 in Caldwell County, Texas.

MEMORIAL HILLS UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11044-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located immediately south of Cypress Creek, approximately 600 feet north and 600 feet east of the intersection of Farm-to-Market Road 1960 and Hardy Road in Harris County, Texas.

BRAZOS RIVER AUTHORITY has applied for a renewal of TNRCC Permit Number 11071-001, which authorizes the discharge of treated

domestic wastewater at a daily average flow not to exceed 37,800,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 37,800,000 gallons per day. The plant site is located on the southwest bank of the Brazos River, approximately 4.5 miles downstream from the crossing of Interstate Highway 35 and the Brazos River in McLennan County, Texas.

BRAZORIA COUNTY FRESH WATER SUPPLY DISTRICT #1 has applied for a renewal of TNRCC Permit Number 11130-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 165,000 gallons per day. The plant site is located the east side of State Highway 36, approximately 1,100 feet southeast of the intersection of Farm-to-Market Road 1462 and State Highway 36, northeast of the City of Damon in Brazoria County, Texas.

CITY OF MORGAN'S POINT has applied for a renewal of TNRCC Permit Number 10779- 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 at the southwest corner of the intersection of Barbours Cut Boulevard and North Wilson Street in Harris County, Texas.

CITY OF LEAGUE CITY has applied for a renewal of TNRCC Permit Number 10568-007, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The plant site is located on Gum Bayou, 0.75 mile south of Farm-to-Market Road 1266 and 1.75 miles west of State Highway 146 in Galveston County, Texas.

LAKE OAKS LANDING, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13039-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number13039-001 will replace TNRCC Permit Number 13039-001. The plant site is located approximately four miles south and 1,600 feet east of the intersection of State Highway 156 and U.S. Highway 190, on Lake Livingston in San Jacinto County, Texas.

CHAMP'S WATER COMPANY, 103 Heather Lane, Conroe, Texas 77385, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10436-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The plant site is located at 1714 Sandy Dale in Western Homes Subdivision in Harris County, Texas.

CITY OF PECAN GAP has applied for a renewal of TNRCC Permit Number 10744-001, 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 0.5 mile west and 0.3 mile south of the intersection of Farm-to-Market Road 64 and Farm-to-Market Road 128 and immediately west of South Third Street in Delta County, Texas.

CHARTERWOOD MUNICIPAL UTILITIES DISTRICT,1001 Fannin, Suite 800, Houston, Texas 77002, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0046841 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11410-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11410-002 will replace the existing NPDES Permit Number TX0046841 issued on November 24, 1992 and TNRCC Permit Number 11410-002.

SOUTHERN MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT, 25212 I-45 North, Spring, Texas 77386, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11001-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located at 852 Rayford Road, approximately 3,500 feet north of Spring Creek and approximately 4,000 feet east of Interstate Highway 45 in Montgomery County, Texas.

HOUSTON SOLVENTS AND CHEMICALS COMPANY, Inc. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0086002 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02449. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001 and Outfall 002. The plant site is located at 11235 Farm-to-Market Road 529, approximately 0.5 miles southwest of the intersection of U.S. Highway 290 and Farm-to- Market Road 529 near the City of Jersey Village in Harris County, Texas.

CITY OF PINEHURST has applied for a renewal of TNRCC Permit Number 10597-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located at 3000 Gull Street in the City of Pinehurst in Orange County, Texas.

CITY OF ALBANY has applied for a renewal of TNRCC Permit Number 10035-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 290,000 gallons per day. The plant site is located approximately one mile southeast of the intersection of U.S. Highways 180 and 283; approximately 3,200 feet east of U.S. Highway 283 in Shackelford County, Texas.

WHITE RIVER MUNICIPAL WATER DISTRICT has applied which authorizes the discharge of treated domestic weastewater effluent at a daily average flow not to exceed 900,000 gallons per day. The plant site is located on the north side of Farm-to-Market Road 2794, approximately 6.5 miles east-southeast of the intersection of Farm-to-Market Roads 2794 and 651, approximately 16.5 miles south southeast of the City of Crosbyton in Crosby County, Texas.

CITY OF BURNET has applied for a renewal of TNRCC Permit Number 10793-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 726,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 245 acres. The plant site is located approximately 1,400 feet southeast of Southern Pacific Railroad Bridge crossing Hamilton Creek in Burnet County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit Number 10495-146, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,400,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,400,000 gallons per day. The plant site is located north of the West Fork Arm of Lake Houston, approximately 4.5 miles east of U.S. Highway 59 between Bear Branch and Bens Branch, approximately 7.75 miles northeast of the intersection of U.S. Highway 59 and Farm-to-Market Road 1960 in Harris County, Texas.

CITY OF SAN SABA has applied for a renewal of TNRCC Permit Number 10687-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day. The plant site is located 2,000 feet north of U.S. Highway 190 and 6,000 feet east of State Highway 16 in the City of San Saba in San Saba County, Texas.

MLR MANAGEMENT, INC. has applied for a renewal of TNRCC Permit Number 12149-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located southwest of the intersection of Greens Road and Morales Road in the City of Houston in Harris County, Texas.

CITY OF ALVORD has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10036-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 112,000 gallons per day. The plant site is located approximately 2500 feet south of Farm-to-Market Road 1655 adjacent to Elm Creek at a point approximately $\frac{1}{2}$ mile southwest of the business district of the City of Alvord in Wise County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 16 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11386-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 177,000 gallons per day. The plant site is located south of the intersection of Hickory Lane and Tupelo Lane approximately two miles north of New Caney in Montgomery County, Texas.

XIU HUI LI MCCULLOCH has applied for a renewal of TNRCC Permit Number 13084-001, 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 approximately 1,600 feet northwest of the intersection of Aldine-Westfield Road and Hartwick Road and approximately 2,300 feet south of Halls Bayou in Harris County, Texas.

CITY OF FRANKLIN, has applied for a renewal of TNRCC Permit Number 10440-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located 1,000 feet southeast of U.S. Highway 79 and one mile southwest of the intersection of U.S. Highway 79 and Farm-to- Market Road 46 in the City of Franklin in Robertson County, Texas.

DANIEL MEASUREMENT AND CONTROL, INC., has applied for a renewal of an existing wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02731. The draft permit authorizes the discharge of stormwater via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfall 002. The applicant operates from the Houston Plant, a flow measurement equipment manufacturing facility. The plant site is located 9720 Old Katy Road in the City of Houston, Harris County, Texas.

BISSONNET MUNICIPAL UTILITY DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11461-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located at 13026 Bissonnet on the northeast corner of the intersection of Synott Road (Farm-to-Market Road 1876) and Old Richmond Road (Bissonnet) in Harris County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 41, IN CARE OF SCHWARTZ, PAGE & HARDING, L.L.P., has applied for a renewal of TNRCC Permit Number 12475-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 86,000 gallons per day. The plant site is located approximately 1,500 feet northwest of the intersection of Voss Road and Old Richmond Road and approximately 5,000 feet west-northwest of the intersection of State Highway 6 and Voss Road in Fort Bend County, Texas.

CITY OF KEMP, P.O. Box 449, Kemp, Texas 75143, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10695-001, 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 one and one-half mile southwest of the City of Kemp in Kaufman County, Texas.

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 13653-001, 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 approximately 4.73 miles due south of the City of Magnolia central business district on the west side of Nichol Sawmill Road in Montgomery County, Texas.

MNC/TELGE HUFFMEISTER CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14032-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately 2,000 feet west of Telge Road and approximately 8,850 feet south of the intersection of Telge Road and Grant Road in Harris County, Texas.

CITY OF SWEETWATER has applied for a major amendment to TNRCC Permit Number 10373-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 2,000,000 gallons per day to a daily average flow not to exceed 2,200,000 gallons per day and change the method of disposal from irrigation to surface water discharge with the option to irrigate 365 acres of pasture land. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 365 acres of pasture land. The plant and disposal site are located on County Road 109, approximately 0.6 mile north of the intersection of Farm-to- Market Road 1856 and Interstate Highway 20 in Nolan County, Texas.

CITY OF SEAGOVILLE has applied for a renewal of TNRCC Permit Number 10370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The plant site is located approximately 0.65 of a mile northeast of the intersection of Malloy Bridge Road and U.S. Highway 175 and approximately 0.5 of a mile north of U.S. Highway 175 in Dallas County, Texas.

ZAVALA COUNTY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14006-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 4,000 feet south of the intersection of Farm-to-Market 1433 and Farm-to-Market Road 65 on the south side of Crystal City in Zavala County, Texas.

RITA KARBALAI has applied for a renewal of TNRCC Permit Noumber 12399-001, 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 at 12117 Aldine-Westfield Road, 4,000 feet south of the intersection of Aldine-Westfield Road and Aldine Mail Road; 3.5 miles east of the intersection of Interstate Highway 45 and Farm-to-Market Road 149 in Harris County, Texas.

HOLNAM, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0006629 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 00456. The draft permit authorizes the discharge of authorized stormwater, non- contact cooling water, and truck wash water at a daily average flow not to exceed 7,000 gallons per day via Outfall 001. The plant site is located the 9600 block of Clinton Drive in the City of Galena Park in Harris County, Texas.

BCD SERVICES, INC. has applied for a renewal of TNRCC Permit Number 12344-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 1,500 fee south of U.S. Highway 90, on the eastern bank of Cedar Bayou in Liberty County, Texas

TRD-9903108
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 25, 1999

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Notice of Water Rights Applications

J. I. Ginnings, 900 8th Street, Suite 820, Wichita Falls, Texas 76301, applicant, seeks a permit pursuant to 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The applicant seeks authorization to divert an amount not to exceed 797.4 acre-feet per year from the Red River for irrigation of 498 acres of land within four tracts totaling 725 acres in the William Lankford Survey, Abstract No. 705, Grayson County, Texas.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of the notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit 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.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 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-9903105
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 25, 1999

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Public Notice

The Texas Natural Resource Conservation Commission (commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (the Act) to identify and assess hazardous waste facilities or areas that may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. Pursuant to the Act, §361.181 the commission must update this state Superfund registry annually to add new facilities, or to delete those facilities that have been cleaned up pursuant to the Act, §361.189. The first registry identifying those sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). The current notice also includes all facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

Pursuant to the Act, §361.188 the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment is, in descending order of hazard ranking scores (HRS), as follows:

1. Col-Tex Refinery, both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: Oil refinery and tank farm.

2. Houston Scrap, 3799 Jensen Drive, Houston, Harris County: Aluminum, battery and lead recycling.

3. Double R Plating Company, on County Road 3544, approximately three miles northwest of the intersection of U.S. 59 and Farm Road 96, near Queen City, Cass County: Metal refinishing company.

4. Precision Machine, 500 West Olive Street, Odessa, Ector County: Machine and chrome plating shop.

5. Sonics International, Inc., north of Farm Road 101, approximately two miles west of Ranger, Eastland County: Soil around wellheads of two industrial waste injection wells.

6. Maintech International, 8300 Old Ferry Road, Port Arthur, Jefferson County: Chemical cleaning and equipment hydroblasting.

7. Federated Metals, 9200 Market Street, Houston, Harris County: Landfill for magnesium dross and sludge.

8. Gulf Metals, on Telean Street, northeast of the intersection of Mykawa Road and Almeda- Genoa Road, Houston, Harris County: Disposal of hazardous materials.

9. Texas American Oil, approximately three miles north of Midlothian on Old State Highway 67, Ellis County: Waste oil recycling.

10. Niagara Chemical, west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: Pesticide formulation.

11. International Creosoting, 1110 Pine Street, Beaumont, Jefferson County: Wood preserving plant.

12. McBay Oil & Gas, approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: Oil refinery and reclamation plant.

13. Solvent Recovery Services, 5502 Farm Road 521, approximately 0.2 mile south of its intersection with Texas 6, Arcola, Fort Bend County: Paint solvent recycling facility.

14. Harris Sand Pits, 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: Inactive sand and clay quarry used for disposal of sulfuric acid tar sludge.

15. JCS Company, north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: Battery recycling facility.

16. Jerrell B. Thompson, north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: Battery recycling facility.

17. Butler Ranch, 11.8 miles west of Falls City off Farm Road 791, Karnes County: Two abandoned uranium mining pits containing drums of hazardous substances.

18. Hayes-Sammons Warehouse, Miller Avenue and East Eighth Street, Mission, Hidalgo County: Commercial grade pesticide storage.

19. Jensen Drive Scrap, 3603 Jensen Drive, Houston, Harris County: Scrap salvage facility.

20. Baldwin Waste Oil Company, on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: Waste oil processing facility.

21. Hall Street, north of intersection of 20th Street East with California Street, north of Dickinson, Galveston County: Landfill/ open field dumping.

22. Unnamed Plating, 6816-6824 Industrial Avenue, El Paso, El Paso County: Metals processing and recovery facility.

Pursuant to the Act, §361.184(a) a list of those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state registry, is set out in descending order of HRS as follows:

1. Kingsland, starting from the 900 block of Farm to Market Road 1431, then west to the intersection of Farm to Market Road 1431 and Ranch Road 2545 in the community of Kingsland, Llano County: Groundwater plume.

2. J. C. Pennco Waste Oil Service, 4927 Higdon Road, San Antonio, Bexar County: Waste oil and used drum recycler.

3. Phipps Plating, 305 East Grayson Street, San Antonio, Bexar County: Metal plating.

4. Pioneer Oil and Refining Co., 20280 South Payne Road, outside of Somerset, Bexar County: Oil refinery facility.

5. Higgins Wood Preserving, inside the bordering streets of North Timberland Drive (U.S. 59) on the west, Warren Street on the east, and Paul Avenue on the north, Lufkin, Angelina County: Wood preserving facility.

6. Marshall Wood Preserving, 2700 West Houston Street, Marshall, Harrison County: Wood pressure treatment facility.

7. Thompson-Hayward Chemical Company, on the east side of U.S. 277, 0.5 mile south of Munday, Knox County: Pesticide formulating facility.

8. Old Lufkin Creosoting, 1411 East Lufkin Avenue, Lufkin, Angelina County: Wood preserving facility.

9. Materials Recovery Enterprises, about 4 miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial solid waste management site.

10. Harvey Industries, Inc., southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: Television cabinets and circuit board manufacturing.

11. American Zinc, approximately 3.5 miles north of Dumas on U.S. 287, and 5 miles east on Farm Road 119, Moore County: Zinc smelter.

12. Toups, on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105 in Sour Lake, Hardin County: Fence post treating facility.

13. Aztec Ceramics, 4735 Emil Road, San Antonio, Bexar County: Tile manufacturing.

14. Hart Creosoting, south of Jasper on the west side of U.S. 96, approximately one mile south of U.S. 190, Jasper County: Wood treatment facility.

15. Permian Chemical Company, 325 Pronto Avenue (formerly listed as 1901 Pronto Road), southeast of Odessa, Ector County: Hydrochloric acid and potassium sulfate manufacturer.

16. Sampson Horrice, 2000 and 2006 Plainfield Drive (formerly listed as 8460 Sparrow Street and 1 Sparrow Street), Dallas, Dallas County: Inactive gravel pit that illegally accepted hazardous and solid waste.

17. Barlow's Wills Point Plating, south side of U.S. 80, approximately 3.4 miles east of its intersection with Texas 64, in Wills Point, Van Zandt County: Electroplating facility.

18. Poly-Cycle Industries, Inc. on Texas 75 about 0.5 miles north of Palmer, Ellis County: Storage and disposal facility for lead-acid battery chips (plastic and rubber).

19. Tricon America, Inc., 101 East Hampton Road, Crowley, Tarrant County: Aluminum and zinc melting and casting facility.

Since the last annual publication on November 20, 1998, the commission has determined that one facility, Jerrell B. Thompson, poses an imminent and substantial endangerment to public health and safety or the environment, and pursuant to the Act, §361.188 is hereby listed on the state Superfund registry.

To date, 15 sites Aztec Mercury, Brazoria County; BestPlate, Inc., Dallas County; Hagerson Road Drum, Fort Bend County; Hi-Yeld, Hunt County; Houston Lead, Harris County; LaPata Oil Company, Harris County; Munoz Borrow Pits, Hidalgo County;

Newton Wood Preserving, Newton County; PIP Minerals, Liberty County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Waste Oil Tank Services, Harris County and Wortham Lead Salvage, Henderson County have been deleted from the state registry pursuant to the Act, §361.189.

The public records for each of the sites are available for inspection and copying during regular commission business hours at the commission's Records Management Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone 1-(800) 633-9363 (within Texas only) or (512) 239-2920. Copying of file information is subject to payment of a fee.

TRD-9903063
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 24, 1999

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Texas Department of Protective and Regulatory Services

Correction of Error

The Texas Department of Protective and Regulatory Services adopted amendments to §§725.6050–725.6052. The rules appeared in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3732).

Due to agency error, on page 3732, §725.6050(4) should read:

"(4) Human services field-a field of study designed to prepare an individual in the disciplined application of social work values, principles, and methods."

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Public Utility Commission of Texas

Notices of Applications for Approval of Intralata Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 14, 1999, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Peoples Telecommunications, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Project Number 20879.

The Application: The intraLATA plan filed by Peoples Telecommunications, Inc. (Peoples) provides a proposal that, upon implementation, would provide customers with the ability to route intraLATA toll calls automatically, without the use of access codes, to the telecommunications services provider of their designation. Peoples holds a Certificate of Operating Authority (COA) to serve the Quitman and Winnsboro exchanges. Peoples informs the commission that it has not begun providing local exchange service but will implement intraLATA equal access concurrent with local exchange service. Peoples plans to begin providing local exchange service in the Quitman exchange on or around September 1, 1999, and in the Winnsboro exchange on or around September 1, 2000.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before June 11, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20879.

TRD-9903101
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 14, 1999, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Santa Rosa Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Project Number 20882.

The Application: The intraLATA plan filed by Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) provides a proposal that, upon implementation, would provide customers with the ability to route intraLATA toll calls automatically, without the use of access codes, to the telecommunications services provider of their designation. Santa Rosa holds a Certificate of Operating Authority (COA) to serve the Seymour exchange. Santa Rosa informs the commission that it has not begun providing local exchange service but will implement intraLATA equal access concurrent with local exchange service. Santa Rosa plans to begin providing local exchange service on or about June 1, 1999.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before June 11, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20882.

TRD-9903100
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 1999

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Notices of Applications for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 18, 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 Columbia Telecommunications, Inc., d/b/a aXessa for a Service Provider Certificate of Operating Authority, Docket Number 20742 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange access services and optional features, local exchange usage services, and intrastate interexchange services.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Dallas Local Access and Transport Area.

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 June 9, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902961
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 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 May 19, 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 CommcoTec Corporation for a Service Provider Certificate of Operating Authority, Docket Number 20895 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange and intrastate interexchange telecommunications services.

Applicant's requested SPCOA geographic area includes the geographic area served by all incumbent local exchange companies throughout the 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 June 9, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902987
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 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 May 20, 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 NET-tel Corporation for a Service Provider Certificate of Operating Authority, Docket Number 20898 before the Public Utility Commission of Texas.

Applicant intends to offer local service to residential and business customers on a resold basis.

Applicant's requested SPCOA geographic area includes all areas served by incumbent local exchange companies throughout the 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 June 9, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902988
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 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 May 18, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 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 Reliant Energy HL&P to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Harris and Galveston Counties, Docket Number 20887 before the Public Utility Commission of Texas.

The Application: In Docket Number 20887, Reliant Energy HL&P (HL&P) requests approval of four line segments totaling 28.2 miles of 138-kV transmission line. The four line segments are as follows: Webster - Virginia Point Corridor, Virginia Point Corridor - Virginia Point Terminal, Virginia Point Terminal - 8-Mile Road Terminal, and 8-Mile Road Terminal - Stewart. The proposed project will be located within Harris and Galveston Counties. The proposed project is necessary to ensure an adequate supply of electricity to: (1) satisfy expected load growth on Galveston Island, and (2) enhance reliability of service to the island. This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at PO 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-9902943
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 1999

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Notice of Application to Revise Purchased Power Cost Recovery Factor

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 7, 1999, for authority to revise purchased power cost recovery factor, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §32.101(b) and §36.205 (Vernon 1998).

Docket Style and Number: Application of Southwestern Public Service Company for: (1) Authority to Revise its Purchased Power Cost Recovery Factor; and (2) Related Good-Cause Waiver. Docket Control Number 20853.

The Application: Southwestern Public Service Company is proposing to amend its purchased power cost recovery factor to provide for the factor to be fixed annually and the purchased power costs correction amount to be an annual calculation and to use the estimated annual sales for the rate class for the current year. Any correction amount will be trued up to actual costs each year and reflected in the succeeding year's factor, eliminating month-to-month variations. The proposed change will become effective upon commission approval and will remain in effect until revised by the commission. All classes of Southwestern Public Service Company's Texas retail customers will be affected by this application.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than June 21, 1999, the Public Utility Commission of Texas, PO 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 telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9902946
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 1999

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Notices of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Cypress Fairbanks Independent School District (ISD) in Houston, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File a New Plexar-Custom Service for Cypress Fairbanks ISD in Houston, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20886.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for a new PLEXAR-Custom service for Cypress Fairbanks ISD in Houston, 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 Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston 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-9902944
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 1999

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for State of Texas Auditor in Austin, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File a New Plexar-Custom Service for State of Texas Auditor in Austin, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20900.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for a new PLEXAR-Custom service for State of Texas Auditor in Austin, 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 Austin exchange, and the geographic market for this specific PLEXAR-Custom service is the Austin 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-9903033
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 1999

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Public Notices of Interconnection Agreements

On June 10, 1999, MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively MCI), Brooks Fiber Communications of Texas, Inc. (Brooks), and MFS Communications Company, Inc. (MFS) are scheduled to file their interconnection agreements with Southwestern Bell Telephone Company (SWBT) 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 interconnection agreements are to be filed pursuant to the arbitration award in *Complaint of MCI, Brooks, and MFS against SWBT Regarding Delivery of Telephone Directories*. The petition for arbitration has been designated Docket Number 20224. The petition for arbitration and the underlying interconnection agreements will be available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement that is a result of arbitration. Pursuant to FTA §252(e)(2) the commission may reject any agreement resulting from an arbitration award if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the commission pursuant to FTA §251, or the standards set forth in FTA§252(d). 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 30 days after it is submitted by the parties.

Pursuant to the commission's procedural rules, public comment is allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments regarding the agreement by filing 13 copies

of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on MCI, Brooks, MFS and SWBT. The comments should specifically refer to Docket Number 20224. Such comments shall be limited to whether the agreement meets the requirements of FTA and relevant portions of state law. The comments shall be filed by June 17, 1999. If the comments request rejection or modification of the agreement, the interested person must provide the following information:

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) does not meet the requirements of FTA § 251, including any Federal Communications Commission regulation implementing FTA § 251; or

b) is not consistent with the standards established in FTA § 252(d); or

c) is not consistent with other requirements of state law.

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.

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 20224.

TRD-9902989
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 1999

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On May 10, 1999, Southwestern Bell Telephone Company and Dakota Services Limited, 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 20859. 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 20859. 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 June 22, 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 20859.

TRD-9902962
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 1999

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On May 11, 1999, Southwestern Bell Telephone Company and Snappy Phone of Texas, 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 20867. 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 20867. 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 June 22, 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 20867.

TRD-9902963
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 1999

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On May 18, 1999, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and BasicPhone, 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 20890. 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 20890. 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 June 23, 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 20890.

TRD-9902964
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 1999

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On May 18, 1999, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and Dakota Services Limited, 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 20892. 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 20892. 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 June 23, 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 Public Utility Commission 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 20892.

TRD-9902965
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 1999

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On May 18, 1999, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and dPi-Teleconnect, 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 20893. 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 20893. 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 June 23, 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 Public Utility Commission 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 20893.

TRD-9902966
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 1999

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On May 18, 1999, Southwestern Bell Telephone Company and Ciera Network Systems, 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 20894. 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 20894. 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 June 23, 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 Public Utility Commission 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 20894.

TRD-9902967
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 1999

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Public Notice of Reporting Form for COAs and SPCOAs

The Public Utility Commission of Texas (commission) proposes new application forms relating to Certificates of Operating Authority (COAs) and Service Provider Certificates of Operating Authority (SPCOAs). Project Number 19582 has been assigned to this proceeding. The proposed new forms will be used in conjunction with the commission' proposed rules §26.109 relating to Standards for Granting of Certificates of Operating Authority (COAs), §26.111 relating to Standards for Granting of Service Provider Certificates of Operating Authority (SPCOAs), and §26.113 relating to Amendment of Certificates of Operating Authority (COAs) or Service Provider Certificates of Operating Authority (SPCOAs). The proposed sections were published in the April 2, 1999 *Texas Register* (24 TexReg 2586).

Copies of the proposed forms will be available in the commission's Central Records Division under Project Number 19582 on June 4, 1999. Written comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 by June 25, 1999. All comments should refer to Project Number 19582.

Any questions pertaining to the proposed forms should be directed to Gordon Van Sickle at (512) 936-7343 or Ericka Kelsaw at (512) 936-7282. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903109
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 1999

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Public Notice of Workshop and Public Hearing on Procedural Rules, Subchapter E, Relating to Pleadings

The Public Utility Commission of Texas (commission) will hold a combination workshop and public hearing for the review of its Procedural Rules, Subchapter E, §§22.71 - 22.80 on Wednesday, July 7, 1999, at 9:00 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 20364 is assigned to this proceeding. Discussions at the workshop will focus on the proposed review and amendments to Subchapter E as published in the March 12, 1999, *Texas Register* at 24 TexReg 1844 (review) and 24 TexReg 1708 (amendments).

Questions concerning the workshop or this notice should be referred to Rhonda Dempsey, Office of Regulatory Affairs, (512) 936-7308. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9902945
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 1999

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Office of the Secretary of State

Professional Engineering Services-Request for Qualifications #195009

Purpose:

To research and gather information to submit an application to the Border Environment Cooperation Commission (BECC) to obtain certification of water and wastewater hook-ups in the colonias of the Texas border.

The Office of the Secretary of State (SOS) is inviting engineering firms to submit their qualifications and experience related to this project. Your submittal should include an explanation of your firms commitment and interest in this project.

Project Description:

The SOS will apply for BECC certification of approximately 15,000 water and wastewater hook-ups in the colonias of the Texas border region. The certification should be accomplished in December 1999, at the BECC Board of Director's Meeting. This will be the first state application the BECC has received on behalf of residents and communities in the state's border region. The proposed 15,000 hook-ups is part of a larger project entitled the TEXAS Plan that creates a strategy to connect a total of 25,000 homes (100,000 colonia residents). The TEXAS Plan for hook-ups, which includes 13 counties, will be fully implemented in the next three years in coordination with the Texas Water Development Board (TWDB) projects funded under the Economically Distressed Areas Program (EDAP) that are providing the mainline infrastructure in Texas border communities.

The BECC certification to be achieved will focus on eighteen communities located in nine counties between El Paso and Brownsville. The proposed timeline for completing the certification process through the BECC begins in June 1999 and terminates with full certification in December 1999. The BECC certification will allow those communities certified to seek grant funds from the North American Development Bank (NADBank) from the Border Environment Infrastructure Fund (BEIF).

The SOS intends to contract with an engineering firm to provide the following services:

1) Conduct an assessment of the technical feasibility of the water and wastewater hook-ups for each community certified by the BECC under the TEXAS Plan, possibly including basic design and specifications of yardlines and hook-ups to the household.

2) Conduct a cost-per-connection assessment that defines the proposed hook-up funding necessary to finance the entire BECC certification package.

3) Evaluate the social, environmental, and economic benefits and costs of the hook-ups to be provided to each community under the BECC certification.

4) Coordinate, with the SOS Coordinator of Colonia Initiatives, the funding package from state and binational agencies for all 25,000 hook-ups, but most specifically, the 15,000 hook-ups to be BECC certified.

5) Develop, with the SOS Coordinator of Colonia Initiatives, a comprehensive regional public outreach and participation plan to satisfy BECC requirements.

6) Coordinate research and information gathering with the TWDB and other state agency staffs on the EDAP projects (which serve as the core of the BECC certification process) to complete all necessary information required by the BECC application.

7) Assist the SOS Coordinator of Colonia Initiatives to develop a coordinated interagency hook-up implementation strategy to complete the TEXAS Plan.

8) Develop an outreach program that can identify those families and individuals eligible for assistance in the communities targeted by the BECC application, including recommendations on how to organize to enroll customers, what information should be gathered, and identifying the resources needed to successfully complete the TEXAS Plan.

9) Develop and promote sustainable development criteria for the long-term success of the water and wastewater hook-ups to be provided under the BECC certification.

10) Provide technical assistance to local communities to be served by hook-ups certified by the BECC, including the development of the financing package (grant funds) to be provided to the local colonia residents and interagency coordination with the local political

subdivision sponsoring the hook-ups (i.e. local water district, municipality, etc).

11) Coordinate all application activities with technical staff from the BECC and NADBank to guarantee full compliance with BECC procedural requirements.

Vendor's Response:

1. The Vendor Information sheet must be completed and returned as the cover sheet of your response.

2. Submit, on company letterhead, an explanation of your firms commitment and interest in this project, specifying your availability in accordance with our proposed timeline.

3. List all key personnel to be assigned to the project and their qualifications and experience.

4. Response must be **received by 5:00 p.m. on June 14, 1999.**

Request for Qualifications #195009
Vendor Information

Company:_____

Contact:_____

Address:_____

_____

Phone:_____

Fax:_____

Email:_____

Vendor ID#_____

_____
(signature of vendor's authorized representative)

Your response must be received at the address below no later than 5:00 p.m. on June 14, 1999.

Send responses to:
Mary Jon Urban
Purchasing Manager
Secretary of State
P.O. Box 12887
Austin, TX 78711-2887

-OR-

Deliver to:
1019 Brazos, Suite 405
Austin, TX 78701-2413

Filed: May 26, 1999

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TRD-9903117
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State

Texas State Soil and Water Conservation Board

Extension of Request for Public Comment - State Brush Control Plan

The Texas State Soil and Water Conservation Board (Board) announces the extension of the public review and comment period for the State Brush Control Plan.

Written comments will be accepted for a period of 30 days from the date this notice is published.

The draft document is available by contacting Richard Egg at 254/773-2250. Comments on the document should be submitted to Mr. Egg, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503-0658. The deadline for comments is 5:00 p.m., Monday, July 5, 1999.

TRD-9903123
Robert G. Buckley
Executive Director
Texas State Soil and Water Conservation Board
Filed: May 26, 1999

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Texas Department of Transportation

Public Notice

Pursuant to §26.45 of 49 CFR Part 26, the Texas Department of Transportation will conduct a series of public meetings to receive comments on the methods for establishing the Disadvantaged Business Enterprise goals for fiscal year 2000 for: Federal Highway Administration funded contracts or grants; Federal Transit Administration contracts or grants for planning, capital and/or operating assistance; and Federal Aviation Administration grants for airport planning or development.

The first meeting will be held at 1:30 p.m. on Friday, June 18, 1999, at 125 East 11th Street, Austin, Texas 78701, in the first floor hearing room.

The second meeting will be held at 1:30 p.m. on Wednesday, June 23, 1999, at 4777 East Highway 80, Mesquite, Texas, in the Dallas Room.

The third meeting will be held at 1:30 p.m. on Thursday, June 24, 1999, at 1430 Joe Battle Boulevard (Loop 375/Americas Ave.) El Paso, Texas.

The fourth meeting will be at 1:30 p.m. on Wednesday, June 30, 1999, at 7721 Washington Avenue, Houston, Texas in the Main Conference Room.

The fifth meeting will be at 1:30 p.m. on Thursday, July 1, 1999, at 600 West U.S. Expressway 83, Pharr, Texas in the Assembly Room.

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 if possible. Persons with disabilities who have special communication or accommodation needs and who plan to attend one of the hearings 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 Eugenia Humphries, Construction Division, 105 East Riverside Drive, Austin, Texas 78704, (512) 703-5829 at least two working days prior to the hearing so that appropriate arrangements can be made.

For additional information please contact Cynthia Gonzales, Construction Division, 105 East Riverside Drive, Austin, Texas 78704, (512) 703-5837.

TRD-9903114
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: May 26, 1999

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Public Notice-Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation published a notice for a public hearing in the May 28, 1999, issue of the *Texas Register*. This revised notice adds additional agenda items for consideration at the hearing. The department will receive comments from interested parties concerning proposed approval of the following: construction services at the Beaumont Municipal Airport; design and construction services at the Lockhart Municipal Airport; and adding the Brownsville/South Padre Island International Airport to the "Small Market Air Service Needs Assessment." The department has previously received comments at public hearings held on January 11, 1999, and April 6, 1999, for the remaining airports included in the Small Market Air Service Needs Assessment.

The public hearing will be held at 9:00 a.m. on Monday, June 14, 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 have special communication or accommodation needs and 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-9903113
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 26, 1999

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The University of Texas System

Request for Information (RFI) - FCC Matters

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its component institutions in communications law matters involving the Federal Communications Commission (FCC). This RFI is issued to establish (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific communications law matters as the need arises.

Description. The U. T. System, with offices in Austin, Texas, is composed of six health institutions and nine academic institutions located in eleven cities in Texas. Distance learning, radio, television and journalism curriculum, research activities and other educational pursuits at each institution result in the need for various licenses and permits to be obtained from the FCC in order to operate non-commercial FM radio stations and low power UHF educational channels; construct various antenna and satellite dish structures; and to expand and enhance current telecommunications networks involving distance learning via a virtual campus program linking the component institutions and other telecommunications links with institutions of higher education in the United States and Mexico. Subject to approval by the Texas Attorney General, the U.T. System may engage outside counsel to prepare, file, prosecute, maintain and renew various permits, licenses and license applications with the FCC. U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of the U. T. System's Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in communications law, the names, experience, and scientific or technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and communications matters in particular; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's communications law matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (4) confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or delivered in person, marked "Response to Request for Information," and addressed to Robert Giddings, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (fax: (512) 499-4523; telephone (512) 499-4462 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U. T. System at the address set forth above no later than 5:00 p.m., Friday, July 9, 1999.

TRD-9903125

Francie A. Frederick
Executive Secretary, Board of Regents
The University of Texas System
Filed: May 26, 1999

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Request For Information (RFI) - Federal Tax Matters

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its component institutions in certain federal tax matters. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific federal tax matters as the need arises.

Description. The U. T. System comprises six health component universities and nine academic component universities supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, the Permanent University Fund, the Available University Fund, grants, gifts, sponsored research and other sources of revenues, all of which may be impacted by the Internal Revenue Code and Regulations of the Internal Revenue Service. Subject to approval by the Texas Attorney General, U. T. System will engage outside legal counsel to provide legal counsel and advice to the U. T. System on matters pertaining to federal income, estate, gift, employment, and excise taxes. This legal counsel and advice will include, but not be limited to, the following: matters regarding taxation of any kind, representation in tax audits, appeals of tax issues, tax hearings before administrative law judges and magistrates, appeals to IRS appeals officers, district court, U.S. Tax Court, U.S. District Court, the U.S. Court of Claims and other venues on tax matters. Tax counsel will also advise regarding employee benefits such as I.R.C. Section 125 cafeteria plans, the Texas Optional Retirement Program, I.R.C. Section 403(b), Section 415(m) and Section 457(a) and (f) plans. Income tax matters will also include unrelated business income tax as it relates to universities; and federal tax matters regarding compensation issues related to university hospitals and physicians. Although the law firm will not be required to prepare the System tax return, it will be required to give legal advice on issues relating to the filing of tax returns and the appropriate treatment of tax matters on such returns. This legal counsel will include interaction with and representation before the Internal Revenue Service and other taxing authorities in any tax controversy. The legal counsel will also advise and represent the System in matters relating to tax liens, tax garnishments, tax levies, tax assessments, tax valuations, as well as summonses, subpoenas, and discovery relating to tax matters. The law firm should be admitted to practice before Texas district courts, the United States Tax Court, United States District Court and the U.S. Court of Claims.

U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in federal tax-related matters including experience handling state pension issues and plans available only to universities, the names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation

of minorities and women in the provision of legal services; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's federal tax matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information" and addressed to David W. Lacy, Attorney, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (dlacy@utsystem.edu; fax: (512) 499-4523; telephone (512) 499-4462 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U. T. System at the address set forth above not later than 5:00 p.m., Friday, July 9, 1999.

TRD-9903128
Francie A. Frederick
Executive Secretary, Board of Regents
The University of Texas System
Filed: May 26, 1999

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Request for Information (RFI) - Health Law and Contracting

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its health component institutions regarding Medicare/Medicaid/Managed Health Care questions, Medicare/Medicaid, third party reimbursement matters and appeal of adverse Medicare reimbursement decisions and complex contracting issues related to affiliation agreements with health care delivery networks, including contracts with private and public entities. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 1999 to August 31, 2000) a health care panel from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation and advice of legal issues raised by complex contracting issues, complex managed care arrangements and third party reimbursement matters, including certified non-profit health corporations, fraud and abuse issues, antitrust concerns.

Description. The U. T. System operates six health institutions located in Houston, Dallas, Galveston, San Antonio and Tyler, Texas. University physician and hospital services are provided through a broad range of contractual arrangements with Health Maintenance Organizations, Preferred Provider Organizations, Medicare, Medicaid, private health insurance carriers, as well as directly with employers. These managed care arrangements may be impacted by state and federal laws and regulations governing insurance, third party reimbursement, antitrust matters, and fraud and abuse issues. Subject to approval by the Texas Attorney General, U. T. System will engage outside counsel with experience in establishing certified non-profit health corporations and other complex managed care contracting arrangements. In addition, outside counsel must have a working knowledge of state and federal laws and regulations governing safe harbors, antitrust matters, Medicare and Medicaid regulations, and appeals of adverse determinations by third party payor intermediaries. U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

Responses. Responses to the RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in complex health delivery and reimbursement matters, the names, experience, and expertise of the attorneys who may be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's complex health delivery and reimbursement matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 81/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information" and addressed to R. Carlton Presley, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (bpresley@utsystem.edu; fax: (512) 499-4523; telephone (512) 499-4462 for questions.)

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U. T. System at the address set forth above no later than 5:00 p.m., Friday, July 9, 1999.

TRD-9903126
Francie A. Frederick
Executive Secretary, Board of Regents
The University of Texas System
Filed: May 26, 1999

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Request for Information (RFI) - Intellectual Property Matters

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its component institutions in intellectual property matters. This RFI is issued to establish (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description. The U. T. System comprises six health institutions and nine academic institutions located in eleven cities in Texas. Research activities and other educational pursuits at each institution produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Texas Attorney General, U. T. System will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; and to prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries. U.T. System also will engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights and to handle other related matters. U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in intellectual property-related matters, the names, experience, and scientific or technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (4) confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail or delivered in person, marked "Response to Request for Information," and addressed to Georgia K. Harper, Section Manager for Intellectual Property, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (gharper@utsystem.edu; fax: (512) 499-4523; telephone (512) 499-4462 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U. T. System at the address set forth above no later than 5:00 p.m., Friday, July 9, 1999.

TRD-9903127
Francie A. Frederick
Executive Secretary, Board of Regents
The University of Texas System
Filed: May 26, 1999

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Request for Information (RFI) - Tax-Exempt Bond Matters

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its component institutions in tax-exempt bond matters. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 1999 to August 31, 2000) a referral list from which U. T. System, by and through its Office of General Counsel and subject to approval by the Texas Attorney General, will select appropriate counsel for representation on specific bond matters as the need arises. These needs include the usual and necessary services of a bond counsel in connection with the issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

Description. The U. T. System comprises six health institutions and nine academic institutions located in eleven cities in Texas. Public, tax-exempt bond issuance is conducted under two major programs and is rated by three major rating agencies. Bonds are issued under authority granted the U. T. System in Article VII, Section 18 of the Texas Constitution (Permanent University Fund). A variable rate demand note program is frequently used to raise new funds in support of the Capital Improvement Program. During the 2000 fiscal year, one such note sale is anticipated in the approximate amount of $30 million. Fixed rate bond sales occur each two to three years in the amount of approximately $100 million to refund variable rate notes. Advance refunding of Permanent University Fund bonds are conducted periodically based on potential savings opportunities. Under authority granted in Chapter 55, Texas Education Code and Vernon's Annotated Texas Civil Statutes Articles 717k and 717q, and other applicable laws, the U. T. System issues revenue bonds for capital improvements. A tax-exempt commercial paper program is used for interim financing with long-term fixed rate bonds sold to provide more permanent financing. The commercial paper program is presently authorized up to $350 million and has approximately $140 million outstanding. Two fixed rate bond sales of approximately $100 million each in size will likely occur during fiscal year 2000. The U. T. System employs a revenue bond program which offers a combined pledge of all legally available revenues with certain exceptions (the "Revenue Financing System"). Advance refunding of bonds, interest rate swaps and escrow restructures of previously defeased bonds, based on market timing, may be expected. Federal tax related matters regarding bonds issued by the U. T. System, including strategies and management practices in the conduct of an exempt debt program requires a close working relationship with bond counsel. In addition, the System works with counsel regarding the preparation of the annual S.E.C. filings. Contact is frequent, particularly in regard to the Revenue Financing System program due to the significant level of capital improvements anticipated throughout the system over the next two years. U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in bond issuance matters, the names, experience, and technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies,

commissions, universities, or elected or appointed officials); and (4) confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, either stapled or bound together. They should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Ray Farabee, Vice Chancellor and General Counsel, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701 (bpage@utsystem.edu; fax: (512) 499-4523; telephone (512) 499-4462 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of U. T. System at the address set forth above no later than 5:00 p.m., Friday, July 9, 1999.

TRD-9903124
Francie A. Frederick
Executive Secretary, Board of Regents
The University of Texas System
Filed: May 26, 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

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-9903032
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 24, 1999

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Texas Workforce Commission

Notice of Public Hearing

To All Persons Interested in the Child Care State Plan Under Consideration by the Texas Workforce Commission

The Texas Workforce Commission (Commission) will conduct a **PUBLIC HEARING** at:

1:00 p.m. on

June 15, 1999

101 East 15th Street

Room 244

Austin, Texas 78778.

to receive comments from the public on the Child Care State Plan proposed by the Texas Workforce Commission and published in the *Texas Register* on May 21, 1999. The proposed State Plan concerns the provision of child care services.

Any person may appear and offer comments or statements either verbally or in writing; however, questioning of commenters will be reserved exclusively to the Commission or its staff as may be necessary to ensure a complete record. While any person with relative comments or statements will be granted an opportunity to present them during the course of the hearing, the Commission reserves the right to restrict statements in terms of time or repetitive content. Persons wishing to appear and offer comments at the hearing are encouraged to notify the Commission in writing by June 9, 1999.

Copies of the proposed State Plan may be obtained from the May 21, 1999 issue of the *Texas Register* or an electronic copy is

available on the Texas Workforce Commission website at: http://www.twc.state.tx.us/twcinfo/rules/prorules.

Comments on the proposal 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.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids, services to special accommodations are requested to contact Carolyn Calhoon at (512) 936-3501 at least two (2) working days prior to the hearing.

TRD-9902958
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: May 20, 1999

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